The Consequences of Bill C-24 and its Impact on Victim Rights, Police
Corruption and Undercover Policing.

By

Erin Olesen-Schinke

A thesis submitted to the Faculty of Graduate Studies and Research in partial
fulfillment of the requirements of the degree of

Masters of Arts
Department of Law

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**The Consequences of Bill C-24 and its Impact on Victim Rights,
Police Corruption and Undercover Policing**

Submitted by

Erin Olesen-Schinke, B. A. Hons.

**in partial fulfilment of the requirements for
the degree of Master of Arts**

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Abstract

This thesis debates the merits of Bill C-24 and the resulting amendments to Section 25 of the Canadian Criminal Code. Bill C-24 makes it possible for enforcement personnel and other designated officials to pursue investigations without having their actions fall within the scope of criminal law. Two major events, the Supreme Court ruling of *R. v. Campbell and Shirose* and the increased criminal activities of Outlaw Motorcycle Gangs, significantly influenced the creation of Bill C-24. The controversy surrounding Bill C-24 is examined in relation to victim rights, undercover policing, police corruption, and the lack of measures to guide the use of the powers provided by the bill. The thesis demonstrates that the implementation of Bill C-24 was neither systematic nor well thought through, and as a consequence, the potential areas for misuse of the Bill are many. It concludes with a number of recommendations arguing for stronger internal and external controls, the increased use of measures aimed at curbing police corruption and, finally, the need for future study and research.

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Chapter 1

Introduction

Law enforcement personnel are faced with the difficult task of maintaining safe cities, implementing proactive crime reduction initiatives while at the same time fostering efficient and effective policing strategies. The public looks to enforcement agencies and other governmental organizations concerned with the administration of justice for productive crime control and crime reduction initiatives. These initiatives are often varied and prolific, attempting to impact upon crime within communities. Enforcement personnel need to be provided the tools necessary to combat crime so as to protect the integrity of Canadian communities. These tools must reflect the constant changing nature of crime so that they do not become antiquated and ineffective. Crime is an ever changing and evolving entity that reflects new technologies, the changing scope of the law, social conditions, political environments, economic status, and other key factors. These factors and other conditions are all instrumental in defining and shaping current crime trends and criminal patterns. As such, enforcement policies and strategies are also diverse and dynamic, often echoing the changes associated with Canadian crime. It is recognized that Canadian law must also reflect upon the changing nature of crime and, in part, be amended or developed to acknowledge significant shifts in patterns or trends of crime within Canada.

Bill C-24 is one of many changes initiated by the Canadian government to reconcile the needs of enforcement agencies to aptly combat crime while

adhering to the legal principles that govern the powers granted to them. Bill C-24 will be described in greater detail within the following chapters however, briefly put, the bill allows for consequential amendments to Section 25 (1) of the criminal code. This new legislation grants police officers and other designated officials to act in a manner or make omissions that otherwise would be against the law.

Bill C-24 identifies many pivotal relationships that shape the manner in which the police function. The emphasis on protecting civil rights and liberties while fostering safe and secure communities can result in positioning organizations, legal institutions and social agencies against each other. Historically, law enforcement agencies have advocated for broader powers and better tools to effectively fight crime (Perry, 1996, Recasens, 2000, Kersten, 2000). This expansion of police power directly affects the degree to which individual rights and freedoms are experienced and located within the greater justice system. Recasens (2000:253) states that, "...security is a condition *sine qua non* for the full exercise of rights and liberties, but it is never a right comparable...." It has been argued that within a democratic society one should not have to sacrifice individual liberties to ensure security. Recasens (2000) contends that it is the trend of enforcement agencies to present this faulty reasoning as a means to justify the expansion of police powers at the cost of civil rights and freedoms. Bill C-24 exemplifies this reasoning of granting enforcement personnel greater power, through the reduction of one's exercising

of their rights, as a means to promote crime control initiatives. Thus, the amendments found in the bill are not met without some controversy.

The amendments located within Bill C-24 were shaped to a certain degree by the growing concern with organized crime (OC) related activities. Enforcement agencies contend that as criminal organizations grow in sophistication and scope, larger, intricate sting operations must be established and utilized to help police organizations curb OC-related activities. Former Solicitor General Lawrence MacAulay spoke to the mandate of the bill, stating "...law enforcement organizations across the country have identified organized crime as a top priority for action...the Government of Canada's legislation will give them essential tools to target and dismantle organized crime networks at all levels (Jan 7/2002 Press Statement)". However, a significant 1999 Supreme Court ruling had inhibited the ability of enforcement agencies to use elaborate sting operations.

The Supreme Court Ruling of *R.v. Campbell and Shirose*, [1999] 1 S. C. R., severely limited the ability of enforcement personnel to conduct and participate within these large, reverse sting operations. In short, the ruling found that the principle of Crown Immunity did not cover the actions of police officers that violate statutes, even if those actions were taken to support or further a criminal investigation. The Supreme Court indicated that only Parliament has the authority to create exemptions from an offence provision of a statute for enforcement personnel conducting criminal investigations. Consequently, legislative amendments were required to grant officers these

greater powers of investigation. Thus, Bill C-24 became the vehicle to promote greater success when dealing with OC-related activities and other criminal activity. Bill C-24 was hailed as the remedy that would adequately furnish police officers and other designated officials with the vital tools to dismantle and prosecute members of gangs and organized criminal associations while, at the same time, promoting officer safety. However, these newfound powers were not conceived within an unquestioning milieu and there existed some serious concerns with the ethical and legal consequences of Bill C-24.

This thesis will first focus on the general concerns associated with the amendments found within Bill C-24, followed by a more in-depth investigation of the specific issues associated with undercover operations and the legislative changes brought about by Bill C-24. Clear analysis of the legal ramifications of *R. v. Campbell and Shirose* will be presented, highlighting the legal arguments presented and the relevant issues raised.

Bill C-24 was not solely borne out of a single Supreme Court ruling, rather a multitude of political, social, economic and legal factors combined to create an environment in which such a bill would be accepted and, ultimately, turned into law. One pivotal element of this environment was the growing anxiety over OC-related activities, specifically, the violence associated with Outlaw Motorcycle Gangs or OMGs. A 2001 Brief prepared by the Canadian Police Association (CPA) in respect to, at that time, the proposed amendments of Bill C-24 asserted that "...there are disturbing and significant trends evolving in Organized Crime in this country, including increased violence, and

the use of threats, intimidation and violence against victims, witnesses, public officials, police officers and the media (CPA, 2001:1)". The CPA (2001:1) continued by stating that, "... Canadian Police Agencies are presently ineffective in controlling Organized Crime in Canada and that police services do not have adequate funds for Organized Crime investigations". Thus, OC-related activity will be discussed as one of the major factors that significantly contributed to the conception of Bill C-24.

Bill C-24 and the resulting amendments to Section 25 of the Criminal Code will also be analyzed in light of the ethical and legal questions associated with such a significant broadening of the powers bestowed upon enforcement agencies. The wording of Bill C-24 will be closely examined so as to underscore the lack of controls implemented within the context of the amendments to prevent undue use of the powers granted by Bill C-24. Inspection of the Bill will also delineate the inadequate measures included within Bill C-24 intended to promote accountability on the part of enforcement personnel and agencies. Upon examination of Bill C-24 it will become evident how officers and other designated officials exercising the powers outlined by the Bill will experience few checks and balances in their employment of the changes. Nor, does Bill C-24 advocate for restraint when determining how the amendments to the Criminal Code will be implemented and under what circumstances. This thesis will clearly demonstrate the inadequacies associated with Bill C-24, specifically in the weak wording of the Bill and its indifference to the potentially far-reaching consequences of its use.

Finally, specific issues central to Bill C-24 will be examined. Such issues as victim rights, police corruption, undercover policing, ethical considerations associated with augmenting police powers, police accountability and methods of police control will be discussed in light of the amendments to Section 25 of the Canadian Criminal Code. It is evident that the aggressive changes implemented through the bill have significant consequences if used inappropriately or unjustly. There must be appropriate safeguards in place to ensure that such misuse is infrequent at best. One could argue that Bill C-24 has not adequately addressed the issue of police agencies potentially misusing the powers generated through the Bill, and that many of the pivotal areas of concern with the bill have not been satisfactorily dealt with by the Government. It is not enough to recognize and identify a significant policing issue, such as OC, and create legislation in hopes of managing the problems associated with the issue. Reforms must be considered in light of the multiple areas where these new laws will impact. As such, it is important to investigate and debate the merit of Bill C-24 in light of its broad consequences and, more specifically, how it will impact upon policing within Canada and its target of OC.

Chapter 2: The Supreme Court Ruling of *R.v. Campbell and Shirose*

R.v. Campbell and Shirose

Before one can fully examine Bill C-24, a solid understanding of the milieu from which it emerged must be obtained. Social, political and economic factors are just a few of the many elements that can impact and influence the creation of a new law. The development of Bill C-24 occurred against the backdrop of escalating organized crime activity within Canada and, more specifically, the rising concern with Outlaw Motorcycle gangs' (OMG) criminal activities. These activities seemed to go unchecked by law enforcement agencies, due in part to a 1999 Supreme Court Ruling in *R.v. Campbell and Shirose* that placed serious limitations on police investigations. This ruling was pivotal in the formulation of Bill C-24.

R.v. Campbell and Shirose spoke to police procedure, the scope of police investigations, the use of "sting" operations by law enforcement agencies, the illegality of police actions, the role of parliament in relation to police powers, solicitor-client privilege and, most importantly, the rule of law. The ruling placed strict limitations on enforcement agencies and was argued to have compromised their ability to fight organized crime and the "war on drugs"(RCMP). This inability was noted by then Justice Minister Anne McLellan who argued that, "...in today's world, it is essential to provide police officers with the tools they need to combat local, national and global crime and protect Canadian interests"(News Release, June 22, 2000).

It has been suggested that *R. v. Campbell and Shirose* hindered the ability of police to protect Canadian interests and to adequately meet operational goals of crime control and prevention. Bill C-24 was the proposed remedy by the Liberal Government that would augment the ability of law enforcement agencies to combat crime and meet other organizational targets and mandates. Whether this is true remains to be seen, but what is clearly evident is the fundamental role that the 1999 Supreme Court ruling played in the creation of Bill C-24.

Facts of *R.V. Campbell and Shirose*

In the autumn of 1991 the Royal Canadian Mounted Police (RCMP) sought legal advice regarding their desire to conduct a “reverse sting” operation that would involve undercover officers posing as large-scale hashish vendors. Such operations have often been used to apprehend large-scale drug traffickers but their use poses both ethical and legal concerns. In the more traditional sting operations the police will pose as willing purchasers of narcotics to obtain evidence and possible subsequent arrests against drug traffickers. The Narcotic Control Act of Canada (NCA) allowed for police agencies to purchase narcotics for the purpose of a sting operation. However, the deterrence effect of these operations was limited for their scope is often confined to low-level street dealers. One can understand that the arrest and detention of low-level dealers has little deterrence on the day-to-day trafficking of narcotics. The RCMP recognized that a “reverse sting” would be a useful mechanism to gain

evidence on the larger, more substantial narcotic dealer that is typically insulated from the reach of the traditional sting operation. Successful “reverse sting” operations could in fact impact upon the drug trade. However, because police officers in a “reverse sting” sell narcotics, the NCA did not authorize the use of such stings, as it is illegal for any Canadian citizen, police officers included, to distribute and sell narcotics. This legal impasse led Corporal Richard Reynolds of the RCMP to seek legal advice from a senior attorney in the Department of Justice, Mr. James Leising.

The legal advice given by Mr. Leising was not revealed within the original court case, for submitting the information garnered in the meetings between the Justice Department and the RCMP was found to be in violation of solicitor-client privilege. In September of 1991, after lengthy consultation with Mr. Leising, senior officials of the RCMP did approve the request made by Cpl. Reynolds to organize a reverse sting operation. It was assumed that the RCMP was acting in good faith based on the legal advice Cpl. Reynolds had received and that the legal advice was in fact good advice. Thus, it was concluded that the RCMP was proceeding with the “reverse sting” based on the information received and that their action, in respect to existing laws and statutes, was a result of Mr. Leising’s advice.

With the help of a police informant, the RCMP contacted two potential groups that might be interested in purchasing one ton of cannabis resin. The RCMP officers were unable to achieve the sale of such a large quantity of resin; thus the sale amount was lowered to 50 kilograms. In January of 1992,

Campbell, acting as a financier for one of the interested groups, with the help of Shirose, negotiated with the undercover officers to pay \$270,000 Canadian funds for the hashish. The drugs in question carried a value on the street of close to one million dollars. Instead of receiving the expected 50 kilograms of resin, Campbell and Shirose were arrested, charged and initially found guilty of conspiracy to traffic cannabis resin and conspiracy to possess cannabis resin for the purpose of trafficking.

Lawyers for Campbell and Shirose argued that the conduct of the RCMP "...shocks the conscience of the community and is so detrimental to the proper administration of justice that it warrants judicial intervention"([1999]S.C.R 1). The legal team further argued that because the conduct of the RCMP was so detrimental a stay of proceedings should be granted. The RCMP, in the process of conducting the "reverse sting", had themselves trafficked cannabis resin, thereby violating the NCA, the very same Act that was being used to charge Campbell and Shirose.

The case came to trial in 1995 and was presided over by Judge Casewell of the General Division of Ontario Courts. Judge Casewell found that the illegal conduct of the RCMP was not relevant to the proceedings, rather the conduct of the RCMP was measured in relation to whether the proceedings were so overwhelmingly unfair that to proceed with the case would pervert justice. It was found that it was in the interest of justice to enter a conviction and impose a sentence on Campbell and Shirose. Though the defense lawyers were advocating for a stay on the proceedings based on the allegedly illegal

actions of the RCMP, the Ontario court found that the actions of the RCMP did not warrant a stay; rather, society would be offended if a stay was imposed on the legal proceedings. As a result of the ruling, the defendants were found guilty of the drug-related charges and the actions of the RCMP were not called into question.

Campbell and Shirose appealed the decision, which was then heard before the Ontario Court of Appeal in 1997, led by Chief Justice Carthy. Judge Carthy disagreed with the trial judge, believing that the actions of the RCMP were relevant and should be measured in relation to the appellant's claim of abuse of process. Carthy found that the conduct of the RCMP was in fact illegal. The fact that the RCMP never intended to actually sell the drugs was irrelevant, their attempt to traffic narcotics was illegal. However, Judge Carthy ruled, "...having condemned the actions of the RCMP and having held up [his] hand against repetition, it would be sanctimonious to say that the rule of law had been eroded by these convictions and sentences"([1999] S.C.R 1:198-99). Judge Carthy found that the circumstances of the case did not warrant a stay and that the "public conscience" would not be shocked to have the convictions stand. The appeal court did note that the information exchanged between the Department of Justice and the RCMP should have been conveyed at the original trial. Judge Carthy could only speculate as to the advice given to the RCMP; thus the court's ability to determine if the RCMP was acting in good faith was constrained. This information was important in establishing whether the RCMP knowingly abused justice. Campbell and Shirose appealed and in

1999 the Supreme Court of Canada ruled on the many issues raised by this precedent setting case.

The Supreme Court Ruling

When the Campbell and Shirose case was presented before the Supreme Court of Canada many key issues surrounding police powers and the illegality of police conduct were addressed. Essentially, the Supreme Court was asked to rule on whether agents of the state, such as police officers while in the course of duty, should follow the same rule of law that the average Canadian citizen is subject to. The RCMP suggested that in breaking certain laws the majority of Canadian citizens would benefit, thereby justifying their actions. If the RCMP did in fact knowingly break the law, then they themselves would be subject to prosecution. This admission would place the RCMP and all law agencies within Canada on a very slippery slope for officers would be held accountable for their actions taken within the course of an investigation. Theoretically, police officers are accountable for their actions if they fall outside the range of legitimate police conduct, however, reverse sting operations are unique because typically the RCMP and other police agencies, despite their technical illegality, sanction them. Thus, with organizational backing, officers have broken the law, without reprimand or consequence, because they were acting within the understood scope of their duties.

The appeal court had questioned the actions of the RCMP but without access to the consultations between the Justice Department and Cpl. Reynolds,

the court could not determine the degree to which the RCMP organization and the undercover officers went beyond the general scope of their duties. The Supreme Court would have to investigate the range of powers of police organizations within Canada to ensure that no abuses of these powers were transpiring under the guise of being part of sanctioned police activity.

Lawyers for the appellants claimed that the actions of the RCMP were so grave that they should deprive the state of a conviction against the defendants. A stay of proceedings was again advocated as it was argued that to continue with the case would violate the fundamental principles of justice. The Supreme Court recognized that situational police illegality does occur and often these illegal actions are important to successful policing. The conclusion that the RCMP acted in a manner prohibited by the NCA was inescapable. The fact that the police acted illegally was not enough to warrant a stay, rather it had to be determined to what extent their actions would “shock the conscience of the community”. This conclusion would speak to the question of abuse of process. Paramount to the Supreme Court’s ruling was the application of the “rule of law” and how this principle governs the actions of police officers and other agents of the state.

The Rule of Law

It is considered fundamental to a democratic nation to have one law for all members of its society. Through equal adherence and application of the law no one individual or organization is immune from acting within the prescribed

boundaries upheld by the law. This principle of one law for all citizens is a critical element to the successful administration of justice through ensuring that the law serves the people through its equal application and administration. Arguably, the use of reverse sting operations by the RCMP brought justice into disrepute. Campbell and Shirose contended that the illegality of the RCMP was so grave that the complete case against them was tainted by these actions. The notion that the RCMP put themselves above the law had not only serious constitutional ramifications but also immediate consequences for the outcome of the Campbell and Shirose appeal.

The rule of law is a deep-seated legal principle entrenched within the Canadian Constitution. Adherence to the common law assures that all citizens are subject to the same laws regardless of public position or governmental status. As demonstrated in the ruling of the *Attorney General of Canada v. Lavell* (1974:1366),

...[Rule of law] means again equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts; the rule of law in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary courts.

Thus, in application, the rule of law ensures that all members of Canadian society are subject to one law. Issues of class, race, ethnicity, social or economic status should not influence one's adherence to the law nor, the universal application of the law. If one person or group were allowed to transcend the confines of the law without consequence, then the legitimacy of the law and society's faith in the rule of law would be challenged. Further, by

what standards would individuals or organizations be evaluated to determine if the overall interests of society would benefit from their breaking of the law? How would one justly calculate the circumstances by which the law could be circumvented and by whom? As such, the principle of one law is meant to ensure that all participating members of society are not subject to arbitrary laws or rules and that their free participation within society is guaranteed through their adherence to the governing laws and statutes of their nation.

In the *Campbell and Shirose* case, the law in question was the NCA. As defined by the NCA (section 4:1) “no person shall traffic in a narcotic or any substance represented or held out by the person to be a narcotic”. “Traffic” is further defined by the NCA (section 2:A) as “...to manufacture, sell, give, administer, transport, send, deliver, distribute...”. Therefore, any person attempting to sell a narcotic would in essence be trafficking. Factually, the RCMP was in possession of a classified narcotic, and the undercover officers were attempting to sell this cannabis resin for \$270,000 dollars. These actions on the part of the RCMP were in theory illegal.

Furthermore, the RCMP have a higher standard of duties imposed on them by Parliament to ensure that they “...maintain the integrity of the law, law enforcement and the administration of justice...and to perform the member’s duties promptly, impartially and diligently, in accordance with the law...”(RCMP Act, 1985, R-10). It is the expectation that police agencies and other agents of the state within Canada will act accordingly while performing their various duties and that their actions will fall within the scope of the law,

the very same law that governs all citizens. One can question how police officers could break the law in an effort to uphold it. This contradiction colored the *Campbell and Shirose* case, bringing into question the practices of the RCMP and the general methods of crime control employed by Canadian police agencies.

Notion of “good faith”

In hopes of addressing this contradiction, the RCMP asserted they were acting on the legal advice received through the Department of Justice prior to initiating the reverse sting operation. The RCMP claimed that their actions were in “good faith” and it was implied that they acted in accordance with this advice. It is essential that the RCMP be able to garner legal advice in connection with their operations and traditionally such legal guidance should fall under the solicitor-client relationship. As stated in *R. v. Gruenke* (1991:p.289)

...the prima facie protection for solicitor-client communications is based on the fact that the relationship and the communication between solicitor and client are essential to the effective operation of the legal system. Such communications are inextricably linked with the very system which desires the disclosure of the communication....

These communications were found to be relevant for they determined if the RCMP officers were knowingly breaking the law when they offered to sell narcotics to the appellants. An admission on the part of the RCMP to breaking the law would open the door for possible charges against the police organization. Further, the laying of charges would set a precedent for all

future police initiatives, limiting the scope and capacity of police action so as to ensure that all conduct fell well within the range of the law. If the RCMP were acting in good faith then their deeds were exercised based on the legal advice received and both individual and organizational accountability would not fall on the shoulders of the RCMP.

The Supreme Court considered whether the communications were in fact privileged and whether these communications should have been made available at trial to the appellants. From legal arguments presented by the appellants, though not germane to this paper, it was found in part that some of the communications should have been revealed at trial. More specifically, arguments were made to reveal the questions asked on the part of the RCMP surrounding the legality of the police posing as traffickers, offering drugs for sale and the possible consequences to RCMP members for engaging in the above mentioned activities. As a result, a new trial was ordered by the Supreme Court with this new information to be included at the trial. The actions of the RCMP would then be scrutinized in relation to the information they had received. Only then could the courts determine if the RCMP had acted in good faith and, if not, then their alleged abuse of power could in fact affect the criminal liability of Campbell and Shirose.

Conclusion of R. v. Campbell

The Supreme Court acknowledged that the new trial judge should consider all the circumstances of the *Campbell and Shirose* case when making a judgement. Notably, the police conduct did not lead to any serious infringement of the appellant's rights, and the RCMP were careful to keep control of the drugs and ensure that none escaped to the streets. Finally, the courts need to acknowledge the difficulty of combating drug rings using traditional police methods. However, even with these recommended considerations, the Supreme Court ruling was instrumental in virtually eliminating all reverse sting operations on the part of Canadian policing agencies. Because police conduct was open to possible litigation even after seeking legal advice, police organizations severely curtailed certain activities for fear of putting officers into positions where they might be held criminally liable.

One of the most striking observations to come out of *R. v. Campbell and Shirose* was the lack of comprehensive legislation to guide police investigations, taking into consideration the changing face of criminal activity and other relevant criminal trends. The Supreme Court was left to rule within the confines of existing legislation which does not allow for police officers or other agents of the state to supersede the rule of law in order to facilitate operational goals or to augment public safety. Due to this absence of legislation, what would arguably be deemed reasonable and proportional conduct in light of investigative goals would now leave police organizations

open to litigation. This lack of legislation was considered as weakening the ability of the police to do their job, specifically in respect to emerging concerns with organized crime. The limitations on policing that were upheld in the ruling of *R.v. Campbell and Shirose* coalesced with public fears surrounding the OMGs wars and the inability of the police to adequately deal with organized crime. Thus, the Supreme Court ruling alone did not ignite the need for Bill C-24; rather the ruling set the stage for discussion. One of the major impetuses for change was societal reaction to OMGs and the increase of random violence within traditionally safe communities.

Outlaw Biker Gangs and Organized Crime: Their Scope within Canada

The 1999 Supreme Court ruling combined with another phenomenon of increasing organized crime serving to highlight the newfound limitations of police. Canadian communities were dealing with the fallout of organized crime, spearheaded by “outlaw biker gangs”. With these new restrictions on police, the ability to control organized crime was diminished. Public perception was that of an increasingly serious crime problem festering within cities and going unchecked by current crime control methods. At stake was the safety of the general public but police organizations were not willing to jeopardize their officers by placing them in positions where they could be held legally accountable for actions taken within the course of an investigation. Organized crime was not a new issue to policing agencies but during the mid-to-late nineties incidents of violence and other criminal activity linked to organized

criminal groups were on the rise and of paramount concern to both the public and the Canadian government.

The federal government initiated and participated in numerous projects and strategies aimed at tackling the issue of OC and related activities. In 1994 the government introduced the Anti-Smuggling Initiative which provided resources for the RCMP, Justice Canada and Canada Customs and Revenue to combat smuggling and the distribution networks located at Canadian ports and borders used by organized criminal gangs. These initiatives were strengthened when Canada and the United States participated in a Cross-Border Crime Forum that strengthened cooperation and information-sharing between the two countries. It was recognized that reliable and easy access to information was fundamental to police investigations. Thus, in 1999, the government provided \$115 million dollars to the RCMP to modernize the Canadian Police Information Center (CPIC) to ensure that policing agencies across Canada had consistent access to information regarding suspected organized criminal activities. Other federal initiatives focused on amendments to existing laws and the creation of new laws aimed at combating organized crime.

In 1996 the Witness Protection Act came into force and established a formal, nation-wide program to safeguard those individuals who were risking their lives to help police agencies and their investigations. In addition, in 1996, the Solicitor General of Canada organized a National Forum on Organized Crime that brought together the police, federal and provincial governments, the

legal community, the private sector and academics. The aim of the Forum was to coordinate an approach that would address the essential issues surrounding organized crime and the increase in OC-related activities. The Forum called for more harmonized tactics towards OC with an emphasis on money laundering, criminal intelligence, cross-border controls, and law enforcement strategies. A consequence of this Forum was the establishment of five Regional Coordinating Committees and a National Coordinating Committee on organized crime that were introduced in 1997. The committees served to provide a stage for a multi-disciplinary approach used to address the plethora of issues surrounding OC-related activities. The National Committee also focused on legislative issues arising from law enforcement-related concerns and, as such, the Committee advised the federal government on possible policy changes.

The National Committee advised the Federal Government on a multitude of concerns that resulted in numerous policy modifications. One such development was the enactment of Bill C-17 in 1997 that allowed for wide-ranging amendments related to the power of search and interim judicial release or bail, and the prosecution of criminal organization offences. Bill C-95, also enacted in 1997, implemented certain proposals brought forth by the National Forum on Organized Crime. Bill C-95 furthered the scope of these proposals by clearly defining the concepts of criminal organization, criminal organization offence and participation in such offences. Bill C-95 also expanded investigative powers of police, enhanced public protection by

augmenting the bail requirements for persons charged with criminal organization offences and made participation in a criminal organization offence an indictable offence, punishable by up to 14 years in prison. Bill C-8, enacted in May of that same year, modernized Canada's drug laws as outlined in the Controlled Drugs and Substances Act and combined with the Police Enforcement Regulations Act to further broaden the scope of police powers while conducting criminal investigations. Bill C-40, the new Extradition Act expanded Canada's capacity to extradite and in general simplified Canada's extradition procedures. Finally, Bill C-51 made amendments to the Corrections and Conditional Release Act through eliminating the possibility of accelerated parole for those individuals convicted of offences related to organized crime.

Most of the federal initiatives were based on the belief that organized crime was in fact an increasing problem with serious repercussions to the general public. It was also assumed that traditional methods of policing and investigation techniques did not adequately meet the challenges presented by organized crime-related activity. What, then are the key challenges when addressing organized crime and how large of an issue is it in fact?

Organized Crime Impact Study

In 1998 the Government of Canada produced an Organized Crime Impact Study (OCIS), the first of its kind in Canadian history and arguably the most comprehensive attempt at delineating the many issues surrounding

Organized Crime. The study was the result of a need to better understand the phenomenon of Organized Crime (OC) activity within Canadian borders and the role of Canadian based OC within the global community. OC was defined by the Government as

...economically motivated illicit activity undertaken by any group, association or other body consisting of two or more individuals, whether formally or informally organized, where the negative impact of said activity could be considered significant from an economic, social, violence generation, health and safety and/or environmental perspective (Impact Study, 1998, p.5).

The definition of OC has evolved throughout the past years as new information and better understandings of OC have emerged. However, during the late nineties, as OC was burgeoning within the Canadian context, the above definition was considered the most up-to-date and best encapsulated the scope of OC.

The OCIS noted the many areas of Canadian life that are tainted by OC, the most statistically relevant being the illicit drug trade. The most reliable estimates of the magnitude of this illicit drug market range from seven to ten billion dollars annually, with estimated direct costs to the Canadian public of one and a quarter to four billion dollars per annum in the three most populous provinces of Ontario, Quebec and British Columbia (OCIS, 1998). These costs focused primarily on related health care issues, enforcement, reduced labour productivity, while other costs to the public could never be accurately quantified. As acknowledged by the OCIS, the consequences from the illicit drug trade “range from readily recognized violence and economic loss to the less quantified but no less important environmental, social and health and

safety implications of some OC-related activities” (OCIS,1998:.1).

Furthermore, it is these intangible impacts that can reflect the greatest harm of the illicit drug trade on Canadian communities. As such, it was suggested that OC involvement within the illicit drug market represents a major detriment to the well being of Canadian institutions and citizens.

Other identified areas of OC-related activities ranged from environmental crime, prostitution, economic crime, migrant trafficking, counterfeiting, motor vehicle theft, fraud, money laundering, corruption, and alcohol/tobacco smuggling. The increasing abundance of illegal activities associated with OC combine to enlarge the overall economic and social costs experienced by the public. Though not an exhaustive list, one can infer that OC-related activities have serious repercussions if not controlled through proper enforcement and legislative initiatives.

In 1997, the then Solicitor General, the Honourable Andy Scott, addressed the phenomenon of OC in his speech to the House of Commons. Scott described OC as an issue of “great concern” to the government of Canada and to all citizens. Scott stated that “the police have also told us that the most effective way to dismantle and disrupt criminal enterprises over the long term is to target the upper levels of criminal organizations and focus on the kingpins”(Speech to the House of Commons, Nov 27, 1997). The Solicitor General asserted that police need a legislative base to conduct undercover operations and other crime control initiatives if they are to be able to “dismantle criminal enterprises”. The need for police accountability has to

be balanced with existing operational goals and strategies. It was acknowledged that increased controls might limit the ability of the police to function against OC structures. Thus, in the pre-*Campbell and Shirose* period, latitude in dealing with OC was advocated for by enforcement organizations. However, the government was wary of giving police complete freedom as articulated by the office of the Solicitor General (Portfolio Environmental Document, 1998).

The complexity of combating OC-related activity was recognized by the Ministry of the Solicitor General in the 1998 Portfolio Environment Document that summarized the key environmental trends and issues that challenged the Ministry. It noted that OC was a serious threat to Canadian society and to best address the problem of OC the government must work together with police, prosecutors, other departments and international partners to develop new collaborative mechanisms to attack OC. The Solicitor General called for increasing crime prevention programs, integrating criminal justice systems to foster information sharing and to boost existing initiatives as a means to combat OC-related activities. As part of achieving this goal, it was noted that policing systems and other enforcement agencies must increase their availability to independent review to better ensure that administrative processes are subject to both internal and external control mechanisms. It was understood that the integrity of the justice system was of paramount concern to the government of Canada, and newly implemented enforcement strategies must reflect this interest. The manner in which agencies tackle OC must not

jeopardize the public's faith in the police or the government. Thus, the demand for increased vigilance against OC was of paramount concern to the Ministry but the means for attaining these goals were curtailed by arguing for increased accountability. The challenge of enhanced accountability in light of rising organizational demands weighed on policing agencies that at the time were in the middle of a dramatic and violent biker war in the province of Quebec.

Statistically, there were enough OC-related incidents that could be used to justify augmenting police powers and to call for removing some of the limits placed on enforcement agencies. The most notable cases of OC violence came from within the province of Quebec, with an outbreak of violence between two warring Outlaw Motorcycle Gangs (OMG), the Hells Angels and the Rock Machine. The conflict was brought home to the average Canadian citizen with the violent, 1995 death of a nine-year old Montreal boy who was blown up by a bomb meant for a member of a rival gang.

Though OMG violence was not a new phenomenon to the province of Quebec, in 1994 the conflict raged in earnest as the two major OMG of Quebec battled over ownership of the illicit drug trade market within the province. According to a 1999 report conducted by the Criminal Intelligence Service of Canada (CSIS), since the OMG war started in 1994 there had been 103 homicides, 124 murder attempts, 9 missing persons, 84 bombings and 130 incidents of arson related to this conflict (CSIS Report, 1999). The violence perpetuated by the OMG was extreme and often affected the lives of individuals not involved in the conflict.

With thirty known OMGs within Canada and the well-earned reputation of OMGs as being violent entities, tolerance on the part of the Canadian public for outlaw bikers was low. This environment, coupled with the government's recognition of OC as a number one priority, created a milieu in which the success of traditional policing tactics were questioned. Creation of specialized units dealing with OC, such as the Provincial Special Squad or the Wolverine Squad in Quebec were attempts at remedying the situation. However, as previously noted by the former Solicitor General Andy Scott, police agencies needed legislative backing to grant them greater powers to combat OC-related criminal activities.

On the other hand, the Supreme Court ruling in the *Campbell and Shirose* case, during the height of the biker wars within Canada, critically redefined the manner in which law enforcement agencies could respond to the issue of OC. The ruling also significantly questioned the overall role of police within Canadian society, specifically the balance of their powers in relation to the ability to do their job. Protection of the public is not limited to protection from being victim to a violent crime, but also from being victim to a crime against one's freedom and liberties. Thus, the challenge of balancing the need for expanding police powers in a democratic society was addressed by the Supreme Court in the *Campbell and Shirose* case. The ruling was controversial in light of the growing OC concern and impact on Canadian society. Thus, at the turn of the millennium, the Liberal Government

attempted to reconcile these concerns with Bill C-24. Whether this Bill is the remedy needed remains yet to be seen.

Chapter 3: A Closer look at Bill C-24

Bill C-24

Bill C-24 was an Act to amend sections of the Canadian Criminal Code in respect to organized crime and law enforcement and to make further consequential amendments to other existing acts. A federal White Paper was tabled on June 22, 2000, before the Senate by the then Justice Minister Anne McLellan and the then Solicitor General Lawrence MacAulay. The White Paper contained aggressive new measures to fight organized crime within Canada. The emphasis of the proposed legislation was to offer police officers and other public officials the tools necessary to adequately enforce criminal, environmental, immigration and custom laws. In a direct response to the 1999 Supreme Court ruling in the case of *R.v.Campbell and Shirose*, the onus was placed on Parliament to define and characterize the scope of law enforcement agencies when conducting investigations. As noted earlier, the ruling in *R.v.Campbell and Shirose* found the actions of the RCMP illegal while conducting a reverse sting operation. Due to the ruling, police agencies across Canada suspended or permanently discontinued investigations out of concern that their officers were no longer immune from prosecution for offences they committed in the name of law enforcement while conducting an investigation.

The mandate of the White Paper was twofold: first, to explore the need for protective legislation for officers and other public officials so as to enable them to successfully carry out their respective jobs, and second, to acknowledge the growing concern with OC-related activities within Canada by

providing the legislative amendments needed to support crime control initiatives aimed at OC. In response to these concerns and after much discussion and debate surrounding the paper, Bill C-24 was tabled in the House of Commons at the beginning of 2001.

The Political Process of Passing a Bill

Before dissecting the individual elements of Bill C-24, it is important to understand how a Bill becomes law within Canada and at what stage in the process can recommendations and changes to the Bill's content can be made. In general, proposed Bills often reflect current concerns and conditions that necessitate new legislation in order to address these developing conditions. The government firsts conduct research on the selected topic and drafts initial reports that highlight the area of concern and what parties are most intrinsically linked to the issue at hand. After much exploration, the government will then compose a bill that introduces the new legislative changes and this bill is put through numerous stages before it can become law.

At first reading, the bill is considered read for the first time and printed without being subject to any debate. At second reading, the Members of the House of Commons debate the founding principles of the proposed bill and attempt to determine if the bill meets its selected mandate in a fashion that is compatible with the Canadian public. Upon passing second reading the proposed bill goes onto the committee stage where committee members study the bill clause by clause. Committee members often call in experts to clarify or

suggest changes to the bill. The Committee may propose amendments, or changes to the bill before passing the bill on to the next stage. The report stage follows and this opens the revised bill in the House to debate. Again, members can suggest modifications that need to be made to the bill before it is presented for third reading. The third reading of the bill provides an opportunity for members to vote on the bill after any revisions have been made to it. If the bill is passed at third reading, it goes through a similar process in the Senate, at which point more deliberation surrounding the bill is conducted. A bill must be approved by both the Senate and the House of Commons for it to be given Royal Assent and to become law within Canada.

The process through which a proposed bill is debated and voted on is an attempt to ensure that the new legislation will reflect the ideals of government and offer further protection and consideration to the Canadian public. That is not to say that proposed bills can be highly controversial and at times pushed through the process due to formidable external pressures. It has been suggested that Bill C-24 does not reflect the best interests of the Canadian public, that it places law enforcement officers and other appointed public officials above the law in the name of promoting crime control and that it jeopardizes the operation of civil rights within Canada. It is essential to consider each aspect of Bill C-24 and the subsequent ramifications of the legislation to best understand how this Bill will act upon crime control techniques within Canada, and the implications it will have for the Canadian public.

Summary of Bill C-24

Bill C-24 contained many proposed changes to the Criminal Code and other acts, but the most contentious alterations were in respect to the powers allotted to law enforcement personnel and other persons acting at their direction. Bill C-24 contains specific amendments to Section 25 of the Code. The bill was attempting to provide circumscribed protection to officers and public officials from criminal liability for a selection of otherwise illegal acts executed while in the course of an investigation or enforcement of an Act of Parliament. The bill was primarily launched as legislation to combat organized crime and. The bill was touted as the mechanism to take a “bite” out of the OC problem that was evident in many urban centers across Canada. The other major initiatives of Bill C-24 reflected this position and were introduced as necessary changes to Canadian legislation if effective crime control measures were to be achieved.

Bill C-24 sought to provide governmental members and their family’s additional protection from intimidation directed at them due to their role in the administration of justice. Bill C-24 also called for more encompassing measures for investigation and prosecution in connection with OC by expanding the concept of criminal organization and criminal organization offences. Finally, other amendments relating to the proceeds of crime legislation were included to augment the government’s ability to seize and restrain proceeds from organized crime. In general, Bill C-24 debuted as the new legislative weapon against OC-related activities and was the answer to the

R.v.Campbell and Shirose ruling that allegedly circumvented criminal investigations across Canada.

It is important to note that the most controversial amendment of offering immunity to officers from prosecution was embedded within the multitude of changes to legislation in respect to combating organized crime. As mentioned previously, OC was of growing concern to not only law enforcement agencies but also the Canadian public. With OC-related activities as the focus of many advocacy groups and law enforcement agencies OC-related activities were presented as a growing concern to Canadian society that knew no boundaries and that was seemingly unfolding unchecked by law enforcement agencies hampered by bureaucratic red-tape. Thus, proposed legislation that fundamentally challenged the rule of law within Canada and the founding notion of equality before the law was presented along with the broader OC-related legislation. Though the OC-related amendments of Bill C-24 are contextually relevant, the primary focus of this paper is with the concerns and ramifications of providing law enforcement officers and those acting at their discretion circumscribed immunity from prosecution and criminal liability for actions committed during the course of an investigation. This contentious amendment will be investigated in greater detail in the following section.

Bill C-24: Amendments to Section 25 of the Canadian Criminal Code

The main goal of Bill C-24 is to provide officers and designated officials with capacity to effectively combat crime. In light of the growing concern with OC it has been suggested that current policing techniques are at times antiquated and for law enforcement agencies to keep pace with the activities of criminals improved policing strategies are needed. It is written in Bill C-24,

...it is the public interest to ensure that public officers may effectively carry out their law enforcement duties in accordance with the rule of law and, to that end, to expressly recognize in law a justification for public officers and other persons acting at their direction to commit acts or omissions that would otherwise constitute offences...(Section 25.1(2)).

Thus, the argument is made that the amendments made to the Canadian Criminal Code are in fact in the best interest of the general public. It is argued that for effective policing to occur law enforcement officers and other designated individuals need the freedom at times to circumvent the law in order to facilitate public protection and other organizational goals. Bill C-24 limits this freedom to law enforcement officers engaging in criminal investigations and any other public officer who is actively partaking in the enforcement of an Act of Parliament, such as custom officers or immigration officers. This section of the bill exposes the paradox of having to break Canadian laws in order to best enforce them. It is this contradictory theme that runs through the bill and is central to the debate surrounding its creation..

Before officers are allowed to circumvent the law, they must receive permission from a “competent authority” to do so. Bill C-24 defines a competent authority as an individual responsible for law enforcement or who has the power to enforce acts of Parliament, such as the Solicitor General, the

Minister responsible for policing in each respective province, or the Minister who is responsible for the Act of Parliament that the officers are trying to enforce. The Bill allows for a competent authority, at their discretion, to designate senior officials who then can authorize the commission or omission of acts that otherwise would constitute an offence. A senior official includes individuals who are responsible for law enforcement, such as commanding officers within a police organization. The bill states that the competent authority "...shall consider the nature of the duties performed by the public officer or group of public officers in relation to law enforcement generally, rather than in relation to any particular investigation or enforcement activity" (Section 25.1(4)). It is the duty of the competent authority or the designated public official to consider general law enforcement goals and mandates when making their decision and to consider the individual characteristics of each situation presented before them. Through the use of law enforcement goals as the barometer against which all applications are measured, an attempt is made to reduce disparity and emotionally charged decisions based on particularly upsetting or highly pressured individual cases. However, this process also effectively removes considering the individual when reviewing applications and can promote general, sterile goals over considering the implications that are unique to each individual situation. Furthermore, one might question the ability of internal officers and officials to make sound and just decisions regarding their own organizational goals and personnel. The issues surrounding

the use of internal personnel without an external validation system will be further explored throughout the ensuing sections of this thesis.

Included within Bill C-24 are conditions and justifications that are to be considered when granting a peace officer permission to circumvent the law.

Bill C-24 states,

...a public officer is justified in committing an act or omission-or directing the commission of an act or omission-that would otherwise constitute an offence if the public officer is (a) engaged in the investigation of an offence under, or the enforcement of an Act of Parliament or in the investigation of criminal activity; (b) is either designated, or is a member of a group that is designated and (c) believes on reasonable grounds that the commission of the act or omission, as compared to the nature of the offence or criminal activity being investigated, is reasonable and proportional in the circumstances...(Section 25.1(8)(a)(b)(c)).

The competent authority and/or senior official must weigh the act or omission in question in relation to the nature of criminal activity being investigated to ensure that the act or omission is comparable to the level of criminal harm resulting from the activity being investigated. Bill C-24 sets the parameters for this decision by indicating that such factors as the character of the act or omission must be considered as well as whether or not the peace officer has other means available to them to carry out their law enforcement duties.

Intrinsic to the decision making process is the notion of proportionality. Bill C-24 does not specify what elements should be considered when trying to ascertain the proportionality of the peace officer's act or omission in relation to the criminal activity at hand. Lacking any formal structure, decisions are then made based on what the senior official or competent authority deems relevant and germane to the process. Without specific guidelines it is virtually

impossible to accurately and systematically measure the relative harm of the act or omission in question in relation to the harm caused by the criminal act. The bill fails to list the components that should be considered in such an equation and, as a result, proportionality is reliant on what aspects each senior official or competent authority considers to be significant.

This ambiguity continues in the next section of the bill where the bill allows for peace officers to commit an act or omission that otherwise would be considered an offence without being authorized to do so if the immediate situation makes it not viable to receive prior authorization. Section 25.1(9)(a) states that no peace officer is justified in committing an act or omission that otherwise would be considered an offence unless, in addition to meeting the conditions as set out in sections (8)(a) to (c), they are personally authorized in writing to do so by a senior official or competent authority. It is implied that the senior official and/or competent authority has weighed the circumstances of each application and has decided that granting permission to commit an act or omission otherwise considered illegal is proportionate to the nature of the investigation and the reasonable availability of other means to achieve operational goals. However, section (9)(b) recognizes that officers may find themselves in immediate situations where there are reasonable grounds for receiving authorization but to seek endorsement at that time would be unfeasible. Bill C-24 ensures that peace officers can only go ahead without prior approval when their actions,

...(i) preserve the life or safety of any person, (ii) prevent the compromise of the identity of a public officer acting in an undercover

capacity, of a confidential informant or of a person acting covertly under the direction and control of a public officer or (iii) to prevent the imminent loss or destruction of evidence of an indictable offence (Section (9)(b)(i) to (iii)).

Thus, actors in the moment can make decisions as to whether or not they may commit acts or omissions that otherwise they would be criminally liable for.

One can question the ability of individuals to make sound decisions when directly involved in the situation at hand. Conversely, the ability to weigh the immediate proportionality of one's actions while being directly involved is arguably an impossible task.

Section 25.1(11) sets the limitations on what acts or omissions are not justified through the bill. It is clearly noted that no element of Bill C-24 amendments to the Criminal Code would allow,

...(a) the intentional or criminally negligent causing of death or bodily harm to another person; (b) the willful attempt in any manner to obstruct, pervert or defeat the course of justice or; (c) conduct that would violate the sexual integrity of an individual (Section (11)(a) to (c)).

Thus, police officers and other designated officials are limited to the extent to which they may circumvent the law while conducting an investigation.

However, how would one know if an officer went beyond these limitations and conducted himself or herself in a questionable or even criminal manner? The bill was specifically designed to help undercover officers maintain their "cover" by ensuring that such officers could, through their acts or omissions, break the law while being actively involved in covert operations. It was argued that to not be able to engage in certain criminal activities would not only place the personal safety of the officer at risk, it could potentially jeopardize

undercover operations. But what form of checks and balances exists to ensure that officers do not act outside of the specific limitations of the proposed Bill?

In general, section 25.2 contends with the issue of accountability by requiring all officers and/or designated public officials to file a written report with the “appropriate” senior official recounting the act or omission. This section does not state what the consequences are of an officer failing to submit a written report, nor is a specific timeline given as to when the report is due. Further, the onus is placed on the individual officer and their superior officer to ensure that the act and/or omission is noted and recorded. It is implied that if the legislation is used in an erroneous fashion it will come to light through this reporting system. One might argue that if an individual inadvertently or purposely fails to produce a report for their superior officer, then it would be very difficult to get a fair understanding of when, under what circumstances and to what avail the proposed legislation is used. Furthermore, filing a report requires the officer to account for their conduct but, to assume that an individual can describe their actions in a self-reflective and unbiased manner is naïve.

Section 25.3(1) extends this notion of accountability by requiring that an annual report be published, listing the various incidents and uses of the legislation, the nature of the acts or omissions, and the nature of the conduct being investigated when the peace officers or other officials were designated to use section 25.1. Section 25.3(2) identifies limitations to the annual report, specifically ensuring that any information within the annual report should not

compromise an ongoing investigation, endanger the life or safety of any person, prejudice a legal proceeding, or jeopardize the identity of an undercover officer, informant or a person acting covertly under the direction of a public officer. Also, the annual report should not contain any information that would “otherwise be contrary to the public interest” (Section 25.3(2)). Though the intention of the annual report is to list the frequency and context with which the proposed legislation is employed, these limitations serve to frustrate the flow of information and as a result true accountability is impinged upon.

It can be argued that revealing delicate information regarding criminal investigations can be contrary to the public interest and the use of such vague and ambiguous terminology only serves to make it that much more difficult to decipher what is truly damaging information or information that can be released within an annual report without consequence. Thus, even with the inclusion of provisions to ensure that the use of section 25.1 is regulated, the degree to which these provisions will ensure that goal is questionable.

Section 25.4(1) speaks to the issue of the consequences of the use of Bill C-24 in respect to property damage incurred through an act and/or omission of a peace officer or other designated official. Section 25.4(1) states that “...the senior official with whom the public officer files a written report under section 25.2 shall, as soon as it is feasible.... notify in writing to any person whose property was lost or seriously damages as a result of the act or omission...”. This report must be made no later than one year after the commission/omission of the act. However, section 25.4(2) notes that the competent authority may

advise the senior official not to write a report to the parties concerned if the notification might hinder or jeopardize an ongoing investigation. There are no stipulations given to how individual or parties would be remunerated for damage to their property at the hands of peace officers and/or designated officials. Further, no time limit is indicated as to how long a senior official may wait before notifying individuals if they have deemed the information to be sensitive in respect to ongoing investigations. One could also argue that limiting reports to noting only property damages negates the potential emotional hurt that may be suffered as a result of being victimized. Failing to address the personal impact of being a victim of a crime and not having solid provisions to address these potential outcomes threatens the scope and validity of such legislation.

Moreover, the bill does not specifically address how police organizations or other agencies would make restitution for the actions of peace officers and other designated officials if it was found that the actions or omissions they took were unwarranted. What if an officer, assuming that an authorization would be granted, acts in such a fashion that directly impacts members of the community and then, upon reflection, it is argued that the officer was in fact not justified to have committed an offence? Having not addressed such a scenario the legislation is limited in its ability to adequately manage both the justified and unjustified actions of officers.

More specifically, simply notifying a party of who perpetrated the property damage and in what context does not speak to the multiple layers of

“damage” that may have been experienced as a result of the actions or omissions on the part of peace officers and other designated officials. The fallout out from not addressing these multiple layers of harm is not only extensive but it directly challenges the notion of rule of law and organizational accountability on the part of the police and other law-enforcement agencies. Being a victim of a crime extends far beyond the material loss experienced, and though each individual response to victimization is unique, it is fair to suggest that being the victim of a crime perpetrated by the very individuals sworn to uphold and protect the law could have consequences that are more lasting and severe. Simply notifying an individual or party of their material loss does not extend far enough in attending to the possible damage done through the acts or omissions of peace officers and/or designated officials and thus compounded by the lack of specific provisions for restitution to parties and individuals who have been the victim of a crime.

Finally, there are some further limitations attached to Bill C-24 that regulate the use of the legislation in respect to gathering evidence and the provisions of Part 1 of the Controlled Drugs and Substances Act. Section 25.1(13) states that “...nothing in this section relieves a public officer of criminal liability for failing to comply with any other requirements that govern the collection of evidence”. This is to ensure that no evidence that could be used within court proceedings is collected in such a manner that would make it inadmissible in court or that would jeopardize the administration of justice. Further, section 25.1(14) states that

...nothing in this section justifies a public officer or person acting at his or her direction in committing an act or omission-or a public officer in direction the commission of an act or omission-that constitutes an offence under a provision of Part 1 of the Controlled Drugs and Substances Act.

This section acknowledges that public officers or those acting under their direction must consider the specific provisions of Part 1 of the Controlled Drugs and Substances Act when considering their choice of act and/or omissions while conducting an investigation. Thus, Bill C-24 expressly recognizes that certain considerations must be met when collecting evidence and when dealing with controlled drugs and other substances and that these limitations must be contemplated prior to authorization being granted under section 25.1(9)(a) and (b).

It is evident that the proposed amendments to Section 25 of the Criminal Code are not only extensive but deal with contentious issues that can have important ramifications in respect to the protection of the public interest, the administration of justice and the accountability of peace officers and other designated officials from law-enforcement agencies. Specifically, the amendments generate concern in several areas including victims rights, ethical considerations in respect to police organizational behavior, the possible circumvention of the rule of law, judicial oversight of police organizations and, the issue of police corruption. Increasing incidents of OC-related activity within Canada, the growth of outlaw biker gang violence and the need for police agencies to have more freedom to pursue organizational goals have created a milieu in which Bill C-24 is perceived as the required legislative

response to adequately address these and other concerns with crime control and crime prevention.

What remains to be seen is how will the power and immunity embodied within the bill affect the general public and the pursuit of justice? Further, can a balance be met between achieving crime prevention and safer communities, and upholding the guiding principles of criminal justice and rule of law?

Although Bill C-24 strives to allow for greater crime control and prevention, will that be the sole outcome of the powers granted through the legislation or will unintended consequences of the Bill further compromise the administration of justice? Attempting to reconcile these controversial concerns will be the focus of the following chapter.

Chapter 4: General Concerns with Bill C-24

General Concerns with Bill C-24

The expansion of police powers as granted by Bill C-24 raises many genuine concerns amongst civil rights organizations, victim protection advocates and other agencies, groups and individuals that monitor the actions of police personnel within Canada. The amendments made to section 25 of the Canadian Criminal Code clearly increase the level of power exercised by the police during the course of criminal investigations. It is the belief that these newfound powers will enable police and other enforcement personnel to conduct investigations that target larger, traditionally harder to infiltrate criminal organizations such as OMGs or OC networks. The ramifications of allowing police officers to act outside of the law have not been fully examined. The following sections will closely consider some of the main concerns associated with Bill C-24 and investigate the possible fallout from adopting a Bill that allows for such less restricted police action. The bill and the consequences in relation to undercover policing and police corruption will be dealt with in greater detail in the next chapter.

The Concern of Victimization and Adequate Restitution

One of the concerns associated with Bill C-24 is the lack of provisions that have been included within the Bill to address the issue of victimization at the hands of police. Bill C-24 gives license to police officers and other designated authorities to essentially conduct themselves in such a fashion that

would normally be determined criminal. An important consequence of Bill C-24 is the creation of victims that will experience victimization at the hands of the police.

The word “victim” is defined as “...one that is acted on and usually adversely affected by a force or agent...one that is subjected to oppression, hardship, or mistreatment”(Webster’s, 1983:1314). To be a victim generally holds a negative connotation and implies that the victim is acted upon by outside sources. When these outside sources are labelled within the criminal justice system as “offenders”, then the victim is guaranteed certain legal rights due to their status as a victim of crime (Canadian Statement of Basic Principles of Justice for Victims of Crime, 2002, United Nations Declaration of Basic Principles of Justice for Victims of Crime, 1987). The defining element is that the individual or parties at hand are victims of actions that are deemed as illegal under the Canadian Criminal Code. What then is to be said of the position of the victim in relation to actions of police officers or designated officials that normally would be contrary to sections of the Criminal Code yet are allowed through the amendments of Bill C-24? Are these individuals and/or parties even considered as victims of crime? The amendments to section 25.4(1) of the Criminal Code stipulate that when not in the position to compromise and ongoing investigation,

...the senior official with whom the public officer files a written report under section 25.2 shall, as soon as feasible after the report is filed, and no later than one year after the commission of and act or omission, notify in writing any person whose property was lost or seriously damaged as a result of the act or omission (Bill C-24, Section 25.4(1)).

Section 25.4(1) is the only part of Bill C-24 that addresses the possibility of potential victims of the actions or omissions of officers and designated officials acting in accordance with Bill C-24. This lack of recognition of the status of the victim within Bill C-24 is arguably of serious concern for Canadian citizens. The bill fails to outline an adequate system to address how the Canadian Government will deal with individuals and/or parties who are victimized by agents of the law. The following section will closely examine the changing role of the victim within the criminal justice system and it will investigate how the defined role of the victim within Canada relates to Bill C-24.

The Changing Status of Victims of Crime

The role of the victim within the criminal justice system had traditionally been a very instrumental part of the process to ensure the administration of justice (Tobolowsky, 1999). The earliest court proceedings were relatively private affairs where the victim sought some form of restitution or compensation from the perpetrator of the crime. This position of the victim within the justice system evolved, as argued by Tobolowsky (1999:2) as countries became more structured and ordered, leaving governments to "... assume greater responsibility for the initiation and conduct of criminal proceedings, a change which substantially reduced and often virtually eliminated the crime victim's previous role in the criminal justice process".

The status of the victim within the system changed again as grassroots organizations during the 1970s advocated for the marginalized role of the victim to become more important in the dispensation of justice. This initiative was supported through the various task forces focused on victimization and crime. One of the most notable task forces, spearheaded by the then President of the United States, Ronald Reagan, was conducted by a nine-member panel that reviewed existing literature on victimization and held hearings across America in an attempt to garner information from professionals serving the needs of victims. *The President's Task Force on Victims of Crime*, compiled in 1982, proposed greater access by the victim to the criminal justice system through integration and participation. It was recognized that the victim was "harmed" through being victimized and that this harm had a significant effect on the country as a whole and for the victim themselves.

Victims of crime can be affected by their experience on numerous levels resulting in but not limited to financial loss, emotional trauma, physical harm, the loss of freedom and one's sense of safety, lowered productivity and other personal and/or social issues. The impact of crime experienced by victims is both multi-layered and unique to each person, and their response to victimization is often gauged by their own personalized coping strategies. As stated by Mawby & Walklate (1994:33-34)

... a particular crime may have an effect on victims directly in a number of ways. They may be physically injured, incur expenses or lose time, as a result of the crime itself or involvement in the criminal justice process. Crime may also have an impact on their psychological state, undermining their state of well being and making

them unsure, apprehensive, afraid and so on. This may affect future behavior; for example, resulting in a fear to go out alone after dark.

A person's age, gender, race, prior history, physical condition and emotional state are all elements that can combine to alter and shape one's experience with crime. The argument has been made that this sense of victimization can at times be further compounded by the criminal justice system that fails to protect the emotional integrity of victims of crime and exposes them to a form of "secondary victimization" (Mawby & Walklate, 1994). On a world scale, the plight of the victim was considered by the United Nations in hopes of addressing this sense of "harm" experienced by victims of crime and creating principles to guide governments on how to treat and protect the victim within the justice system.

The notion of harm done to victims by perpetrators was one of the many notions addressed within the *United Nations Declaration of Basic Principles of Justice for Victims of Crime*. In part the Declaration stated, ...offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for harm or loss suffered, reimbursement of expenses incurred as a representative of the victimization, the provision of services and the restoration of one's rights (Quoted in Mawby and Walklate, 1994:144).

Thus, the Declaration equated victimization with a degree of suffered harm and/or loss that on some level should be recognized in an official capacity through "fair" restitution. The Canadian Government also recognized the importance of the victim within the justice system and acknowledged that their presence within the system was the result of their personal victimization. The

ten principles as compiled by the Canadian Government reflect on promoting access to justice by victims of crime, increasing provisions and assistance for victims and to ensure fair treatment of victims located within the system.

Again, the notion of harm is highlighted through these Canadian principles and it is stressed that every effort should be made to guarantee that victims have proper access to services designed to offered assistance to victimized individuals, and that the victim should be treated with integrity and courtesy throughout their time spent within the system. What is lacking within these ten listed principles is the outlining of provisions on how and when to make “fair” restitution to the victim. Though clearly stated within the Declaration by the United Nations, the Canadian counterpart does not specifically address the fundamental issue of restitution for the victim. This omission is pivotal in respect the Bill C-24 and the manner in which the Bill chooses to address the status of the victim.

The Legal Position of the Victim within Canada

The notion that victims of crime should be allotted protections and legally entrenched rights has not gone unchallenged. As stated by Mawby & Walklate (1994:178) “...the needs/rights debate is emotive and fraught with political overtones in every area of policy implementation...research has established that victims of crime do have substantive needs, ranging from the need for information from the criminal justice system to the need for emotional support”. Mawby & Walklate (1994:178) contend that it is evident that “... an

approach based solely on the question of meeting needs, without translating any of those needs into rights, is likely to reproduce the individualized discretionary response of earlier eras....” Thus, it must be carefully considered as how to justly furnish legal rights to victims within a justice system that is primarily concerned with defendants and complainants.

Through a series of amendments to the Canadian Criminal Code, certain rights have been allocated to victims of crime. Canada’s Criminal Code “...protects the safety, security and privacy of victims of crime, gives victims a voice in the criminal justice system and holds offenders accountable to victims of crime and society” (Department of Justice Web Page, 2002). These rights are expressed through a multitude of avenues geared towards assisting victims within the justice system. The rights given to victims of crime are as follows: the ability of victims to read “victim impact statements” in open court at sentencing hearings, consideration of victim safety in bail decisions, requiring offenders to pay the victim restitution as part of a sentence, and publication bans may be ordered to protect the identity or integrity of the victim (Department of Justice Web Page, 2002). The Criminal Code also contains provisions to facilitate victims testifying in court and finally, special measures are followed to address the unique needs of child and adult victims of sexual offences (Section 278.1, Section 486, Section 718, Section 722, Section 737, and Section 745.6). These rights, coupled with the *Canadian Statement of Basic Principles of Justice for Victims of Crime*, endeavour to address the role

of the victim within the justice system and to better serve the specific needs of victims of crime.

The issue of accountability is recognized through the use of restitution, which strives to provide reparations for harm done to victims or the greater community (Criminal Code, Section 738). Restitution orders also aim to increase a sense of responsibility experienced by offenders. Such orders can compensate victims for monetary losses or property damage due to crime and, in the case of an offender being charged with bodily harm, a restitution order may be paid to member's of the offender's family for their loss as a result of moving out of the offender's household due to the charges. However, one could contend, court ordered restitution does not adequately address the concept of "pain and suffering" occurred as a result of a criminal offence and that means to collect and enforce restitution orders are lacking. The emotional aftershocks of being a victim of crime and the resulting damage for being a victim are not adequately addressed within the Criminal Code nor does Bill C-24 attempt to address these issues.

Victims of Crime and Bill C-24: The Consequences

Having established the scope and degree to which victims of crime are protected under Canadian law, one must question whether the rights of victims are being violated due to the amendments found in Bill C-24? It is evident that the bill does not contain any effective provisions for dealing with individuals and/or parties who experience victimization at the hands of police. For example, what should be done about the individual whose home is broken into by a gang and ransacked, if a member of that gang was an undercover officer acting on the authority granted to them to break the law? Is the victim of this crime entitled to restitution for their loss or is this loss considered one of the individual sacrifices needed to ensure a greater common good? No provisions have been included within Bill C-24 that would ensure that the harm realized by victims of crime due to the actions or omissions of police officers or designated officials is addressed and adequately dealt with.

Generally, for victims to be able to access their rights within the justice system they must first know the identity of the offender who perpetrated the crime(s) and then this individual must be brought before the courts and charged with the relevant crime(s). The most fundamental element in this process is that the victim must have experienced a harm or wrongdoing due to an action or omission by the offender. It could be argued that if the police or other designated officials are legally allowed to conduct themselves in such a fashion that normally would be against the law, then it might be difficult to define their actions as criminal. An individual cannot be a “victim of crime” if the actions

or omissions against them are not defined as criminal. Furthermore, Section 25.2 (2) of the bill stipulates that police organizations or other government officials do not need to notify individuals whose property was damaged as a result of police activity if that notification could possibly hinder an ongoing investigation. This lack of notification could result in members of society being victimized without even knowing who the real perpetrators were, and as result of this section, could limit the ability of individuals and/or parties to exercise their guaranteed rights.

It is obvious that the issue of victim rights is of great concern when one critically examines the changes brought about by Bill C-24. It has been the mandate of the Canadian government and the courts to ensure that the victim plays a pivotal role in the administration of justice. The Department of Justice (2002:Web Page) states "...they [the above mentioned rights] are part of the Government of Canada's commitment to ensure that the views and concerns of victims of crime are considered at every stage in the criminal justice system, particularly in decisions that may affect their safety, security and privacy". It can be argued that the bill does very little to enhance this commitment to victim rights. The far reaching consequences of the C-24's failings to protect the victim within its amendments cannot be quantified, but what can be noted is that through the government's desire to apprehend criminals to prevent crime, they are essentially victimizing another group of individuals.

Victim rights and the failure of Bill C-24 to stipulate clear provisions in dealing with the outcome of police actions is not the only concern with the bill.

Another issue of contention is how the bill serves to further enhance the powers enjoyed by police officers and other agents of the criminal justice system. With increasing demands on police organizations to meet occupational goals through efficient and effective policing, the broadening of the powers exercised by the police seems a reasonable response to the demand placed on enforcement personnel. However, the proliferation of police powers has very real consequences not only in respect to victim rights but also in relation to the potential for systematic abuse of police power and authority.

Bill C-24 clearly amplifies police powers but it arguably provides very little by way of provisions to protect the general public from unwarranted or inappropriate use of police power. Police agencies are exposed to numerous internal and external bodies and agencies that monitor the activities of the police in an attempt to limit transgressions and to increase organizational accountability. The following section will outline some of the more important methods used to control for police actions and will identify how the amendments of Bill C-24 serve to increase the potential for the misuse of power by enforcement personnel.

Police Powers

The powers given to police officers and other enforcement personnel are unique: they possess the ability to greatly affect an individual's course of action and freedom within the boundaries of Canada. Law enforcement officers possess the legal right to arrest, detain, question and search, collect evidence

and use force against members of society. In order to exercise these powers, police must follow the guidelines as set down by the law and enforced through the courts. The emphasis is on balancing the ability of the police to carry out their occupational goals of crime control and prevention while ensuring that Canadian citizens are not subject to arbitrary actions at the hands of police that would constitute a violation of their guaranteed rights and freedoms. Where the trouble arises is with the inability of the police organization to meet the need for efficient and effective policing within the prescribed boundaries of the law. Thus, the debate is borne: for police to successfully combat crime the restrictions imposed by law must be reduced so as to promote proficient and capable policing. As stated by Russell (1989:143),

...the extraordinary powers that are vested in the police to arrest, detain, search and use force are clearly required for the maintenance of freedoms that are essential to the welfare of the citizenry and its governing processes. But they are also invasive of those freedoms, and are an always-present threat to them and to the integrity of a free and democratic community.

It is evident that the powers vested in the police are intrusive by nature and that in exercising these powers some degree of societal forfeiting of individual rights is inevitable. What then are the controls placed on the police and other enforcement personnel to restrain the degree and scope of police powers within a democratic and free society? One such control that guides and directs the actions of police and other enforcement personnel is Canadian law and governing statutes.

Legal Controls

The law is the primary mechanism to identify and limit the scope of police power. Police are required to act within the proscribed boundaries of the law and to follow rules governing their various duties. The scope of police power is inextricably linked to the law and conversely, the law is an ever-changing entity that reflects and mirrors the philosophical and constitutional ethos of the community at any given time. The law is not inert, it changes over time and these amendments are primarily based on the needs and requirements of the community that governs law making. The powers bestowed on police are also reflective of the culture of the law and as a result one could argue that as perceptions shift and evolve so do the margins of police action.

Bill C-24 is a prime example of how the need for augmented crime control in relation to a perceived communal problem - organized crime - resulted in amendments being made to the Criminal Code that furnished police with a greater range of power. Perry (1996) asserts that the Canadian courts typically rule in favour of the police, thereby conferring greater powers to the police while at the same time jeopardizing the balance between crime control and the protection of individual rights and freedoms. Perry (1996:21-26) suggests that while "...attempting to balance legal rights with the goals and practices of law enforcement, the courts have thus far sacrificed these rights in favour of police...the dominant trend [in court rulings] has favoured the values of law enforcement over the values of individual rights and liberties...." Then

Chief Justice Dickson of the Supreme Court stated that "...the majority of the court departs firm ground for a slippery slope when they authorize an otherwise unlawful interference with individual liberty by the police solely on the basis that its is reasonably necessary to carry out general police duties" (quoted in Perry, 1996:27).

The reasoning of interfering with personal liberties to aid police investigations implies that the apprehension of criminals is more significant than maintaining and fostering civil rights. Section 25.1(2) states that it is in the "public interest to ensure that public officers may effectively carry out their law enforcement duties...." Therefore, amendments to the Criminal Code were made to augment the capacity of police to act effectively upon crime. In a 2001 brief prepared by the Canadian Police Association (CPA) to the Senate Standing Committee, the CPA gave full approval of Bill C-24, even going so far as to say that limiting immunity from certain acts- recklessly causing death or bodily harm, sexual offences, or obstructing the course of justice- was too restrictive and could flag for "...sophisticated criminals the types of crimes that will be demanded of their subjects in order to establish loyalty and preclude infiltration"(CPA Brief 2001:7). The CPA went on to advise the committee from considering any further amendments that would compound this concern. Interestingly, a Bill argued by civil libertarians as overly expansive and a detriment to the guarantee of civil rights was still considered too restrictive by the policing and enforcement community. Again, the ability to strike a good

balance between police powers and individual rights and freedoms is unattainable.

Internal Controls

Another mechanism for controlling the police is located within the police organization itself. Through a series of interrelated managerial, occupational, operational and legal restraints, police officers are made aware of their limits and freedoms in respect to their duties. However, as these standards of behaviour are filtered down each organizational level, the chance for individual officers to abuse their power can increase. This process is described by Baldwin & Kinsey (1982:134) who argue, "...the limits of what can and cannot be done are set, but within these limits-as with any system of rules-there is always room for manoeuvre...officers find practical ways of doing the things required of them...." Baldwin & Kinsey (1982:134) assert that "...the informal practices and purposes pursued frequently bring the officers at street level into conflict with the formal rules and regulation, so that the power at the top is renegotiated at the bottom". This 'renegotiation' of the rules is problematic for the law is essentially not meant to be interpreted rather simply followed, maintained and enforced by police officers and other enforcement personnel.

Marin (1997) contends that the high degree of autonomy given police officers is an inherent organizational flaw that can lead to possible abuses of power. "Officers are called on to make on-the-spot decisions with little time to

reflect and consider the alternatives. These decisions can bring the whole weight of the criminal justice system to bear on a member of society”(Marin, 1997:37). This exercise of discretion, as argued by Marin (1997), can translate into coercive action against the community when used incorrectly or inappropriately. Marin (1997:37) further states that,

...given these organizational imperatives, it is vital that the individual police officer's discretion be exercised in an enlightened and informed manner. The existence of discretion can place police officers in a situation where they might be tempted to abuse their powers. This temptation might be enhanced when the only witnesses to the abuse will be the police officer and the victim, who frequently will enjoy less “credibility” than the officer.

In response to this potential for abuse Marin (1997) calls for adopting an internal code of ethics, in tandem with other internal and external control mechanisms, to work against police acting beyond the scope of their legislated powers. These ‘ethics’ should be maintained as an integral part of the police officer's professional identity and to be fully realized these ethics need to be espoused by all members of the policing organization. Furthermore, Marin (1997:43) notes “...police ethics must lead to the impartial enforcement and respect of all laws, even those which appear to limit the police officer's ability to do his or her job”. Marin (1997:43) continues that “...police officers must recognize that they have the responsibility to ensure that the rights of all citizens are respected by, among other things, ensuring that their actions are within the limits prescribed by the law and ethics”.

According to Marin (1997), laws are not designed solely to be enforced by representatives of the justice system, they are also to be applied to those

individuals enforcing the law itself. Marin (1997) contends that through describing officers as 'crime fighters' two positions are created: one of the police as the 'good guys' and the criminals as the 'enemy'. This division can allow for officers to foster a mentality that rationalizes abuses of power that enable the 'good guys' to win the war on crime. Bill C-24 also identifies officers within these divisions for it contends that acting like criminals is justifiable if it meets the organizational goals of crime control. When engaging in a war, otherwise questionable tactics can be used to ensure victory. Ethics, and a sense of what is morally right or wrong are ambiguous, dynamic concepts that are difficult to articulate and translate into policy; as such it is almost impossible for such notions to be written within the letter of the law. Bill C-24 defines legal boundaries for enforcement personnel but the bill does not address the ethical consequences of police acting outside the parameters of the law they are enlisted to enforce. Nor does Bill C-24 address the issue of what is ethical behaviour on the part of officers. How the legal immunity granted through Bill C-24 will shape the attitude of officers is yet to be determined, and whether this sense of being above the law will deepen the divisions between officers and those they are policing is yet to be seen? What is evident is that Bill C-24 poses a considerable ethical challenge.

To stem corruption Marin (1997) advocates for the adoption of ethical codes to attempt to circumvent the abuse of powers and, in assuming these codes, police officers must internalize a certain set of beliefs about the law and other aspects of their profession. The concept of 'rule of law' and the equal and

unbiased application of the law is a fundamental legal and ethical position that serves to shape how an officer may view their world. Bill C-24 alters this position by indicating that at ‘appropriate’ times it is desirable to not work within the precincts of the law. Bill C-24 essentially asks the officer to recognize the importance and jurisdiction of the law while at the same time permitting the officer to transcend the law in hopes enforcing it. How an officer can reconcile these different positions without beginning to doubt the general merit of the law is questionable.

Other External Controls

There exist many external controls acting upon the police beyond the written law. Essentially, external control mechanisms strive to regulate police behaviour and oversee law enforcement initiatives in an attempt to monitor how law enforcement personnel are interacting with the community. Such independent oversight of the police, as noted by the CPA (Brief, 2001:9), can include but is not limited to, “...civilian police services board and local police governing authorities, public complaints commissions, ministries of the Solicitor General, Justice and/or the Attorney General, and civil litigation”. The CPA contended that police officers are one of the most highly regulated and “scrutinized” professions in the world and this high degree of judgment attempts to maintain and reinforce ethical policing practices.

Baldwin & Kinsey (1982:105) identify two main issues when trying to regulate police activity; “...first, how to reconcile acceptable democratic

participation with effective policing and, second, how to ensure that agreed force policy is implemented on the street...any consideration of external accountability and policy review requires analysis of the internal organizations that either permits or obstructs the implementation of preferred policies”.

Therefore, to ensure effective and ethical policing, control agencies must closely investigate internal aspects of the police organization that can impede the regulation of police action. For external controls to work, the police organization must internally adopt the codes set by these standards and begin to recognize the importance of policing within set standards of behaviour.

In relation to Bill C-24, the amendments did not advise for the creation of an external board or agency to specifically monitor the use of the provisions outlined within the Bill. Nor, did the bill identify the need for special, internal police training that would address the considerable ethical concerns with the Bill and help police realize the potential for misuse. Some of the external control agencies as recognized by the CPA, such as the Public Complaints Commissions, work solely on identified police infractions and such Commissions require that the public understand that they have been “victimized” or treated inappropriately by the police. As indicated earlier, Bill C-24 was primarily conceived under the auspicious of attempting to help police agencies infiltrate and ultimately disband extensive criminal organizations. Arguably, the use of the provisions provided by Bill C-24 within these circumstances would not have the typical public disclosure as in the situation where a police officer is conducting a general investigation on the street. This

designated use of the bill would make it very difficult for external agencies to have any real semblance of control over the activities of enforcement personnel due to the limited access they would possess to monitor police conduct.

Conclusion

It is obvious that enforcement personnel do not act within a vacuum, their behaviour is scrutinized by both internal and external agencies that attempt to foster correct police conduct. What is not so evident, is how the police intend to deal with the newfound powers allocated to them through Bill C-24? If police organizations are not required to make public their use of Bill C-24 for fear it will jeopardize an ongoing police investigation, then how will the actions of the police be effectively monitored? External control agencies are limited in their ability to supervise police activity if the activity itself is not available for public examination. Conversely, Bill C-24 has not included any meaningful internal guidelines on how to fairly implement the powers awarded through the bill; rather it is up to police personnel to decide which context necessitates the use of broader police powers. Furthermore, the Bill fails to indicate what type of response is warranted if it is found that law enforcement personnel are inappropriately using the provisions. Essentially, the traditional control mechanisms that serve to regulate police action are severely limited when it comes to Bill C-24. The potential for misuse of Bill C-24 is great and such misuse can severely compromise not only the integrity of the police but also of the larger justice system. The use of Bill C-24 is even more problematic

when it relates to covert policing operations as will be discussed in the ensuing chapter.

Chapter 5: Bill C-24 and Undercover Policing

Specific Concerns with Proposed Bill C-24 in respect to Undercover Policing Operations

Concerns surrounding Bill C-24 are augmented when considered in respect to undercover policing and the unique challenges facing undercover officers and the agencies that employ such tactics. With the broad expansion of public police forces and private security agencies within Canada, “undercover” work has evolved to play an integral role in the operations of both private and public police. Due to the nature of undercover operations, concerns over the amendments surrounding the adoption of Bill C-24 are amplified. Working undercover requires a job environment that is both steeped in secrecy and a lack of accountability. The expansion of police powers through the measures in Bill C-24 would greatly increase the ability of undercover officers to bypass the written law so as to ensure the viability of key investigations and the realization of occupational goals. What makes the undercover environment unique and so prone to this lack of accountability, and the possibility for corruption will be the focus of this chapter. First, one must start with a working definition of what it means to be engaged in undercover work as well as the characteristics of such investigations.

Miller (1987:28) defines undercover police work as “ instances when a sworn officer for organizationally approved investigative purposes, adopts an encompassing but fictitious civic identity and maintains it as a total identity over a defined and considerable period of time”. Miller (1992) elaborated this definition by noting that the goals of undercover work were to discover

criminal activity that normally went unreported, and to attempt to infiltrate targeted criminal groups or associations that normal access to was blocked with the goal of obtaining useful information. In studying Miller's (1987,1992) definitions three components are evident; 1) the aspirations of the policing community, 2) the "criminal element" as represented by the focus/target of the undercover work, and 3) the balance between achieving organizational goals of crime control without illegal or unethical infringement upon the protected rights of citizens.

Arguably, Miller's (1987,1992) definitions fail to recognize the defining element of undercover work in that the work itself is deceiving in nature. Undercover work as argued by Fijnaut & Marx (1983:1) can be defined as involving the "invasion of privacy, the exploitation of trust, danger to third parties, and the risk of police corruption and a compromised judicial system". Deflem (1992:179) contends, "...undercover [work] is not only an extremely hidden, concealed and invisible form of policing, it also involves deception and/or provocation on the part of the agent...as such, there is by definition an intrinsic ironic quality in undercover operations". Critics of covert police tactics contend that undercover operations in general represent a state-sanctioned activity that actively infringes upon personal freedoms and the right to privacy, and lends itself to the likely possibility of being misused. The sanctity of intimate relations, personal dealings and the security of private places can be gravely jeopardized by the use of covert operations. Wachtel (1992:141) observes, "...this unmatched capacity to invade private space is

precisely what gives undercover strategies their peculiarly intrusive-and to some frightening flavor". It is this potential for officer corruption and risk to civil liberties that is omnipresent when it comes to undercover policing. This capacity for corruption on the part of the officer can be affected by the degree to which the officer is involved within the specific undercover operation.

Miller (1987) distinguishes between light and deep cover as to the degree to which the officer's private life merges with the fictitious identity given to him or her to advance the undercover operation. With light-cover work the officer might complete a daily duty of undercover work yet finish the day by resuming their true identity and personal life. Such light-cover work can be demonstrated in simple decoy campaigns, such as the "buy/bust" operation where an undercover officer might buy an illicit substance from a street dealer, only then to have uniformed officers make an arrest. Light-cover work can be used to complete surveillance or intelligence gathering without a long-term investment in the creation of an undercover identity. Light-cover undercover work also involves more supervision than other forms of undercover policing. Generally, operational goals are clearly defined at the outset of the covert operation, leaving less room for improvisation on the officer's part and ensuring a clear understanding of directives that is not always the case with more complicated and less monitored forms of undercover work.

Deep-cover work focuses on the total submersion of the police officer into a fictitious life with an indefinite suspension of the officer's private life. The complete immersion into the constructed identity is necessary so that the

undercover officer can circulate into areas that otherwise would be blocked, and to ensure not to compromise the integrity and safety of the operation. The strategy of deep-cover work may be simply to gather extensive information on the activities of certain groups or individuals or it can be to gather intelligence for the purpose of creating a case against such individuals or groups.

The inherent dangers associated with deep-cover work are greater than those complications associated with light-cover work. The need for maintaining an “undercover” identity is greater within deep-cover work as are the organizational funds and time allocated to sustaining such covert operations. It was argued that for policing agencies to aptly deal with the issue of OMGs and the rise in other OC-related activities, the use of deep-cover operations to gather evidence, ferret information, harvest contraband and to facilitate the arrest of key players was greatly needed. For such officers to “effectively carry out their law enforcement duties”, revisions to section 25 of the Criminal Code were paramount. Such revisions would allow for officers working deep-cover operations to commit acts or omissions that would otherwise constitute an offence, to maintain or promote an ongoing operation. The use of undercover operations to target large-scale enterprises has increased and, as such, has placed a demand on lawmakers to recognize the unique circumstances surrounding covert operations and the officers involved in them (Fijnaut & Marx (1983), Brodeur (1995), Marx (1995)).

Traditionally, undercover work was limited in scope and relied on a more proactive, anticipatory approach. However, Fijnaut & Marx (1983) note that there has been a distinct shift in the function of undercover operations to a facilitative, highly organized approach. Fijnaut & Marx (1983) highlight the changes as a move away from single targets to marking networks and larger organizations. The changing emphasis focuses on highly coordinated team activities with a reliance on joint investigations and exchanges. As a result, undercover operations have grown in sophistication and scope. This trend of increased operations can be accounted for "...by a change in social organization, the nature of crime, the expansion of law and regulation, the relation of police to law, and the new surveillance technologies" (Fijnaut & Marx, 1983:14). Thus, increased undercover operations and a shift in the ideology encasing their functions can be linked to this extension and redefinition of social control and the state's understanding of crime.

Targets of such undercover operations are usually demarcated by the police organization based on a multitude of issues. A shift from street level undercover operations to the infiltration of problematic groups ensures the use of deep-cover tactics. Often groups will be identified as a threat in some form to the community and the police organization will use undercover work to assess the risk to public safety. This identification of targeted groups is relational to the historical context in which the group is found. For instance in the early decades of the twentieth century the illegal use of alcohol was a major concern to police organizations and the target of undercover work. In the

middle of the century it was anti-establishment groups such as the Communist movement, the Black Panthers, the American Indian Movement, that were being infiltrated and monitored by undercover officers. Near the end of the century and more so today motorcycle gangs, OMGs, and other organized crime gangs are the locus of much undercover work. Thus, it is evident that the target of undercover operations can range in size and scope and is generally dictated by current problems and issues identified by the police organization as meriting undercover work.

As noted earlier, undercover operations are unique in many ways with specific defining characteristics. One of the greatest elements associated with covert operations is the level of danger that the undercover officer is in while engaged in their undercover life. The perils connected to undercover policing are not limited to the physical harm of the officer but also extend to other domains such as legal issues associated with such operations and the emotional toll of participating within covert exercises. Girodo (1991) concluded that officers involved in extensive undercover work were susceptible to stress-related illness, increased risk of physical harm and corruption.

Girodo (1991) also observed that longer periods of undercover work were related to increased drug, alcohol and disciplinary problems encountered by officers. The assumption behind the findings is that by being a successful undercover officer, the officer succeeds in assimilating into the criminal context he or she is investigating. This immersion into an anti-social lifestyle is necessary for the undercover officer's identity, yet it is problematic to remove

individual officers completely from their conventional lifestyle. As noted by Pogrebin & Poole (1993:389), "...some undercover officers have difficulty separating the traits and attributes associated with their deceptive criminal roles from their normal demeanor in conventional social roles". This lack of separation serves a purpose for the undercover officers because it is dangerous to slip back into their authentic life for fear of doing or saying something in their "undercover" life that would endanger their position. Thus, this ambiguity or the role within the duties of the undercover officer can lead to the negative consequences as described by Girodo (1991).

Miller (1987) found that supervision was an important concern in undercover operations, as the inherent nature of working undercover does not allow for a high degree of immediate supervision without jeopardizing the entire operation. This lack of supervision can result in mistakes made by the undercover officer or a loss of perspective on the officer's part. Miller's research (1987:36) found that "...if an officer fails to maintain perspective, the police department's integrity is compromised...". Pogrebin & Poole (1993:384) noted this lack of supervision and further argued, "...in addition to the inadequate supervision, often there are no written departmental policy guidelines covering undercover operations for the officers to rely on in lieu of direct supervisory control". Therefore, with the lack of supervision, covert operations can become insular, offering little support for the officer at hand. This lack of supervision can compound the danger already elemental to undercover work. Specifically, this can create a milieu in which the boundary

between lawfulness and criminality is blurred. Opponents of Bill C-24 fear that this fragile frontier separating lawful police action from conduct that results in civil rights violations and illicit behavior will be eroded with the proposed expansion of police power, specifically during the course of undercover operations.

Pogrebin & Poole (1993:388) do little to calm the fear of concerned opponents to Bill C-24 as they note that while working prolonged undercover assignments "...many operatives were found to experience profound changes in their value systems, often resulting in over-identification with criminals and a questioning of certain criminal statutes they were sworn to enforce". The secretive and deceptive nature of covert operations enables officers to move freely among individuals with many of the traditional restraints upon police having been removed or lessened (uniform, supervisor, operational constraints, etc.). Though some of these restraints may serve only symbolic value, they do alert the public to the fact that they are interacting with individuals who uphold the law and in turn should be conducting themselves within the scope of this same law. Miller (1987), as noted earlier, contends it is difficult to adequately supervise undercover operations because direct command over the officer's activity is precluded by the nature of the work. Thus, limited operational control, coupled with the removal of traditional restraints and an over-identification with the criminals the officers are policing, can craft a milieu conducive to violations of personal rights and legal premises.

Conversely, an important “check-and-balance on the adjudicative process -testimony by third party witnesses- is typically unavailable” when dealing with undercover operations (Wachtel, 1992:141). Therefore, the police organization and/or the courts must often rely on the information of the undercover agents to glean an understanding of what transpired during the moment in question versus being able to interview and contrast statements given by third parties to the police organization. Often it is up to the officer alone to evaluate their working environment and without out input from a supervisor, choose actions that in the moment seem the most balanced to realize operational goals. This decision making process is problematic for it requires officers to make pivotal judgments on circumstances that they are intimately involved in, knowing that often their version of the events will go unchallenged by third parties. As such, undercover tactics test the traditional operational boundaries of police by failing to offer distinct forms of external controls on the activities of undercover police officers. Supporters of the bill suggest that adequate controls have been put into place that would prevent its misuse. Furthermore, supporters argue, supervision by senior officials, though removed from the immediate situation, would be enough to ensure that the use of the proposed measures was warranted and justifiable. Arguments suggesting that undercover operations are an ethical and reasonable extension of the law center on the supposition that covert operations act upon crime. Marx (1988:91) indicates that citizens participate within a social contract granting “...the government the right to use exceptional means, such as coercion and

deception, in order to be protected". This concept of a social contract is not new to discussions focused on collective good versus individual sacrifice. Beccaria in 1764 maintained "it was, thus, necessity that force men to give up part of their personal liberty, and it is certain, therefore, that each is willing to place in the public fund only the least possible portion, no more than suffices to induce others to defend it" (Muncie, McLaughlin & Langan, 1997:5). It is understood that in order to obtain a level of collective good, each individual must be willing to give up part of their own freedom.

The concept of individual sacrifice for collective good does have its ideological challenges. Perry (1996:24) contends that "...the cost of defending one's rights is often higher than the cost of relinquishing them..." and "...those who are most susceptible to the negative powers of the police-the disadvantaged and the disenfranchised-are the least able to defend their rights." Thus, Perry (1996) avers that this concept of collective good does little to protect the rights of those disadvantaged individuals most seeking protection and that broadening police powers through diminishing individual rights is at best questionable.

Kerkstetter (1981) argued that the controversies surrounding the use of covert operations were a manifestation of competing social values that arise out of the inability to fairly allocate and balance the power of the state versus the individual. With respect to entering a collective social agreement that maintains collective good as an imperative, the potential for violations of individual rights and freedoms is great. How great this loss of privacy is depends on the tactics

employed, the scope of the investigation, and the amount of information entered into public record.

Marx (1988:100) states "...the duplicity and betrayal inherent in covert operations trades in and debases the trust that is essential to, and characterizes, primary relations". Thus, to what extent will Bill C-24 further require citizens to give up parts of their guaranteed rights and freedoms to maintain and realize the collective good as operationally defined by policing agencies? Will undercover officers circumventing the law, the same law that citizens have a right to find binding on all members of the collective, be too great a strain on this concept of individual sacrifice for the benefit of the collective good? More specifically, what measures are in place to ensure that the amendments will be adequately monitored when used during the course of a covert operation? To fully answer these questions one must first compare the guidelines, as outlined within the bill, to the inherent issues and problems associated with undercover policing to ascertain if enough controls have been put into place to ensure that Bill C-24 will not adversely affect the delicate balance between Canadian citizens giving a measure of their freedom to ensure a safer and healthier collective community for themselves and their families, while exercising their rights and freedoms.

Bill C-24: Limitations and Controls in Respect to Undercover Policing

The primary justification for the amendments to section 25 of the Criminal Code was to ensure the ability of policing agencies to "effectively carry out

their law enforcement duties”. In light of the difficulties experienced by policing agencies after the *R.v. Campbell and Shirose* ruling, it was argued that some form of legal justification to commit acts or omissions that would otherwise constitute offences was needed within the Criminal Code. Further, it was contended that access to this protection from legal criminal liability should be available to public officers within the moment as it would not be practical for the officer to remove themselves from the course of an undercover operation to submit their request.

The chain of command to receive permission to essentially “bypass” the law commences with a competent authority, defined as the Solicitor General, the Provincial Minister responsible for policing or other Ministers within Parliament who have jurisdiction over Acts of Parliament. It is proposed that these individuals have the written authority to grant permission to public officers to act in such a manner that would otherwise constitute an offence. Section 25.1 (4) recognizes that this authority must consider the nature of duties performed by the public officer in relation to law enforcement generally, rather in relation to any individual investigation, to determine if the permission is warranted. One could contend that the competent authority would possess the capacity to determine that such use of the statute would be proportional and reasonable and within the mandate of effective law enforcement.

The competent authority then may designate a senior official for the purpose of Section 25.1(2) who then, in turn, could give the consent needed by a public officer to act in such a fashion that would otherwise be considered

illegal. Again, this senior official must consider investigative needs versus the ethical considerations of officers circumventing the law when considering granting permission to do so. This time, one could argue that the senior official is more intimately involved with criminal investigations activated by their department than a competent authority would be. Furthermore, one could infer that the presiding senior officer would be more fully aware of the time, funds, and effort that had been allocated to the investigation in question and one could still maintain that the officials could adequately consider the issues at hand in a reasonable and proportional manner.

This chain of command is further filtered down to 'street level' decision making through the provisions in sections 25.1(9)(a) and (b). These sections allow for public officers, within the moment, to conduct themselves in such a fashion that they would otherwise be criminally liable for. Generally, before taking any action, the officer must have received permission in writing from a senior official to do so. However, if the officers believe on reasonable grounds that they would be granted permission but could not receive this authorization due to immediate circumstances, then paragraph b of section 25.1(9) sanctions officers taking action without prior written consent. Thus, officers within the moment would need to weigh the costs and benefits of possibly breaking the law, without having spoken to a supervisor, and then decide which course of action would be justified. The power to employ Bill C-24 is supposed to be initiated by the Solicitor General but can ultimately be utilized by deep-cover agents whose vision of the best course of action is uniquely shaped by their

immediate circumstances. 'Street level' decision making lacks the distance and detachment experienced by individuals not so intimately involved with the situation. Thus, the problematic nature of deep-cover agents making in the moment decisions coupled with inherent, ethical concerns associated with undercover policing can make the use of Bill C-24 contentious.

Furthermore, the absence of any direct supervision over the decision-making process can foster an environment where inappropriate or non-justified courses of action could be taken. As already indicated by Fijnaut & Marx (1983), Miller (1987), Girodo (1991) and Pogrebin & Poole (1993), the deceptive and immersing nature of covert operations can at times cloud the vision of undercover officers, thereby reducing their ability to make sound decisions. Thus, poor decisions can be made, though not always intentional, that can lead to civil rights violations, the compromising of criminal investigations and, in general, breaching the spirit of the bill.

The safeguards included within Bill C-24 intended to guard against incorrect use of the Bill are limited to sections 25.2 and 25.3(1)(a-e). Section 25.2, in an attempt to foster internal control over officer behavior requires officers, upon their act or omission to produce a written report of the circumstances surrounding the incident to a senior office. To allow for some form of external control over the use of the proposed amendments, section 25.3(1)(a-e) requires that a public report be published describing the uses and conditions surrounding the implementation of the powers as described in the bill. However, these safeguards fail to specifically address the unique needs of

undercover officers and the challenges facing them during the course of an investigation. With the proliferation of undercover policing and its use to snare larger, more organized networks, one could argue that such covert operations would be paramount to successful crime control initiatives in relation to OMGs and OC-related crimes. As such, more undercover officers, specifically deep-cover agents, will have access to the newfound powers of Bill C-24 which could lead to an abundance of 'street-level' decision making. Bill C-24 includes minimal safeguards against deep-cover agents resorting to "in the moment" decision-making techniques and they fail to clearly identify the challenges presented in undercover operations that could contest the reasonableness of the officer's choice of action. After-the-fact reporting, or annual, sanitized reports do not address the key issues of police accountability, the protection of civil rights and the upholding of the criminal justice system as a fair and answerable entity. For Bill C-24 to be a viable part of undercover operations, more internal controls over officer conduct are essential. Undercover operations already suffer from minimal supervision and are steeped in deception, and these characteristics are not addressed within Bill C-24.

What, then, about actions that are taken by undercover officers that are purposeful and ultimately contrary to the organizational code or crime control initiatives? It is fair to state that police corruption is present in every policing agency, though to varying degrees. What are the effects of Bill C-24 in respect to general police corruption, and more specifically in relation to undercover officers?

Police Corruption in Undercover Investigations and Bill C-24

Seminal works on police corruption (Baker, 1977, Sherman, 1983) have traditionally viewed corruption as a result of police interaction with their work environment. Barker (1977) observes that police work provides multiple opportunities for corruption because officers are interacting with deviant and criminogenic individuals on a daily basis under conditions of little or no supervision. Similarly Goldstein (1975:25) remarks that

...the average police officer...sees the worst side of humanity. He is exposed to a steady diet of wrongdoing. He becomes intimately familiar with the ways people prey on one another. In the course of this intensive exposure he discovers that dishonesty and corruption are not restricted to those the community sees as criminal. He sees many individuals of good reputation engaging in practices equally dishonest and corrupt.

Thus, one could infer that the environment that police work is done in could become a causal factor influencing the likelihood that police officers will participate in corrupt or illicit behavior. Yet another element that can influence levels of police corruption is the phenomenon known as the 'conspiracy of silence'. McCafferty & McCafferty (1998:60) assert that within police structures a "conspiracy of silence" exists based on,

... a "code" that defines the acceptable standard of practice. Where practices exist that in a citizen's view are "corrupt," but in a police officer's view are within the code, the conspiracy of silence sanctions and strengthens their continuance...group loyalty often overcomes an officer's sworn oath and duty...it makes allegiance to fellow officers, even corrupt ones, more important than allegiance to the ideals of the law enforcement agency and the community

Thus, officers themselves can become part of this causal environment that acts as a catalyst for corruption.

However, the environment in which police officers work is not the sole influence on officer conduct individual socialization, organizational factors, levels of internal and external controls and public perception can all affect the degree to which officers engage in corrupt behavior. As noted by Stoddard (1983:334), the conclusion to be drawn from environmental factors is that one should "...see police corruption as something that is not an individual problem but a problem of the occupation and its organization, something in the nature of police work itself." Stoddard (1983) locates police corruption within the occupational environment of policing, thereby implying that the nature of police work is problematic. What aspects then of policing, beyond daily interaction with criminals, can combine to create the milieu that fosters corruption? More specifically, do certain police initiatives, such as undercover operations, increase the chances for officers to engage in illicit and corrupt activities?

It would be impossible to locate one defining reason for the presence of police corruption as a multitude of influences and contexts combine to create the working environment of police officers. The moral character of the officer at hand, occupational responses to illicit behavior, the likelihood of detection, personal motivations, political environments, departmental practices, the level of internalization of ethical codes and norms, leadership from other officers and many other factors can influence the degree and scope of corruption within any given police organization. However, it has been noted that supervision, internal control exercised by the police organization and consistent

implementation of sanctions and disciplinary action against those officers found guilty of corruption can affect the amount of police corruption (McCafferty & McCafferty, 1998, McCormack, 1996, the Mollen Commission, 1993, the Knapp Commission Report on Police Corruption, 1976).

In general, it would be erroneous to assert that police corruption could be completely eradicated, rather proactive methods of officer screening, training, and supervision coupled with reactive methods of control can meld to provide an effective tool against some forms of police corruption. Yet, there still remain certain facets of policing that are resistant to such methods of organizational control in relation to corruption. Undercover policing and covert operations are one such area where it can be extremely difficult to monitor the levels of corruption amongst undercover agents.

It is evident that there exist multiple factors that when combined can endorse or foster corrupt behavior among police officers. However, one could hypothesize that certain unique contexts and environments can act like catalysts for illicit police conduct and, in doing so, augment the chances for corruption to take root. Such environments would have to lack the acknowledged deterrents of corruption: supervision, internal control, detection and punishment, and external controls.

Undercover police operations often exert limited amounts of control on police behavior. As noted earlier (Pogrebin & Poole, 1993, Miller, 1987), undercover operations lack a significant amount of direct supervision of the undercover officer. Deep-cover agents have the least amount of supervision

and their complete immersion into the anti-social lifestyle is often a necessity for their own protection and to limit the chances of detection. Thus, the ability of the police organization to directly monitor the actions of undercover officers is compromised by the nature of covert operations. Conversely, deep-cover officers are not exposed on a daily basis to the occupational ethos of their work environment, thereby limiting the effect of internal controls and the internalization of what constitutes normative behavior. This lack of peer reinforcement, coupled with a general deficiency of supervision and daily interaction with individuals not espousing pro-social behavior, can adversely shape the undercover work environment. Finally, if a deep-cover officer does engage in corrupt behavior, the chances for detection and subsequent sanctions are poor. Kersten (2000:241) suggests that

...unprofessional, at times criminal behavior [perpetrated by the police], from unwarranted 'rough handling' to serious assault and even graver incidents is rarely reported because of the social and cultural characteristics of the most likely victims of police abuse: underclass young men and youths, persons involved in illegal activities. When they report they incriminate themselves.

Thus, victims of police corruption might be less willing to report the corruption to the authorities due to the nature of their own involvement in their victimization. Further, if a deep-cover agent is corrupt, those affected by the officer's corrupt actions would have little chance of knowing their rights had been violated or that the officer's behavior was corrupt because they would not have the knowledge of what the officer's true profession was.

The argument that undercover operations can increase the chances for police corruption has serious ramifications in relation to Bill C-24. The

proposed amendments to the Criminal Code would not only allow undercover officers to break the law but they offer few safeguards against corruption.

Carter (1990) indicates that drug unit officers and undercover agents are most vulnerable to corrupt behavior and, more specifically, it is difficult for some officers to differentiate between legal and illegal behaviors. "In the gamesmanship of undercover work, some officers tend to confuse their own cultural norms and the norms of the drug culture they have penetrated. The buying and selling of drugs becomes second nature, as does the language and social perspective surrounding certain controlled substances"(Carter, 1990:96). The line between legal action and illicit behaviors is distorted by the officer's inability to clearly separate themselves from the culture they are policing.

Bill C-24 can serve to amplify the haziness of the boundary between reaching organizational goals and engaging in corrupt and illicit behavior. As already discussed, the absence of strict procedures over who authorizes the use of the powers established in Bill C-24 will result in the propensity for 'street-level' decision making. Conversely, if an undercover officer decides to partake in corrupt activities and behavior, who will be a witness to these actions? Prior to the implementation of Bill C-24, undercover officers were accountable for any actions that were against the law; now, with Bill C-24, the chances for corruption and officers participating in illegal conduct are increased. The argument can be made that Bill C-24 provides a "scapegoat" to corrupt officers in that they can simply claim that any illegal activity was a necessity to promote investigative goals, and that choosing to conduct themselves contrary

to the letter of the law is a protected choice under the Bill. How then will Bill C-24 impact upon police organizations and the presence of officer corruption?

Combating Police Corruption: Models of Corruption

Motivation is an important element in defining corruption and the behaviors and actions that fall within its scope. Sherman (1983) stated that corruption was the illegal use of organizational power for personal gain. Stoddard (1983) contended that this broad interpretation of 'illegal' would include a violation or misuse of any law: civil, criminal and administrative. Carter (1990:88) defined personal gain to include "...status or an experience that is psychologically rewarding to an individual or an accomplishment that produces material reward". Carter (1990:88) further noted that personal gain can be equated with occupational gain and "...that is when the organization defines objectives, and officer behavior-whether legitimate or illegitimate-helps fulfill those objectives, then there is both personal and organizational gain". The defining characteristic of corrupt behavior is any action that is purposely taken with the aim of increasing or maintaining one's stature within the police organization and/or influencing one's level of personal profit. Therefore, an officer may be motivated by a desire for personal gain or departmental recognition, or other personal factors, and such external motivations as meeting organizational goals and directives may also influence the behavior of police officers. Essentially, for officers to conduct themselves contrary to the law and

in a corrupt factor there must be some kind of reward received due to the behavior that is more enticing than the fear of detection.

Research on police corruption compiled by Carter (1990) found that certain situations arise during the course of police investigations that give rise to “opportunity structures” for corruption that when combined with motivated officers can lead to corrupt behavior. These ‘opportunity structures’ vary in their subtleties, however, the consistent element throughout is providing an environment that is conducive to corruption. Carter’s (1990:88) research further delineates corruption into two main types, “...type 1 goals are defined as ‘illegitimate’ in that an officer, relying on his/her sworn office, seeks benefits and conditions inconsistent with the legitimate police mandate of apprehension”. Carter (1990) notes that these forms of corruption involve many of the ‘traditionally’ defined corrupt behaviors such as accepting bribes, extortion, theft from property rooms, trafficking in drugs, money or leniency in exchange for tips and informant information, and so on. Type 1 corruption is often supported through a cycle of events that results in affirming the officer’s choice of behavior. First, the officer evolves to a level where he/she decides that corrupt behavior is a viable course of action and as a result conducts themselves in an illegitimate fashion. Second, the corrupt actions of the officer go undetected and are on some level rewarded through personal gain or occupational gain. Finally, this failure of detection reinforces the use of illegitimate behavior and the cycle continues.

Type 2 corruption focuses on the abrogation of trust, the trust vested unto officers to uphold the law and to demonstrate a higher level on integrity than that of an average citizen. Carter (1990:93) contends

...in type 2 corruption, the officers rationalized that their behavior was justified because the “criminals were dirty” and the rules of criminal procedure hampered successful prosecution. These officers consistently focused on end results (arrest, prosecution), viewing the “technical rules” as being hurdles rather than safeguards of constitutional rights.

Forms of type 2 corruption are further entrenched within police organizations because, as Carter (1990:91) finds, “there is a degree of informal organizational tolerance for behavior that gets “known” traffickers off the streets or seizes the traffickers’ cache of drugs”. Even though the method of acquiring these desirable organizational goals is illegitimate, officers may receive a certain degree of institutional support for their actions.

Carter (1990:94) further notes that “police departments simply have not provided sufficiently rigorous supervision and training on matters related to the dynamics of corruption. Similarly, insufficient investigative audit controls are utilized to monitor case development and officer behavior”. Marry the lack of organizational controls and supervision with officers striving to meet or exceed organizational mandates and infuse these elements into the already deceptive and weakly supervised undercover operation, and the conditions for possible corruption and misguided use of Bill C-24 are born.

Bill C-24 allows officers to break the law in order to serve organizational goals and it has been introduced specifically to help deep-cover officers from compromising their fictitious identities when involved in

extensive undercover operations. What Bill C-24 does not truly protect against is the purposeful use of the powers provided by the bill for personal or occupational gain. For officers to essentially have a 'green-light' towards circumventing the law could jeopardize the constitutionality of police investigations, taint the collection of evidence, provide opportunities for perjury, and ultimately encourage an opportunity structure that promotes and reinforces corrupt behavior. The bill does not account for police corruption and offers little safeguards against its intended misuse. Giving officers the authority to break the law can increase the perception that occupational goals must be met at all costs and that infringing upon guaranteed rights and protection is necessary to combat crime. Thus, officers in search of personal or occupational gain have been supplied a potential avenue to realize these goals with little chance of detection. The potential for misuse of the bill is unmistakable and the consequences of such inappropriate use have not yet been fully contemplated.

Chapter 6: Conclusions

After examining the changes brought about by Bill C-24, one can clearly identify key areas where the provisions are at best controversial; at times verging on crossing ethical and legal boundaries intended to protect the general public from the blind expansion of police power. The intention of Bill C-24 was to enable police personnel and other designated officials to better combat crime; specifically, to address the rising concerns with organized crime and the inability of traditional policing practices to adequately impact upon large criminal networks. However, these amendments to the Criminal Code, have not guaranteed better protection of the public or enhanced policing strategies. Rather, one can contend that granting enforcement personnel and other designated officials that ability to bypass the law has severely compromised the integrity of the Canadian justice system.

Historically, enforcement personnel have been required to meet organizational goals while remaining within the boundary of the law. However, advocates for broader police powers, such as the CPA, have argued that criminal activity is not always best regulated through traditional means, rather a more proactive approach is needed to curb the emergence of organized networks. Policing agencies have looked to specialized operations, often highly planned covert operations, to gather intelligence against individual players, create contacts and informers, and ultimately dismantle the criminal network. Yet, enforcement personnel have argued that their ability to effectively assimilate into organized criminal groups, due to the legal

restrictions placed upon them, is limited. The intent of Bill C-24 was to address this complaint and to allow officers flexibility when involved in critical investigations and to ensure that policing organizations across Canada had the best resources to contest organized crime. However, upon closer inspection, it is obvious that Bill C-24 has not addressed many crucial issues in respect to police accountability and control, victim compensation, police corruption or the ethical considerations of not adhering to the principle of the rule of law. What, then are some recommendations that could address these pivotal concerns?

Recommendation One: Increased Internal Control

Police officers and other designated officials are ultimately the individuals who interpret their investigative environment and determine what policing strategies best fit the individual context at hand. It is these officers that inform senior officials when to move an investigation in a different direction or, when faced with pressing situations, decide themselves that it would be best to continue down one avenue of action versus another. Thus, a system of strong internal controls would best impact upon how investigations proceed and by what means these investigations are forwarded.

Senior officials directly involved within investigations that might exercise the powers granted through Bill C-24 should not be the sole individuals to grant the authorization needed by officers to act in such a fashion that would otherwise constitute an offence. Senior officers who are intricately involved in the investigation cannot be expected to make impartial decisions

and to have a sufficient degree of self-reflectivity to identify their own biases and how these biases might cloud their judgement. It would be beneficial to have augmented control over the decision process to ensure that when authorization is granted that it is warranted and all other investigational pathways have been considered and deemed insufficient to help meet organizational goals.

Furthermore, “in the moment” decision-making should not be considered the norm and administrative controls should be in place to ensure that officers do not believe that every circumstance would justify an authorization. Organizations must internally monitor which officers and in what contexts “in the moment” decision-making is most prevalent. Upon examination, organizations must control for the misuse of the amendments of Bill C-24 through internal audits, standard reviews of investigations where officers did act outside of the standard parameters of the law, and statistics should be compiled to question whether the officer’s behaviour better served organizational goals with respect to the individual investigation in which the officer made “in the moment” decisions.

Secondly, to further complement more stringent internal controls, enforcement personnel should receive comprehensive training in respect to the fundamental changes to the Criminal Code as instigated by Bill C-24. Training should target both individual officers and senior officials within enforcement agencies, focusing on imparting to officers the ethical concerns with the amendments. When senior officials authorize their officers to work outside of

the law they should be fully aware of the potential for harm that these new powers carry with them and as such, should employ such tactics sparingly. It should be understood that the misuse of such provisions could lead enforcement officers to believe that they are either above the law or serve to fortify the misguided belief that the boundaries of the law only hinder enforcement agencies rather than serving to protect the integrity and ethical constitution of the law and those who enforce it.

Recommendation Two: Combating Corruption

It is recognized that corruption can occur in any enforcement organization, in part due to the very nature of the work itself. Enforcement personnel are often in contact with corrupting elements, coupled with the high-stress environment that is intrinsic to police work, and pressing organization goals: these can combine to create a milieu that breeds corruption. Conversely, one can contend that corruption is a result of administrative failing, such as the low level of supervision over officers, having officers work in specialized units for extended periods of time, the organizational pressure to clear cases and to make significant arrests, and not attempting to confront the “code of silence” that is internalized by officers. Finally, corruption can also be localized in the individual officer who should have been screened out during hiring procedures or who, when confronted with too many diverging influences, was not encouraged to seek counselling or other support services that could have positively influenced their behaviour. Thus, in attempting to address the issue

of police corruption, it must be realized that multiple factors combine that allow for corruption. In reference to Bill C-24, it is important to highlight the possibility that such an expansion of police powers, married with the minimal control procedures currently in place, could foster an environment that is acquiescent to corruption.

It would be almost impossible to stamp out all forms of police corruption on all levels, but in light of the integration of the amendments found in Bill C-24 it is even more important to underscore the potential areas of concern, design procedural protocols with the intent to proactively address the potential for misuse and deal with identified areas of concern accordingly. Protocols, or standard operating procedures, should be instituted with the goal of increasing the accountability of policing organizations and minimizing the potential for corruption. Each enforcement organization needs to determine which weaknesses are central to their particular service and once identified, policies should be implemented that will address these concerns and ideally protect against officers acting in a corrupt fashion. However, even the best protocol is limited in its ability to impact upon corruption when dealing with certain specialized units found within policing organizations. One such unit that is highly susceptible to corruption is the covert operations division.

Undercover policing presents a unique dilemma because high calibre covert operations require officers to act independently and often without guidance from senior officers. Such operations do not encourage a high degree of supervision for fear of jeopardizing the officer's cover, nor do such

operations foster accountability for often the actions of the undercover officer are not entirely known to the police organization. Undercover officers are encouraged to act independently and to make in-the-moment decisions that facilitate their assimilation into the targeted group. These very characteristics make it difficult to ward against officers working outside the scope of the law and virtually impossible to enforce operating procedures. It is can be argued that undercover operations rely heavily on covert officers interpreting their environment and acting accordingly. Increasing the amount of controls that undercover officers must work under would arguably severely compromise their ability to conduct successful undercover operations. Furthermore, the manner in which police organizations quantify success is questionable.

Do the number of arrests, amount of contraband confiscated or the degree of intelligence gathered equate to success or is it the degree to which procedure was followed that indicates a successful operation? Undercover operations are built upon the premise of dismantling criminal organizations through intelligence gathering, evidence collecting and the eventual infiltration and deconstruction of the organization through other undercover strategies. Bill C-24 allows for undercover officers to have the freedom to actively pursue the goals identified by the police organization and to do so with little or no supervision. This instrumental approach, as adopted by undercover officers, is not always amenable to increased control by internal or external bodies. It is the author's opinion that undercover operations present the greatest threat of corruption in light of the very nature of the operations themselves. Bill C-24 is

inadequate in addressing the unique problems presented by undercover policing; thereby increasing the likelihood that undercover officers could proceed with investigations in a corrupt fashion. Though the goal of dismantling criminal organizations may be noble, by officers achieving these goals in a corrupt fashion, they severely undermine and call into disrepute the very integrity of the laws they are trying to protect. Police agencies must account for the unique characteristics of covert operations and create and promote policies that would address these issues.

Recommendation Three: Varied External Controls, the Use of External Audits and the Role of the Courts

For the successful integration of the changes embodied in Bill C-24 it is important for policing organizations to be open to a series of checks and balances. This system of checks and balances is central to monitoring the degree to which police organizations are accountable and to what extent they are acting within the scope of the law. By limiting external monitoring, police organizations are perpetuating an image of enforcement personnel being unaccountable to the general public. It is this writer's recommendation that police agencies be more open to external scrutiny and audits, thereby increasing their adherence to policy, opening the organization to external input, and augmenting the public's role in community safety and security.

Bill C-24 has empowered policing organizations, affording them the ability to pursue investigational goals with very few legal constraints. With the

absence of strong legal controls, the policing community has the ability to design and follow investigative plans with little interference and minimal controls. This lack of control is especially prevalent in undercover operations. Thus, beyond strengthening internal controls which are still directed by the police organization itself, increasing external controls, from a variety of locales would increase the degree to which enforcement personnel are accountable for the choices they make and the justifications they provide.

One such method of external control could be an outside body, composed of individuals from the community, who would audit the use of the new legislation. In Section 25.3 (1) of Bill C-24, it is recommended that an annual report be prepared, listing the various incidents and uses of the legislation and the nature of the acts or omissions. However, the ability of the annual report to accurately depict the frequency with which the legislation is employed and under what circumstances is marred by the fact that officers must report their usage, and self-reporting strategies are dependent on officer integrity and their ability to recollect their actions. Furthermore, Section 25.3 (2) identifies limitations to the submissions of the annual report so as not to compromise ongoing investigations or for other pertinent reasons. Thus, the reporting strategies as recommended by Bill C-24 are arguably limited. With the inclusion of external monitoring, a greater degree of accountability could be placed on individual officers to be systematic in their reporting practices; the knowledge that their actions would be highly scrutinized could be motivation enough to ensure their conduct was justifiable. The decisions of police officers

should be made public to an external agency so as to better identify any incorrect or unjustifiable use of the legislation.

External monitoring should not be limited to one committee of individuals, rather to ensure that the legislation in Bill C-24 is not misused, the government should allow for the use of multiple auditing committees. Through the use of different bodies, policing agencies are assured of receiving the fairest possible treatment. If only one external body reviews the actions of the police, there is the chance that this body could be unduly harsh in respect to enforcement agencies or, conversely, limiting input to one body of reviewers could minimize the quality and depth of the recommendations given. It is in the best interest of the police to have different committees auditing their work because each committee will bring a unique opinion to the table that can act as a catalyst for introspection on the part of the police.

With the recommendation of external monitoring this writer acknowledges that the free flow of information between policing agencies and their auditors is very difficult to cultivate. Realistically, some information should not be shared if its broadcast could jeopardize ongoing investigations or the integrity of the officers involved in such investigations. Thus, it would be impossible to monitor all uses of the legislation for it is foreseeable that at certain moments within the course of an investigation an external audit could be detrimental. Also, the degree to which policing agencies would receive and be open to external audits is unknown. Nor would the effects of external audits of policing investigations be known until such audits were completed and the

information that was garnered was compiled and reviewed. However, this writer contends that by allowing the police to implement the powers outlined in Bill C-24 without some form of external control is irresponsible. The Canadian government must further examine the already existing controls that are in place when it pertains to enforcement practices, determine how these controls could be augmented and, finally, create new checks and balances to ensure that policing agencies are not misusing the powers granted to them. Furthermore, the government should insist that non-governmental agencies also monitor the actions of police agencies to protect against any conflict of interest and to best uphold the integrity of the law

Another mechanism with which to impact upon the actions of enforcement personnel would be to involve the courts within the decision making process of policing organizations. Currently, police officers are required to adhere to due process laws that ensure the rights of individuals are protected from unjust actions of the police. One such example of the restraint that policing organizations must display is the acquiring of warrants when planning on entering a dwelling, executing a wiretap or seizing personal belongings or documents. Before the police can act upon the investigative knowledge they have acquired through the course of an investigation, they must often submit their requests before the courts to receive the legal permission to act. Sections 511(1-2), 512, 513, 514, 528, and 529(1-5) of the criminal code address how warrants are to be served, the information required within the warrant and other particulars in relation to requesting and issuing

warrants. There are circumstances when the need for a warrant can be circumvented, but the general premise is that policing agencies must be accountable to the courts to present their case and cause before they intrude into the personal or intellectual space of an individual or group. Along the same vein, one could argue that to better ensure that police agencies appropriately use the protections as provided by Bill C-24, a requirement necessitating that police agencies present their case before the courts to receive a “warrant-like” permission slip be obtained. This permission should be granted before officers acted or committed omissions that would normally be against the law. This procedure would guarantee that policing agencies were not acting within a vacuum and that prior to authorizing officers to behave in a certain fashion, the position of the police would have to be presented before the courts and to be open to judicial scrutiny. This process would virtually eliminate “in the moment” decision-making, thereby increasing the likelihood that a burden of proof was met before the courts sanctioned police action.

In principle, Bill C-24 was enacted to allow officers the freedom to make on the spot decisions that are argued to be at times necessary when dealing with large criminal organizations. Thus, this writer concedes that if the courts were to be included as a form of external control then there would have to be a mechanism in place that would best ensure compliance with the principles of Bill C-24 while still allowing enforcement agencies the ability to combat crime. But this writer contends that Bill C-24 was conceived with little thought to the negative ramifications of its use, and to involve the courts might

go some way toward finding a solution to the lack of control over the use of the legislation. However, simply discussing the use of the courts serves to exemplify the lack of general thought that has gone into the creation of this legislation. The use of the courts as a regulator should have been a considered option when it came to the creation of the bill and this lack of exclusion of external regulators only increases the likelihood that the legislation found in Bill C-24 can be misused.

Recommendation Four: Victim Compensation

It is accepted that to be a victim of a crime can result not only in financial loss but also emotional, physical and personal loss as well. It is this understanding that is lacking from the new legislation. The community generally identifies police as individuals that serve their community through the protection of its members and by upholding the laws of the land. The consequences of being victimized by the police themselves, even if it is argued to serve the greater good, are not yet fully understood, nor the scope of their effects truly known. As such, it is important to recognize the role of the victim as unique when the crimes against them are perpetrated by enforcement officers who are acting based on the powers provided to them through Bill C-24. It would be naïve to conclude that all members of the community would be willing to be victims at the hands of police even if their victimization was to lead to comprehensive arrests or the dismantling of a criminal organization.

The Canadian government must be prepared to address the specific needs of those individuals who have been victimized as a result of Bill C-24. Furthermore the extent to which individuals perceive their victimization and its severity is influenced by the circumstances of the event itself and the characteristics of the perpetrators. The effects of being victimized by the police can not be underestimated and for Bill C-24 not to have a comprehensive plan to address these concerns and to award quality compensation is yet another area where the conception of the legislation was inadequate and indicative of a plan adopted through pressure tactics in the absence of real consideration and broader contemplation. Bill C-24 grants policing personnel and other designated officials the ability to act outside the law and the long-term ramifications of these actions need to be addressed, specifically when dealing with the victims of such actions. A clear plan outlining how such victims will be compensated is needed and should be firmly in place to ensure that agencies allowing for the use of the legislation are fully aware of its impact on members of the community.

What then of the victims of the actions of the police that were found not to be justified? Currently, with very few internal controls in place and virtually no form of external checks and balances, it is fair to predict that there will be misuses of the legislation. How does the Canadian government and, more specifically, police agencies plan to address the consequences of the misuse of the legislation as it pertains to the victims of police action. Again, Bill C-24 has not attempted to address this potential issue. To be victim of unwarranted

police action is intrusive and problematic enough without augmenting the sense of victimization by not having sufficient policies in place to address the needs of such victims. The Canadian government, in drafting such legislation, should have been proactive enough to foresee that not all enforcement personnel will always conduct themselves in an exemplary fashion. As a result, the unwarranted actions of corrupt officers or the inappropriate use of the legislation due to personal error can result in the victimization of members of the community by the state itself. Thus, to address the effects of such victimization it is necessary to research and ultimately draft policies that would address this phenomenon through either compensation or other appropriate means.

To simply not address the issue of victim compensation is unjustifiable on the part of the Canadian government. The role of the victim is well recognized by the United Nations, other industrialized nations and through other initiatives of the Canadian Government. However, Bill C-24 has not recognized such considerations for the victim and it is the position of this writer that the role of the victim and the consequences of being victimized by the police should have been fully investigated and considered prior to adopting such controversial legislation. As such, it is not too late to identify and address the unique position of the victim in relation to Bill C-24 and to further create and adopt a policy that would address these concerns and other issues as they pertain to victims of state-sanctioned crime. Until such policies are considered, one could argue that the powers as defined by Bill C-24 are an intrusion on the

guaranteed rights and freedoms of members of the Canadian public and the lack of proper compensation polices cannot be justified.

Recommendation Five: Areas of Future Research and Study

Having investigated Bill C-24 it is evident that the amendments found in the Bill were conceived with minimal thought to the long-term ramifications of their adoption. Issues of victimization and victim compensation, police corruption, the ethics of enforcement personnel not being subject to the “rule of law”, the lack of comprehensively designed and implemented methods of internal control, the reluctance of incorporating an external process of checks and balances, and the grave potential for misuse are all areas of concern in relation to Bill C-24. As this writer has discovered through the course of studying Bill C-24, there is little factual basis for implementing such a Bill, rather it is implied and contended that such changes in policy will allow enforcement personnel to better serve the public by possessing the administrative means and legislative immunity to combat organized crime. Based primarily on the belief that to “catch a crook” one must conduct themselves as one, Bill C-24 was conceived and ultimately implemented. What has not been fully researched are the consequences of Bill C-24 and whether or not enhanced investigative freedoms will equate to a consequential reduction in organized crime and subsequently safer communities.

The contentious issues surrounding Bill C-24 need to be systematically addressed through research and study. Only by a better understanding the

ramifications of the Bill can Government then decide what avenues are the best to address these adverse affects. Furthermore, the actual link between increased investigative freedom and superior crime control has not been definitively established. Bill C-24 was employed based on the supposition that its amendments would help enforcement personnel reach occupational goals. Research that focuses on the use of the new legislation could clearly delineate whether the amendments were in fact beneficial. Research in the area of how to best monitor the police is also needed so as to provide guidance on how to proceed with the freedoms found in the new legislation and how to adequately protect against misuse or corruption. Even though Bill C-24 has been enacted and has been incorporated into legislation, it is not too late to re-examine the legislation and begin to address the many areas of concern associated with the newfound powers.

Clearly, the creation and adoption of new policy does not occur within a vacuum. There were several major critical events that precipitated Bill C-24, one being the *R.v. Campbell and Shirose* ruling and another being the increase in organized crime related incidents. However, the true test is not in the creation of new legislation nor its adoption, but rather its implementation and how unforeseen consequences are addressed by the Canadian government. It is this writer's contention that the ramifications of Bill C-24 will only be truly realized once problems occur with the use of the Bill. Some potential problems associated with Bill C-24 have been identified within this paper and some recommendations have been proposed, however, the full impact of the newly

adopted bill will not be experienced for many years to come. As a result, this legislation must be closely monitored through research and study in order to best identify areas of concern and to begin the process of deciding how to best address these issues.

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Appendix

1st Session, 37th Parliament,
49-50 Elizabeth II, 2001
House of Commons of Canada

BILL C-24

An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. C-46

1997, c. 23, s. 1

1997, c. 23, s. 1

``offence-related property"
« *bien infractionnel* »

1997, c. 23, s. 1

1. (1) The definitions ``acte de gangstérisme" and ``gang" in section 2 of the French version of the *Criminal Code* are repealed.

(2) The definition ``offence-related property" in section 2 of the Act is replaced by the following:

``offence-related property" means any property, within or outside Canada,

(a) by means or in respect of which an indictable offence under this Act is committed,

(b) that is used in any manner in connection with the commission of an indictable offence under this Act, or

(c) that is intended for use for the purpose of committing an indictable offence under this Act;

(3) The definition ``criminal organization" in section 2 of the English version of the Act is replaced by the following:

“criminal
organization”
« *organisation
criminelle* »

1997, c. 23, s. 1

“justice system
participant”
« *personne
associée au
système judiciaire*
»

“criminal organization” has the same meaning
as in subsection 467.1(1);

(4) Paragraph (a) of the definition “criminal organization offence” in section 2 of the English version of the Act is replaced by the following:

(a) an offence under section 467.11, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization, or

(5) Section 2 of the Act is amended by adding the following in alphabetical order:

“justice system participant” means

(a) a member of the Senate, of the House of Commons, of a legislative assembly or of a municipal council, and

(b) a person who plays a role in the administration of criminal justice, including

(i) the Solicitor General of Canada and a Minister responsible for policing in a province,

(ii) a prosecutor, a lawyer, a member of the Chambre des notaires du Québec and an officer of a court,

(iii) a judge and a justice,

(iv) a juror and a person who is summoned as a juror,

(v) an informant, a prospective witness, a witness under subpoena and a witness who has testified,

(vi) a peace officer within the meaning of any of paragraphs (b), (c), (d), (e) and (g) of the definition “peace officer”,

(vii) a civilian employee of a police force,

(viii) a person employed in the administration of a court,

(ix) a public officer within the meaning of subsection 25.1(1) and a person acting at the direction of such an officer,

(x) an employee of the Canada Customs and Revenue Agency who is involved in the investigation of an offence under an Act of Parliament,

(xi) an employee of a federal or provincial correctional service, a parole supervisor and any other person who is involved in the administration of a sentence under the supervision of such a correctional service and a person who conducts disciplinary hearings under the *Corrections and Conditional Release Act*, and

(xii) an employee and a member of the National Parole Board and of a provincial parole board;

``serious offence"
« *infraction grave* »
»

1997, c. 23, s. 2

« infraction
d'organisation
criminelle »
``*criminal
organization
offence*»

« organisa-
tion criminelle »
``*criminal*

``serious offence" has the same meaning as in subsection 467.1(1);

(6) Section 2 of the French version of the Act is amended by adding the following in alphabetical order:

« infraction d'organisation criminelle »

a) Soit une infraction prévue aux articles 467.11, 467.12 ou 467.13 ou une infraction grave commise au profit ou sous la direction d'une organisation criminelle, ou en association avec elle;

b) soit le complot ou la tentative en vue de commettre une telle infraction ou le fait d'en être complice après le fait ou d'en conseiller la perpétration.

« organisation criminelle » S'entend au sens du paragraphe 467.1(1).

organiza-
tion"

Definitions

"competent
authority"

« *autorité
compétente* »

"public officer"
« *fonction-
naire public* »

"senior official"
« *fonction-
naire supérieur* »

Principle

Designation of public officers

2. The Act is amended by adding the following after section 25:

25.1 (1) The following definitions apply in this
section and sections 25.2 to 25.4.

"competent authority" means, with respect to a
public officer or a senior official,

(a) in the case of a member of the Royal
Canadian Mounted Police, the Solicitor General
of Canada, personally;

(b) in the case of a member of a police service
constituted under the laws of a province, the
Minister responsible for policing in the
province, personally; and

(c) in the case of any other public officer or
senior official, the Minister who has
responsibility for the Act of Parliament that the
officer or official has the power to enforce,
personally.

"public officer" means a peace officer, or a
public officer who has the powers of a peace
officer under an Act of Parliament.

"senior official" means a senior official who is
responsible for law enforcement and who is
designated under subsection (5).

(2) It is in the public interest to ensure that
public officers may effectively carry out their
law enforcement duties in accordance with the
rule of law and, to that end, to expressly
recognize in law a justification for public
officers and other persons acting at their
direction to commit acts or omissions that
would otherwise constitute offences.

(3) A competent authority may designate public
officers, or groups of public officers, for the
purposes of this section and sections 25.2 to
25.4.

Condition - civilian oversight (3.1) A competent authority referred to in paragraph (a) or (b) of the definition of that term in subsection (1) may not designate any public officer under subsection (3) unless there is a public authority composed of persons who are not peace officers that may review the public officer's conduct.

Declaration as evidence (3.2) The Governor in Council or the lieutenant governor in council of a province, as the case may be, may designate a person or body as a public authority for the purposes of subsection (3.1), and that designation is conclusive evidence that the person or body is a public authority described in that subsection.

Please Note: This bolded section was an amendment made to the bill and when writing the thesis the non-amended bill was the bill referred to.

Considerations

(4) The competent authority shall make designations under subsection (3) on the advice of a senior official and shall consider the nature of the duties performed by the public officer or group of public officers in relation to law enforcement generally, rather than in relation to any particular investigation or enforcement activity.

Designation of senior officials

(5) A competent authority may designate senior officials for the purposes of this section and sections 25.2 to 25.4.

Emergency designation

(6) A senior official may designate a public officer for the purposes of this section and sections 25.2 to 25.4 for a period of not more than 48 hours if the senior official is of the opinion that

(a) by reason of exigent circumstances, it is not feasible for the competent authority to designate a public officer under subsection (3); and

(b) in the circumstances of the case, the public officer would be justified in committing an act

or omission that would otherwise constitute an offence.

The senior official shall without delay notify the competent authority of the designation.

Conditions

(7) A designation under subsection (3) or (6) may be made subject to conditions, including conditions limiting

(a) the duration of the designation;

(b) the nature of the conduct in the investigation of which a public officer may be justified in committing, or directing another person to commit, acts or omissions that would otherwise constitute an offence; and

(c) the acts or omissions that would otherwise constitute an offence and that a public officer may be justified in committing or directing another person to commit.

Justification for acts or omissions

(8) A public officer is justified in committing an act or omission - or in directing the commission of an act or omission under subsection (10) - that would otherwise constitute an offence if the public officer

(a) is engaged in the investigation of an offence under, or the enforcement of, an Act of Parliament or in the investigation of criminal activity;

(b) is either designated, or is a member of a group that is designated, under subsection (3) or (6); and

(c) believes on reasonable grounds that the commission of the act or omission, as compared to the nature of the offence or criminal activity being investigated, is reasonable and proportional in the circumstances, having regard to such matters as the nature of the act or omission, the nature of the investigation and the reasonable availability of other means for carrying out the public officer's law enforcement duties.

Requirements for certain acts

(9) No public officer is justified in committing an act or omission that would otherwise constitute an offence and that would be likely to

result in loss of or serious damage to property, or in directing the commission of an act or omission under subsection (10), unless, in addition to meeting the conditions set out in paragraphs (8)(a) to (c), he or she

(a) is personally authorized in writing to commit the act or omission - or direct its commission - by a senior official who believes on reasonable grounds that committing the act or omission, as compared to the nature of the offence or criminal activity being investigated, is reasonable and proportional in the circumstances, having regard to such matters as the nature of the act or omission, the nature of the investigation and the reasonable availability of other means for carrying out the public officer's law enforcement duties; or

(b) believes on reasonable grounds that the grounds for obtaining an authorization under paragraph (a) exist but it is not feasible in the circumstances to obtain the authorization and that the act or omission is necessary to

(i) preserve the life or safety of any person,

(ii) prevent the compromise of the identity of a public officer acting in an undercover capacity, of a confidential informant or of a person acting covertly under the direction and control of a public officer, or

(iii) prevent the imminent loss or destruction of evidence of an indictable offence.

Person acting at
direction of public
officer

(10) A person who commits an act or omission that would otherwise constitute an offence is justified in committing it if

(a) a public officer directs him or her to commit that act or omission and the person believes on reasonable grounds that the public officer has the authority to give that direction; and

(b) he or she believes on reasonable grounds that the commission of that act or omission is for the purpose of assisting the public officer in the public officer's law enforcement duties.

Limitation

(11) Nothing in this section justifies

	<p>(a) the intentional or criminally negligent causing of death or bodily harm to another person;</p> <p>(b) the wilful attempt in any manner to obstruct, pervert or defeat the course of justice; or</p> <p>(c) conduct that would violate the sexual integrity of an individual.</p>
Protection, defences and immunities unaffected	(12) Nothing in this section affects the protection, defences and immunities of peace officers and other persons recognized under the law of Canada.
Compliance with requirements	(13) Nothing in this section relieves a public officer of criminal liability for failing to comply with any other requirements that govern the collection of evidence.
Exception: offences under <i>Controlled Drugs and Substances Act</i>	(14) Nothing in this section justifies a public officer or a person acting at his or her direction in committing an act or omission - or a public officer in directing the commission of an act or omission - that constitutes an offence under a provision of Part I of the <i>Controlled Drugs and Substances Act</i> or of the regulations made under it.
Public officer to file report	25.2 Every public officer who commits an act or omission - or directs the commission by another person of an act or omission - under paragraph 25.1(9)(a) or (b) shall, as soon as is feasible after the commission of the act or omission, file a written report with the appropriate senior official describing the act or omission.
Annual report	<p>25.3 (1) Every competent authority shall publish or otherwise make available to the public an annual report for the previous year that includes, in respect of public officers and senior officials designated by the competent authority,</p> <p>(a) the number of designations made under subsection 25.1(6) by the senior officials;</p> <p>(b) the number of authorizations made under paragraph 25.1(9)(a) by the senior officials;</p> <p>(c) the number of times that acts and omissions were committed in accordance with paragraph 25.1(9)(b) by the public officers;</p>

Limitation

(d) the nature of the conduct being investigated when the designations referred to in paragraph (a) or the authorizations referred to in paragraph (b) were made or when the acts or omissions referred to in paragraph (c) were committed; and

(e) the nature of the acts or omissions committed under the designations referred to in paragraph (a), under the authorizations referred to in paragraph (b) and in the manner described in paragraph (c).

(2) The annual report shall not contain any information the disclosure of which would

(a) compromise or hinder an ongoing investigation of an offence under an Act of Parliament;

(b) compromise the identity of a public officer acting in an undercover capacity, of a confidential informant or of a person acting covertly under the direction and control of a public officer;

(c) endanger the life or safety of any person;

(d) prejudice a legal proceeding; or

(e) otherwise be contrary to the public interest.