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This article appeared in:
Consent #32, December 2001

Crime Does Pay

- Karen Selick

An edited version of the following article first appeared in the January 10, 2001 issue of The Globe and Mail. At the time of its publication, Karen Selick was a lawyer practicing in Belleville, Ontario. A regular columnist for Canadian Lawyer magazine, she has also been frequently published in many daily newspapers across Canada. Copyright by Karen Selick. For reprint rights, contact the author via Freedom Party or on her website at www.karenselick.com. Please note that Bill 155 was re-introduced as Bill 30 (which it is currently known as) after the Harris government prorogued the last session of the legislature on March 2, 2001 and resumed its sitting on April 19, 2001. On October 22, 2001, Bill 30 passed committee hearings, unamended.

According to Ontario's Solicitor General David Tsubouchi, organized crime has become "a threat to our way of life." Therefore, he and his colleagues in the Ontario government have introduced Bill 155, the Remedies for Organized Crime and Other Unlawful Activities Act. It had first reading in the legislature on December 5, 2000.

Unfortunately, like many legislative remedies to society's problems, this one promises merely to cloak the symptoms, not cure the underlying disease. What's worse, to anyone concerned about civil liberties, the remedy threatens to endanger our way of life far more gravely than the original problem.

The law will operate by allowing judges to transfer suspected proceeds of crime (including drugs and cash) as well as property allegedly instrumental in the commission of a crime (such as houses and vehicles) to the government, whether or not anyone is ever charged with or convicted of the alleged crime. This is called "civil asset forfeiture". The theory is that it will remove the profit from crime --- that it will prove to criminals, literally, that crime doesn't pay.

A good theory, except for one small flaw. The profit won't really be gone, it will merely be diverted.

This little fact has two important implications. First, it undermines the likely efficacy of the proposal. Criminals can hardly be expected to give up their lucrative lifelong occupations for new careers in taxi-driving when there's still a raging demand for the illegal products they've been providing. Instead, they will simply carry on with business, turning some of their energies to preventing the diversion of their profits.

Every new law enforcement measure in recent years has been met with increasingly sophisticated evasive techniques on the part of organized crime. Those who were formerly just drug-dealers or smugglers now conduct money laundering schemes. Local criminal organizations have gone global.

Foreign jurisdictions such as the United States, where civil asset forfeiture laws have been in place for decades, now find it necessary to encourage neighbouring territories to adopt similar measures. Ontario, too, will find that its proposed law may drive criminals' accumulated assets out of the province to safer havens, but it won't stop the crimes from being perpetrated here not as long as there's money to be made from it. Organized crime still thrives in the U.S. despite harsh asset forfeiture laws.

The second implication is that all that diverted money has to go somewhere. Ontario proposes that it go into a special fund. From there, it will be used to compensate victims of organized crime and to reimburse law enforcement bodies (the Crown, municipal police departments, etc.) for expenses incurred in processing cases under the asset forfeiture laws. Anything left over will be used as the regulations prescribe --- in other words, as the cabinet chooses.

Compensating victims is a worthy goal, right? But just who are the victims of organized crime? When Ontario Attorney General Flaherty talks about this aspect of Bill 155, he likes to focus on car thefts and credit card scams.

However, studies indicate that the main source of revenue for organized crime is still the drug trade, which is estimated to generate revenues of \$7 to \$10 billion in Canada annually. Other major activities include the smuggling of liquor, tobacco and people. Illegal gambling is another, relatively minor, activity. The common thread among all these activities is that the participants on both sides of the transaction engage in the activity voluntarily. There are no unwilling victims. Both sides are guilty of something the state has deemed a crime.

It seems unlikely that anyone will ever approach Ontario's victim fund seeking compensation because the marijuana he bought turned out to be oregano. Or because his dealer overcharged him for cocaine. Or because he got cirrhosis of the liver drinking untaxed booze. Or because his snakehead promised to get him to the U.S. but abandoned him in Ontario.

So there should be plenty of money left over to beef up the budgets of the Ontario Crown and police departments and to go into the cabinet's slush fund.

What's wrong with this picture? It will mean that crime does pay for the state and its minions. It will add a flock of respectable citizens --- judges, lawyers, police officers, bureaucrats -- to the burgeoning number of people whose livelihood depends upon the continued existence of organized crime.

Furthermore, it will distort the priorities that law enforcement officials will attach to different types of crime. Why send officers out to investigate some trivial purse-snatching, burglary or car theft when their time could be spent sniffing out drug proceeds which will end up in police department coffers? Then we can hire more officers and sniff out more drug proceeds, and so on, and so on.

In fact, why attempt to keep drugs out of the country, or prevent them from being sold? After all, police can't be everywhere at once. Since choices have to be made, it will be tempting to let the drug trade proceed unmolested, then just go after the cash.

This law threatens to transform policing into a self-contained, self-perpetuating little industry, hooked on the proceeds of vice just like any addict, putting occasional pressure on organized crime but never

enough to derail the gravy train. If it were anyone other than the government doing this, we would call it a protection racket.

Once the state becomes the ultimate beneficiary of crime proceeds, how different is it, really, from being simply the most powerful gang in a battlefield of gangs? Power corrupts, and government employees are not immune. Quebec's anti-gang police squad has already gotten into the spirit of gang mentality, dubbing itself the Wolverines.

Despite these criticisms of Bill 155, there is still merit in the idea of tackling organized crime by taking the profit out of its activities. This doesn't mean diverting the profits, it means preventing profits from arising in the first place.

The solution is to legalize vice. Legalize drugs, gambling, prostitution, adult pornography. Repeal the huge sin taxes on liquor and tobacco. Eliminate the conditions of high risk that make it possible for the brutal and reckless to monopolize the vice industries and drive up prices.

When people can grow their own marijuana or buy it from their next-door neighbour's patch, there won't be any profit in it for organized crime. When prostitutes can advertise in the Yellow Pages and turn to police if they get robbed or assaulted, they won't need pimps.

We will never succeed in eliminating vice. Centuries of laws have already proven that. Our efforts to control unsavoury, but voluntary, human activities by criminalizing them have backfired every time. Each new law has created problems of far greater magnitude. Isn't it time we stopped repeating the same mistake?

CONSENT is published by Freedom Party International. Editor: Robert Metz.

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