Over the course of the calendar year 2018, 2,822 asylum based applications for leave for judicial review had commenced, 2,260 were disposed and 557 were granted leave for judicial review. Additionally, 1,314 asylum based applications for leave for judicial review were still pending a leave decision at the Federal Court on December 31, 2018.

These and other Federal Court statistics can be found at the following webpage:

Q. Was a Gender-Based Analysis done on the money laundering portion of C-97, particularly to money laundering being related to human trafficking including sexual trafficking of young vulnerable women?

A. Yes. GBA+ was performed for the Anti-Money Laundering and Anti-Terrorist Financing Regime portion. The relevant component of the GBA+ in Chapter 4 of Budget 2019 reads as follows:

By strengthening and modernizing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime, these initiatives would reduce potential threats to the country's economic development and its financial security, increase investment attractiveness and competitiveness, and benefit the overall economy by contributing to the stability of the Canadian financial system, which would benefit both men and women.

Any crime that generates profit can be a predicate to money laundering, including drug offences, fraud, and human trafficking. As such, these measures target a broad array of crimes, for which the gender, age and socio-economic status of the victims vary greatly. As a result, these measures have the potential to advance gender-specific objectives, e.g., by targeting prostitution rings, yet are expected to be gender neutral on balance.

According to the United Nations Office on Drugs and Crime, between $800 billion and $2 trillion, or two to five per cent of global GDP, is laundered each year.


Seized Property Management Act (SPMA) Amendments

Q. What is meant by “other services” in clause 114 of Division 2, Subdivision D?

A. Other services provided by Seized Property Management Directorate under the amendment SPMA could include but not limited to:

- Offering services on a broader scale:
Assessing assets and facilitating logistics in anticipation of enforcement operations
- Making secure asset receipt and storage facilities available
- Returning assets safely to accused, when required

- Facilitating the transportation of assets (e.g. cash via armored vehicle service)
- Making Specialized preparations in advance of seizures in support of AML/ATF partners (e.g. creating virtual wallets and accounts and taking other security measures as needed for managing crypto currencies)

Q. Does Part 4, Division 2, Subdivision D amending the Seized Property Management Act apply to goods including marijuana that was seized by the provincial and municipal authorities?

A. Under the current legislation, Public Services and Procurement Canada (PSPC) does manage offence related property including assets used in the production of controlled substances and the illegal production of cannabis; some of those assets may be contaminated with the residue of controlled or other substances, including cannabis. Prior to legalization, cannabis was normally managed by law enforcement, not PSPC. With legalization, it is possible that cannabis could be seized by an enforcement organization and the proposed amendments would allow those organizations to request PSPC’s support in managing those and other assets.

Q. Who is requesting these amendments?

A. PSPC has requested these changes to ensure it can provide the best possible services and respond to evolving client needs and requests with respect to seizure, restraint, custody, management, forfeiture or disposal of property.

The SPMA gives PSPC the authority to provide services to law enforcement agencies in relation to seized and restrained property, PSPC’s Minister is responsible for the SPMA.

The SPMA outlines the mandate of PSPC in providing services and expertise to law enforcement while maintaining independence. This provides a level of impartiality and segregation between asset management/disposal and law enforcement/prosecution processes.
PURPOSE:

This document is intended to provide Parliamentarians with information regarding Clause 103 of Bill C-97 (An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures), including Charter considerations.

Additional considerations may arise in the course of Parliamentary study and amendment. For the sake of clarity, this document is not a legal opinion on the constitutionality of the Bill.

BACKGROUND:

The offence of money laundering in section 462.31 of the Criminal Code prohibits anyone from dealing with property or proceeds of any property (“property”) with an intent to convert or conceal the property, if they know or believe that all or part of the property was obtained or derived by the commission of an indictable offence.

Clause 103 of Bill C-97 would amend the existing offence, so as to add the additional mental element of “recklessness”.

Clause 103 would allow prosecutors to more easily prosecute the offence. Presently, prosecutors must show that the accused knew or believed that the property being dealt with came from the commission of an offence. Adding the mental element of recklessness to the existing two elements would enable prosecutors, in appropriate cases, to show that the defendant was reckless as to whether or not the property was derived from crime, that is, that the accused was aware of a substantial risk that the property was the proceeds of crime but nonetheless continued with the prohibited activity.

PROVISION-SPECIFIC CHARTER CONSIDERATIONS:

Section 7 of the Charter guarantees to everyone the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Offences that can be punished by way of a term of imprisonment, such as the money laundering offence, deprive individuals of the right to liberty and so must accord with the principles of fundamental justice.
The principles of fundamental justice include the requirement that laws which engage section 7 must not be overbroad. An overbroad law is one that impacts section 7 rights in a way that, while generally rational, goes too far by capturing some conduct unrelated to the law’s purpose. Another principle of fundamental justice is that criminal offences require proof of an accused person’s guilty mind ("mens rea"). The mental element of an offence must maintain a proportionality between the moral blameworthiness of the offender and the stigma and punishment attached to a conviction for that offence.

The following considerations support the consistency of Clause 103 with the above-noted Charter rights. Section 462.31 would continue to be a tailored offence that requires proof of a sufficiently guilty mind. As a result of this amendment, the overall mental element of the offence would require proof beyond a reasonable doubt that, in dealing with the property in question: (1) the accused had the intent to conceal or convert that property, and (2) the accused was at least reckless as to whether the property was obtained or derived from the commission of an indictable offence.

Recklessness is a positive state of mind requiring knowledge of a danger or risk, and persistence in a course of conduct which creates a substantial risk that the prohibited result will occur. Recklessness cannot be established on the basis of a failure to consider whether such a danger or risk exists. In the context of section 462.31, assuming the other elements of the offence are met, proven recklessness as to the nature of the property in question is worthy of criminal sanction under this offence. While the offence of money laundering is a serious one, it is not so serious as to fall within the small group of offences (such as murder) that have stricter requirements for a guilty mind.