

The Community Protection and Liquor Control Amendment Act and The Safer Communities and Neighbourhoods and Consequential Amendments Act

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I. INTRODUCTION

Every so often in politics, the creation of legislation is so decidedly linked to legislation previously debated that no examination can be properly conducted of one without the other. Such is the case in this paper, which will review the substantive and procedural formation of *The Safer Communities and Neighbourhoods and Consequential Amendments Act* given Royal Assent by the provincial New Democratic government in the summer of 2001 after receiving support from all opposition parties.¹

No examination of *The Safer Communities Act* would be properly conducted without first looking at *The Community Protection and Liquor Control Amendment Act*, which had been introduced and quickly passed in July of 1999 by the Progressive Conservative government on the eve of its election defeat.² Like its successor, *The Community Protection Act* received no opposition to its passing.

It was in fact *The Community Protection Act* that set the framework for *The Safer Communities Act*. Both pieces of legislation were designed and intended to achieve the same goal. Each created a civil process to control and potentially close homes in which criminal activities such as

¹ Bill 10, *The Safer Communities and Neighbourhoods and Consequential Amendments Act*, 2d Sess., 37th Leg., Manitoba, 2001 (assented to 6 July 2001) [*The Safer Communities Act*].

² Bill 42, *The Community Protection and Liquor Control Amendment Act*, 5th Sess., 36th Leg., Manitoba, 1999 (assented to 14 July 1999, but not proclaimed) [*The Community Protection Act*].

prostitution and the sale or use of drugs and alcohol were habitually taking place.³

This paper will examine the development of the two *Acts*, their political foundations and the reasons why such significant and untried legislation was approved by two governments of distinctly different ideology with virtually no opposition. Because both *Acts* are unique to Canada, and will surely be examined by other jurisdictions, this paper will also provide a description of both *Acts*, their function and their differences.

II. BACKGROUND OF *THE COMMUNITY PROTECTION ACT*

After a decade in government, the summer of 1998 brought difficult times to Manitoba's Progressive Conservative government led by Premier Gary Filmon. In light of its difficulties, the government turned to the policy area of justice as one of its key planks in the lead-up to the summer election. A flurry of justice initiatives were announced within a span of four months, including plans to institute 24-hour surveillance of Manitoba's 100 most serious offenders;⁴ to turn over the court settlements of criminals who successfully sued the provincial government to their victims;⁵ to seize the cars of drunk drivers who refused to take breathalyser tests;⁶ and a \$14 million plan which merged crime prevention with community revitalization to benefit the core area of Winnipeg.⁷

The crown jewel of the law and order platform, however, was unveiled by Premier Gary Filmon on 11 June 1999 at a news conference held in Winnipeg's inner city announcing the province's intention to use the civil court system to rid communities—primarily inner city neighbourhoods—of what had been la-belled booze cans (homes illegally selling liquor), brothels (prostitution in homes), and shooting galleries and drug dens (homes used for selling and using drugs).⁸

³ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LI No. 30 (15 May 2001) at 1725 [*Debates* (15 May 2001)].

⁴ Douglas Nairne "Tories target top 100 free offenders" *Winnipeg Free Press* (11 June 1999) A3.

⁵ David Kuxhaus "Bill takes aim at inmates who sue" *Winnipeg Free Press* (8 June 1999) A4.

⁶ David Kuxhaus "Law and order on Tory agenda: They'll target criminals now" *Winnipeg Free Press* (7 June 1999) A3.

⁷ Douglas Nairne "Plan targets crime, grime: City can't afford to take part in Tory proposal" *Winnipeg Free Press* (1 April 1999) A1.

⁸ B. Holiday "Booze cans, drugs targeted" *Winnipeg Sun* (12 June 1999) 5 [Holiday].

A. The Demand for and Consideration of *The Community Protection Act*

The political desirability of *The Community Protection Act*, from the viewpoint of a weakened government facing an uncertain electorate, is clear. Accusations that the *Act* was produced quickly only in the context of a looming election were not unexpected and found their voice in then opposition critics Mr. Gord Mackintosh, MLA for St. Johns, and Mr. Kevin Lamoureux, MLA for Inkster.⁹ However, while the introduction of the legislation led to questions concerning the process that the *Act* was subjected to and the consultations that had been conducted, the pressure for this type of legislation had been present for years prior.

Mr. Jack Haasbeek, president of the Winnipeg Police Association from 1990 to 1997 and Special Assistant to the provincial Minister of Justice from 1997 to 1999, suggests that problems with inner city drug houses began in the late 1980s.¹⁰ As the 1990s unfolded, he indicates that inner city residents voiced their complaints to police at numerous community meetings about the proliferation of inner city neighbourhood houses being used for the sale of drugs, alcohol and prostitution. The police pressured the Winnipeg City Council for additional resources who in turn placed pressure on the provincial government to develop solutions to the problem. Mr. Haasbeek suggests that the police were unable to effectively use the *Criminal Code* to control the problem because of the cost of using undercover police officers and their ineffectiveness in drug houses where everyone knew each other.¹¹ When arrests were successful, they only affected the individual apprehended but rarely stopped the sale of drugs or alcohol from the premises since another individual would simply begin the activities again with a heightened awareness of undercover officers.

Much of the public pressure came from Reverend Harry Lehotsky, a long-time and well-known inner city community activist with New Life Ministries. Speaking to the Standing Committee on Industrial Relations debating the *Act*, Mr. Lehotsky, then also a declared candidate for the Progressive Conservatives for the upcoming election, remarked that “this is one of the things that I have been looking into for about five years.”¹²

⁹ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XLIX No. 56 (7 July 1999) at 4078–4080 [Debates (7 July 1999)].

¹⁰ Interview of Jack Haasbeek (October 2001) [Haasbeek].

¹¹ R.S.C. 1985, c. C-46 [*Criminal Code*].

¹² Manitoba, Legislative Assembly, Standing Committee on Industrial Relations, Vol. XLIX No. 2 (12 July 1999) at 70 [Committee (12 July 1999)].

Wyman Sangster, Manitoba's Director of Public Safety from 1997 to 1999, confirms that the Department of Justice received calls on a daily basis from inner city homeowners regarding 'houses out of control' and from police who were indicating they could do little to address the problem.¹³ Several newspaper stories in 1999, under headlines such as "Residents welcome anti-crime initiative" expressed the frustration of inner city residents and their desire for stricter laws and community revitalization.¹⁴

The demand for the government in 1999 to take legislative steps to address the problem of properties being habitually used for crime clearly existed, as did a government who had the practical and political motivation to react. But there is little evidence that the legislation was quickly rushed forward for the sole purpose of election readiness. In fact, Mr. Haasbeek suggests that general discussion, if not the specific legislation, had been ongoing for at least two years in the provincial Department of Justice in response to a desire to rid the inner city of "crack houses and slum landlords."¹⁵ Former Manitoba Justice Minister, Vic Toews, recalls that there was extensive policy development that took place before the legislation was drafted, noting that he would not have approved the legislation if it failed to meet appropriate legal standards. He also suggests that consultations occurred with representatives from government, the community and the various levels of police agencies.¹⁶

The premise that *The Community Protection Act* was not developed as a last minute election initiative, is strengthened by comments of Reverend Lehotsky that indicate he first heard of the government's intention to introduce such legislation three months before it was brought forward in the Legislature.¹⁷ Even if that three month notice marked the beginning of the drafting process, it would have been crafted over a period of time longer than many bills and substantially longer than other more significant and wide ranging pieces of legislation, such as the recent federal *Anti-terrorism Act* brought forward barely one month after the 11 September 2001 attacks on the World Trade Centre and Pentagon in the United States of America.¹⁸

¹³ Interview of Wyman Sangster (October 2001) [Sangster].

¹⁴ Linda Rosborough "Residents welcome anti-crime initiative: Tough neighbourhood 'needs to be fixed up'" *Winnipeg Free Press* (1 April 1999) A2.

¹⁵ Haasbeek, *supra* note 10.

¹⁶ Interview of Vic Toews (October 2001) [Toews (October 2001)].

¹⁷ Committee (12 July 1999), *supra* note 12 at 70.

¹⁸ S.C. 2001, c. 41.

While public demand and measured government consideration do not always result in sound legislation, at the very least, these ingredients seem to have been present in the drafting of *The Community Protection Act*.

III. THE COMMUNITY PROTECTION ACT

A. Available Remedies

The Community Protection Act called for a three stage process to provide residents with a civil remedy to control neighbourhood homes identified as being habitually used for the use or sale of inhalants such as glue, gasoline and nail polish remover and for the use or sale of illegal drugs, prostitution and the sale of liquor without a license.¹⁹ Ultimately, the legislation targeted the owners of the homes to control the illegal activities.

1. Cessation Notice—The Warning

Under the first stage of *The Community Protection Act*, residents who reasonably believed they were 'adversely affected' by activities in or around a building in their neighbourhood could apply to a judge of the Provincial Court for a cessation notice.²⁰ The definition of a person being adversely affected was a wide and discretionary one. Section 1(2) of the legislation qualified any person as adversely affected whose safety or peaceful enjoyment of their neighbourhood or community was interfered with by activities of another. Proof of such activities may then qualify as proof that the activities adversely affect the safety and peaceful enjoyment of the entire neighbourhood or community. Under *The Community Protection Act*, it was up to the individual with the grievance to bring forward their complaint against the owner of the premises and initiate the court proceedings. Limited practical assistance, essentially preparing evidence for the applicant and determining the occupants and owners of property, would be provided by the Director of Public Safety.²¹

The standard of proof for all levels of application was the civil standard (balance of probabilities) and the legislation called for a reasonable belief on behalf of the applicant.²² This standard was defended by the Justice Minister of the day as being the appropriate standard when dealing with issues of property rights, noting that even child protection

¹⁹ Debates (7 July 1999), *supra* note 9 at 4077.

²⁰ *The Community Protection Act*, *supra* note 2, s. 2(1).

²¹ *Ibid.*, s. 13.

²² *Ibid.*, ss. 2(1), 7(1), 8(5), 9(3) & 12(3).

legislation, where the children are under apprehension, utilizes the civil standard of proof.²³ The successful granting of a cessation order effectively acted as a warning to the landowner, who was served with a notice, that the activities complained of on the property were to cease.

2. Community Protection Order—The Fine

If the activities did not stop following the granting of a cessation notice, under s. 5(1) of the *Act*, an application could be made to the Court of Queen's Bench for a Community Protection order which, if granted, would terminate the lease or tenancy agreement of any landlord and tenant on the premises and would allow for a daily fine to be administered to the owner for each additional day the complained of activity continued.

3. The Closure Order—Eviction or Closing of Property

The failure of a Community Protection Order to end the activities complained of would allow the complainant to proceed back to the Court of Queen's Bench for an application to have the tenant evicted or the property closed for up to 90 days by way of a Closure Order.²⁴ However, under s. 12(1) of the *Act*, if a Court of Queen's Bench judge was satisfied that an immediate threat existed to the safety and security of occupants or of persons living in the neighbourhood, an application could be made to effectively skip the Community Protection Order stage and have an order for Closure made immediately.

B. The Media and *The Community Protection Act*

No single piece of legislation introduced by the Filmon government in the lead-up to the 1999 provincial election garnered better positive exposure and general support than *The Community Protection Act*. For a government that had been touched by political scandal, newspaper reports of "Booze cans, drugs targeted"²⁵ and "Tories wage crime war"²⁶ were heartily embraced. Even editorials that criticized the overall justice platform of the government steered clear of criticism of *The Community Protection Act*.²⁷ Significant reporting had been conducted throughout the Winnipeg media in 1999 on the decay of the inner city and media

²³ Toews (October 2001), *supra* note 16.

²⁴ *Supra* note 2, s. 9.

²⁵ Holiday, *supra* note 8.

²⁶ David Kuxhaus "Tories wage crime war: Filmon targets neighbourhood rot; 'people shouldn't have to live in fear'" *Winnipeg Free Press* (12 June 1999) A1 ["Tories wage crime war"].

²⁷ Tom Brodbeck, "Tory policy targets vulnerable" *Winnipeg Sun* (20 June 1999) 28.

outlets seemed more than willing to report ‘tough’ new legislation, especially in the face of little criticism.

C. Debate in the Legislature—*The Community Protection Act*

The lack of debate in the legislature concerning *The Community Protection Act* demonstrates the dynamics of opposition politics on the eve of an election campaign. Despite the fact that *The Community Protection Act* was unique to Canadian law and despite its significant scope and application, only one month and nine days elapsed between first reading and Royal Assent. The speed with which the *Act* passed was, in part, attributable to the strong community pressure that was being applied for approval of the legislation but was also due to the fact that the then opposition NDP believed that, as one editorial described, “coming to the defence of drunk drivers and drug dealers won’t play well with the electorate, even if their rights may be eroded.”²⁸

1. First Reading

The Hon. Vic Toews, then Minister of Justice, introduced *The Community Protection Act* on 5 July 1999, seconded by then Minister of Finance Harold Gillehammer, with no further comments.

2. Second Reading

During second reading, Mr. Toews provided an overview of the bill and its various stages of application. Much discussion had already occurred regarding the proposed legislation in the media by this time and Mr. Toews avoided making more than very summary comments on the bill.²⁹

Opposition critic, Gord Mackintosh, delivered a wide-ranging response at second reading of a more politically charged nature.³⁰ He attacked the government’s record on crime over its 11 years in office, wondered what consultations had occurred in the drafting of the legislation, questioned the need for the legislation given the existence of tort laws such as nuisance, and finally questioned the need for the citizens to advance the court proceedings. Following these comments, he concluded by stating that “we do not oppose this legislation,” demonstrating the difficulty of fulfilling the duty of a critic when dealing with legislation that has little public opposition.³¹

²⁸ “Tories wage crime war”, *supra* note 26.

²⁹ Debates (7 July 1999), *supra* note 9 at 4077–4078.

³⁰ *Ibid.* at 4078–4080.

³¹ *Ibid.* at 4080.

Mr. Lamoureux articulated the Liberal view more succinctly by simply supporting the legislation despite what he considered suspect timing.³² No other members of the Legislature spoke to the bill at second reading.

3. Discussion at Committee Stage

The two most significant occurrences at the 12 July 1999 Standing Committee on Industrial Relations at which *The Community Protection Act* was heard were the presentation offered by New Life Ministries activist, Reverend Harry Lehotsky, and the foreshadowing of changes that would come to the legislation under a new administration.

Mr. Lehotsky, the only presenter to speak to the legislation at committee, provided a lengthy and emotional appeal in support of the *Act*.³³ In addition to speaking of the growing blight in the inner city of Winnipeg, he spoke of the toll his own actions to improve his community had taken on his family. He also took aim at the few critics who had publicly voiced their concerns over the legislation stating that the legislation was not “an invasion of people’s homes or privacy—that is baloney.”³⁴ He suggested that critics of the legislation did not know what was going on in Winnipeg’s inner city communities. Mr. Lehotsky also drew a distinction between what he saw as the criminal law and its high standard of proof for illegal drug dealings, and the ‘common-sense law’ where “everybody from first graders to old grandmas walking up and down the street know what is going on.”³⁵

During the brief committee discussions between Justice Minister Vic Toews and opposition critic Gord Mackintosh, Mr. Toews revealed that City of Winnipeg mayor, Glen Murray, had written his office to offer support for the legislation, thereby adding to the political backing of the bill. He also revealed that legislation in the American states of New York and California was looked at by department staff in the process of drafting *The Community Protection Act*.³⁶ While neither of the American statutes were direct parallels because of the difference of powers attributed to states and provinces, some of the sentiment from the Manitoba bill was drawn from these sources.

While agreeing the legislation provided communities with another tool, Mr. Mackintosh’s most severe criticism was toward the process put forward in *The Community Protection Act*. His criticism was substantially that the onus should not be placed on the complainant to

³² *Ibid.*

³³ Committee (12 July 1999), *supra* note 12 at 70–73.

³⁴ *Ibid.* at 71.

³⁵ *Ibid.*

³⁶ *Ibid.* at 84.

bring forward the action in court but that the government should play a more active role thereby reducing the complexity and cost for the individual as well as providing a level of anonymity.³⁷

Mr. Toews defended the method of essentially private litigation suggesting that significant government intervention was a 'big brother' approach favoured by socialist philosophy.³⁸ He has recently reiterated his defence of the benefit of private litigation by suggesting that

The initiative needs to remain in the hands of the community. The failure to involve community members in a significant way in the course of instituting and maintaining the responsibility for proceedings will result in the failure of this type of initiative.³⁹

Mr. Mackintosh ended the debate at committee by promising to support the bill but noting it needed to be overhauled in terms of its process. He also promised to "make significant changes to this legislation to make it really work" if the NDP were to gain government in an election that was now just weeks away from being called.⁴⁰

4. Third Reading and Royal Assent

The Community Protection Act passed through third reading and received Royal Assent on 14 July 1999 with no further legislative comment.

D. The Death of The Community Protection Act

The Community Protection Act was to become law on a date set by proclamation under s. 32(2) of the *Act*. In fact, it would never become law following the defeat of the Filmon government on 21 September 1999. The new NDP government, and its new Minister of Justice, Gord Mackintosh, indicated on 28 October 1999 of its intention to scrap *The Community Protection Act* and to bring in new legislation that would have the same objectives but would change the scheme for getting the complaint through the courts.⁴¹ In defending the need for new legislation, the new Justice Minister repeated many of the criticisms he

³⁷ *Ibid.* at 85–87.

³⁸ *Ibid.* at 87.

³⁹ Toews (October 2001), *supra* note 16.

⁴⁰ *Supra* note 12 at 87.

⁴¹ David Kuxhaus "NDP to overhaul Tories' law-and-order legislation" *Winnipeg Free Press* (28 October 1999) A3 ["NDP to overhaul"].

had brought forward as a critic, stating in relation to *The Community Protection Act* that “the concept was good but the legislation was bad.”⁴²

IV. BACKGROUND OF *THE SAFER COMMUNITIES ACT*

Following its 21 September 1999 election victory, the provincial New Democratic government, under the leadership of Premier Gary Doer, set out to develop legislation that would provide for a different process than that established in *The Community Protection Act* while maintaining its ultimate intention. The now opposition Conservatives, through Justice critic Darren Praznik, suggested that any changes embodied in new legislation would have less to do with the failings of the old legislation and more to do with the new Minister’s desire to put his own name on the popular legislation.⁴³

On 15 May 2001, the NDP government introduced legislation designed to target the same offences as the former *The Community Protection Act*. *The Safer Communities Act*, while different in process, was met with much the same political and media support that its predecessor received almost two years earlier.⁴⁴

V. *THE SAFER COMMUNITIES ACT*

The goal of *The Safer Communities Act* mirrors that of *The Community Protection Act*—to eliminate the habitual use of homes for the sale and use of drugs, alcohol and prostitution. The goal of the legislation is not, according to Gord Mackintosh, to go after people who have the occasional rowdy party.⁴⁵

The Safer Communities Act does away with the three-tier litigation process of the Conservative legislation. The most significant change to the legislation is that once a person believes that they are being adversely affected by the habitual use of a nearby home for one of the activities the legislation targets, they simply have to make a complaint to the province’s Director of Public Safety. Unlike the former legislation, an investigation will be conducted by investigators in the provincial Department of Justice and the Director of Public Safety will then have the discretion whether to bring forward to the Court of Queen’s Bench

⁴² David Kuxhaus “NDP gets tough on criminal haunts: New legislation to help citizens clean up their neighbourhoods” *Winnipeg Free Press* (16 May 2001) A3 [“NDP gets tough”].

⁴³ Tom Brodbeck “NDP turfs Tory booze-can bill” *Winnipeg Sun* (12 December 2000) 12.

⁴⁴ “NDP gets tough”, *supra* note 42.

⁴⁵ *Ibid.*

an application on behalf of the resident for a Community Safety Order against the owner of the property.⁴⁶ Under this scheme, the resident who launched the complaint remains anonymous and does not have the onus of bringing the complaint forward.

Under s. 6(2) of the *Act*, if the court decides that, on the balance of probabilities, a Community Safety Order is warranted, such an order can require that the premises be vacated, that the tenancy agreement, if applicable, be terminated, that the property be closed for up to 90 days, or any other provision necessary to make the order effective. Residents of the offending property have the ability, under s. 12 of the *Act*, to have a Community Safety Order varied if they can show that the person who caused or contributed to the complained of activity is no longer occupying the property or that undue hardship will be suffered because of the order. Oddly, under s. 24 of the legislation, after an order has been made for the occupants of a residential property to vacate, the Director of Public Safety, who initiates the order, “shall provide whatever assistance in finding alternative accommodations that the director considers reasonable.” This creates the unusual situation of a Director, who saw fit to have the occupants removed from one location, seeking a new residence for the same individuals to occupy.

The most significant difference between *The Community Protection Act* and *The Safer Communities Act* is the latter’s provision for legal action to be brought forward by the government on behalf of the offended resident. Mr. Al Cameron, who, as Manager of Investigations for the Neighbourhoods Safety Unit, will direct the investigations and administration of the *Act*, suggests that the change is a significant improvement. He notes that the *Act* is more streamlined and better able to protect the privacy of citizens.⁴⁷ Mr. Cameron finds support for his opinion from some unlikely allies.

Darren Praznik, opposition Justice Critic at the time of the passing of *The Safer Communities Act*, also feels that the new process is an improvement over the former *Act*. He argues that the type of individual most likely to use the legislation is one who would be least likely to carry through a court proceeding, thereby making the new legislation more accessible.⁴⁸

The former minister responsible for *The Community Protection Act*, however, believes that it will be this lack of participation that will result in the failure of the new legislation. Mr. Vic Toews suggested that those in favour of the legislation, including proponents from inner city associations, believed, as does he, that it was necessary for the

⁴⁶ *The Safer Communities Act*, *supra* note 1 at ss. 3 & 4.

⁴⁷ Interview of Al Cameron (19 October 2001) [Cameron].

⁴⁸ Interview of Darren Praznik (2 November 2001) [Praznik].

community to be involved in the process and not to simply establish another police type of investigation.⁴⁹

While clear differences exist in this key distinction between the two pieces of legislation, it seems that within the Department of Justice, this point was considered at the early stages of the original legislation from both procedural and political perspectives. In fact, former Director of Public Safety, Wyman Sangster, suggests that one of the considerations at the policy formation level within the department was the cost of implementing the legislation.⁵⁰ Under the former government, \$200,000 annually had been budgeted, principally to assist complainants prepare their court applications and weed out frivolous complaints.⁵¹ Had the former government gone to a process similar to that in the new legislation, the cost would certainly have been higher as investigators essentially take the entire matter over from the complainant. Because of the unknown volume of cases to be received, Mr. Sangster suggests that department officials were concerned that the cost conscious Conservative government would not approve a scheme that did not have established cost boundaries. These challenges may now in fact be facing the current government. Despite having some staff in place to administer the *Act*, at the time of writing, the government did not have a budget established or any idea of the caseload to expect.⁵²

A. Debate in the Legislature—*The Safer Communities Act*

The lack of political debate that was garnered by *The Community Protection Act* was also true of *The Safer Communities Act*. The now opposition Conservatives were placed in the difficult position of criticizing legislation that was essentially their own. As well, all of the groups that had expressed satisfaction with the old legislation were again in favour of the new legislation.

1. First Reading

On 15 May 2001, provincial Justice Minister Gord Mackintosh introduced *The Safer Communities Act*. As part of his short address, he suggested that the new legislation was “swifter, less complicated, safer and less costly.”⁵³ Presumably, he was suggesting it would be less costly for the resident bringing forward the complaint since there is no

⁴⁹ Interview of Vic Toews (2 November 2001) [Toews (2 November 2001)].

⁵⁰ Sangster, *supra* note 13.

⁵¹ Holiday, *supra* note 8.

⁵² Cameron, *supra* note 47.

⁵³ Debates (15 May 2001), *supra* note 3 at 1725.

indication that this legislation will be less costly for the government in its implementation and operation. The purpose of the legislation was the same as that of *The Community Protection Act*.

2. Second Reading

On 23 May 2001, Gord Mackintosh, as part of second reading of *The Safer Communities Act*, reiterated many of the arguments he had made publicly and in committee on debate of the former legislation. He argued that the new process alleviated the burden of litigation from the complainant and suggested the new legislation was more streamlined and confidential.⁵⁴

In defending the intention of the legislation, Mr. Mackintosh's comments were similar to those of former Justice Minister Vic Toews. In second reading of *The Community Protection Act*, Mr. Toews, after outlining the difficulties faced by inner city residents, said, "[T]his bill represents a valuable new tool for neighbourhoods that are now under pressure from conditions that favour the development of crime."⁵⁵ After outlining similar conditions, Mr. Mackintosh stated on second reading of *The Safer Communities Act* that "this bill provides Manitobans with tools to achieve these goals and provides assistance to them in the use of those tools."⁵⁶

Mr. Mackintosh went on to suggest that the former legislation was drafted in haste, a claim not substantiated by research, as well as listing the organizations that were consulted in drafting *The Safer Communities Act*. These included the various police forces, neighbourhood groups such as New Life Ministries and several government departments including Family Services and Housing and the Residential Tenancies Branch.⁵⁷ Despite accusations by Mr. Mackintosh that the former legislation proceeded without consultation, these groups are the same as those identified by drafters of *The Community Protection Act* as having been consulted in advance of the creation of that legislation.⁵⁸

The most significant occurrence during second reading of the legislation came when opposition Justice Critic, Darren Praznik, resumed debate on 12 June 2001. For the first time since this type of legislation was introduced more than two years prior, concerns were raised in the

⁵⁴ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LI No. 34 (23 May 2001) at 2133–2134 [Debates (23 May 2001)].

⁵⁵ Debates (7 July 1999), *supra* note 9 at 4078.

⁵⁶ Debates (23 May 2001), *supra* note 54 at 2134.

⁵⁷ *Ibid.* at 2133.

⁵⁸ "NDP to overhaul", *supra* note 41.

legislature regarding the possible infringement of civil liberties and the rights of property owners. Mr. Praznik, repeating a well-worn refrain concerning the legislation, noted he was in favour of the ‘general thrust’ of the legislation, but highlighted, for the first time, concerns with the “rights of property owners, the rights of privacy, rights under the *Charter*,⁵⁹ *et cetera*.”⁶⁰ He noted his intention to raise these concerns when the legislation appeared before committee.

3. Discussion at Committee Stage

On 18 June 2001, *The Safer Communities Act* first appeared for debate before the Standing Committee on Law Amendments. Only one individual, Mr. Fred Curry, appearing as a private citizen, made comment on *The Safer Communities Act*.⁶¹ Mr. Curry expressed that he was generally happy with the legislation but wished that it contained provisions for an advocate for complainants utilizing the legislation and a penalty for breaching the confidentiality of the complainant. Before the committee suspended debate on the legislation, Mr. Mackintosh stated he would take the recommendations into consideration.⁶²

The Standing Committee on Law Amendments next considered *The Safer Communities Act* on 21 June 2001. Despite the promise during second reading by Mr. Praznik to raise issues of civil liberties, the opposition made no comment on the legislation and it passed committee without dissent.⁶³ Mr. Praznik later indicated that, while he personally had concerns with the legislation and the potential for individuals to be deprived of their rights under its application, the Conservative caucus as a whole were generally in favour of the legislation so it moved forward through committee without debate.⁶⁴

4. Third Reading, Royal Assent and Proclamation

Considering the lack of debate that occurred at committee on *The Safer Communities Act*, it is no surprise that the legislation passed third reading without substantive dissent on 4 July 2001 and received Royal

⁵⁹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

⁶⁰ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LI No. 45 (12 June 2001) at 2832.

⁶¹ Manitoba, Legislative Assembly, Standing Committee on Law Amendments, Vol. LI No. 5 (18 June 2001) at 96–98.

⁶² *Ibid.* at 99.

⁶³ Manitoba, Legislative Assembly, Standing Committee on Law Amendments, Vol. LI No. 6 (21 June 2001) at 201.

⁶⁴ Praznik, *supra* note 48.

Assent on 6 July 2001. The legislation was proclaimed into law on 19 February 2002.

B. The Media and *The Safer Communities Act*

Despite the passage of two years, a change of government, and changes to the legislation, the media coverage of *The Safer Communities Act* was almost as positive as it had been for *The Community Protection Act*. Like the Conservative government before it, the NDP benefited from headlines welcoming the legislation as giving hope to inner city residents.⁶⁵ Throughout both its incarnations, the legislation proved, in terms of the headlines, to be a political winner.

C. The Criticisms

Considering the scope and unique nature of *both The Community Protection Act* and *The Safer Communities Act*, public criticism and scrutiny of each piece of legislation was minimal. There were, however, some concerns raised regarding the effect on *Charter* rights and civil liberties as a result of each *Act*.

While former Justice Minister, Vic Toews, contends that the original *Act* underwent significant constitutional study finding no violations, Winnipeg defence lawyer, Jay Prober, suggests that a court's ability to padlock premises and evict occupants without a criminal charge represents a violation of Canada's *Charter*.⁶⁶ Mr. Toews notes that similar questions arose in the 1980s when he was involved in the establishment of the suspended driving and administrative licenses suspension initiatives that were later adopted by other provinces.⁶⁷ Al Cameron, of the Neighbourhoods Safety Unit, notes that virtually all new legislation is challenged, but expects *The Safer Communities Act* to withstand any challenge.⁶⁸

The lack of criticism of either legislation was in large part due to the support received from Winnipeg's inner city groups representing the very segment of the population that the legislation is intended to benefit. These organizations lashed out at comments they felt were insensitive to the challenges of the inner city. Indeed, comments such as those put forward by Mr. Prober asking, "what happens if your neighbour doesn't

⁶⁵ Bruce Owen "Hope on horizon for crack cocaine fighters: New law tackles neighbourhood scourge" *Winnipeg Free Press* (10 September 2001) A8.

⁶⁶ Tom Brodbeck "Violation of individual rights?" *Winnipeg Sun* (12 June 1999) 5.

⁶⁷ Toews (October 2001), *supra* note 16.

⁶⁸ Cameron, *supra* note 47.

like you because your grass is too long or your fence is painted the wrong colour,” did little to advance the cause of the critics.⁶⁹

More reasoned criticism is found in the remarks of Darren Praznik and University of Manitoba Law Professor, Bryan Schwartz. Mr. Schwartz notes that the legislation will operate unevenly and that it is the people with the least ability to defend themselves, that will be most affected by the *Act*.⁷⁰ He suggests that the legislation, while applicable province-wide, will essentially be applied in the inner city and not against homes in wealthy areas of the province whose residents are using illegal substances or causing a disturbance. Mr. Schwartz believes legislation like *The Safer Communities Act* should only be considered as a last resort and that solutions should be found within the context of the *Criminal Code*. Darren Praznik warns that government itself has a huge power inherent in being the state and that legislation needs to keep a balanced perspective, especially when dealing with property rights. He suggests that legislation should not be a substitute for an examination of the root causes of crime such as poverty and boredom.⁷¹

Despite these grounds for criticisms, they received little public attention and did not generate even a hint of general citizen concern. Mr. Schwartz believes little opposition existed because there is not a significant public constituency for civil liberties. Without this support, no political party will pick up the cause to mobilize effective opposition.⁷² These comments are supported by Mr. Praznik. He notes that the role of an opposition party is to gather enough public opposition to amend or defeat legislation but where that does not exist in significant numbers, as in this case, the opposition is usually forced to allow the legislation to pass with little debate.⁷³ This dynamic is perhaps best expressed by former Supreme Court of Canada Justice Lamer:

Members of the public generally become conscious of the importance of protecting the rights and freedoms of accused only when they are in some way brought closer to the system either personally or through the experience of friends or family.⁷⁴

⁶⁹ “NDP to overhaul”, *supra* note 41.

⁷⁰ Interview of Bryan Schwartz (October 2001) [Schwartz].

⁷¹ *Supra* note 48.

⁷² Schwartz, *supra* note 70.

⁷³ Praznik, *supra* note 48.

⁷⁴ *R. v. Collins* [1987] 1 S.C.R. 265 at 282.

VI. ANALYSIS OF *THE COMMUNITY PROTECTION ACT* AND *THE SAFER COMMUNITIES ACT*

As with most legislation, the ultimate analysis as to its effectiveness can only be conducted after it has been applied in practice. However, some analysis can be done on the substance and development of *The Community Protection Act* and *The Safer Communities Act*.

In its general form, *The Safer Communities Act* provides a more streamlined and simple application of the legislation. Its reliance on only one level of court and single application will likely improve how the legislation operates over that which would have been expected with *The Community Protection Act*. Individuals who were involved with the creation of both pieces of legislation seem to agree that the newer legislation is a simpler way to achieve the same goal.⁷⁵

The most significant difference between the two *Acts* relates to how the complaint is brought to the courts. While the new legislation provides anonymity for citizens by giving primary responsibility for advancing the claim to the Director of Public Safety, there are legitimate concerns regarding this approach. By allowing a government official to determine which claims will proceed to court under government direction, it becomes the government that sets the bar for which complaints should be actionable. Since it is widely acknowledged that both *Acts* were primarily established to address problems with Winnipeg's inner city neighbourhoods, this exemplifies the concern expressed by Mr. Schwartz and others that the legislation will be applied unevenly and targets only those who are least able to defend their rights.⁷⁶ These critics and others will have a significant public role to play in the monitoring of how the legislation is applied.

As well, the new legislation is essentially another form of state investigation but with a lower standard of proof required.⁷⁷ Many inner city community residents have expressed frustration with current police investigations. It is entirely foreseeable that a lack of community participation in the new legislation will lead to similar frustrations if residents file complaints with little immediate result or knowledge as to the status of the complaint.

The application of a civil standard of proof through property rights to deal with essentially criminal matters is unique to Canada in this form. Critics have suggested that current provisions under the *Criminal Code* should have been used or greater police resources should have been

⁷⁵ Sangster, *supra* note 13.

⁷⁶ Schwartz, *supra* note 70.

⁷⁷ Toews (2 November 2001), *supra* note 49.

provided in place of such legislation. While it is possible that both the former and the current governments could have explored other alternatives within existing laws, it is also difficult to criticize governments for taking innovative steps to address problems when they are so often criticized for their failure to do just that.

VII. CONCLUSION

The Community Protection Act and *The Safer Communities Act* are significant pieces of legislation. Both will be examined by other governments throughout Canada and the results will be closely monitored. Regardless of the success, it is likely that other governments will attempt to create legislation that addresses similar issues.

The goal of the legislation is not unique, but the method of achieving it is. While *The Safer Communities Act* provides a more streamlined process, the real possibility exists that the legislation will become yet another source of frustration for inner city residents and that it will be applied unevenly because of the role of government as the legislation's 'gatekeeper'.

That such significant pieces of legislation received so little public and legislative debate is as interesting as the legislation itself. The combination of public pressure, the dynamic of political times, and the general politics of justice helped to ensure quick passage of both Acts.

Ultimately, however, due to the importance of both pieces of legislation, it is unfortunate that they did not receive more significant debate publicly and legislatively. Regardless of one's position on such legislation, increased scrutiny of justice initiatives will improve our understanding of effective measures to both punish and prevent criminal activities.