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Chair

Mr. John Maloney

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

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● (1110)

[*English*]

The Chair (Mr. John Maloney (Welland, Lib.)): I now convene the meeting.

Before we go to consideration of Bill C-16, I understand Mr. Thompson has a brief point of order. He has to leave, so he can't wait until the end of the meeting.

Go ahead.

Mr. Myron Thompson (Wild Rose, CPC): I just received word this morning that there are representatives at the United Nations, representing the country of Canada, regarding assisted suicide. I would like the justice committee to look into the statement I received this morning. I would like to know who is representing Canada down there and on what position. I think we need to know that.

The Chair: Do you have a copy of that statement?

Mr. Myron Thompson: I don't have a copy of it. I received it verbally.

The Chair: Do you have any additional reference to what's going on, where—at the UN in New York?

Mr. Myron Thompson: Yes, at the present time.

I think it warrants a bit of checking into by somebody. I'll do the best I can.

The Chair: I'm sure it's a point of order, but we'll certainly request—

Mr. Myron Thompson: I think it should be a point of concern for this committee.

The Chair: It may be a point of concern, but we'll see what we can find out for you.

Mr. Myron Thompson: I'd appreciate that.

The Chair: Okay, thank you.

The concern is about representations being made on behalf of Canada at the UN on assisted suicide.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Maybe they were talking about Bill C-407, which is being discussed.

The Chair: I'm not sure what we're talking about at this stage.

Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): I'd like to table some documents. Do you want me to wait until later? This has to do with the proposed appointment of Ms. Catherine Ebbs. We're dealing with that, I gather, on Thursday. I have some background information on the candidate that I can table.

The Chair: Are they in both official languages?

Hon. Roy Cullen: Yes.

The Chair: Sure, no problem. Just give them to the clerk.

Turning our focus to Bill C-16, I understand we received some amendments approximately an hour ago. It might be appropriate to review these amendments before we go into a clause-by-clause consideration.

Mr. White, do you have a point?

Mr. Randy White (Abbotsford, CPC): Just on the amendments, yesterday my office was on the phone with the staff who were making the amendments. I have two amendments that are not here. We just talked to them, and the information I got was that they had them, but they're not sure what the person who was working on them did with them. In the final analysis, they're not here. I guess I'll have to go and—

The Chair: It's another aspect of the situation, but let's start our consideration of the amendments, discussion of them, and if we don't get your amendments in the interim, we may have to adjourn the clause-by-clause consideration until we have everything together and have been able to consider them in a reasonable fashion. I think everyone would like to take a last minute....

The amendments are not very good. Members were urged to get the amendments in as soon as possible.

Mr. Breitkreuz.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): On a point of order, if we can't discuss and examine those here at the committee, can we bring them in at report stage? We did our best to have them here in plenty of time.

The Chair: Isn't there a ruling that the amendments that would otherwise...?

Could I have our legislative counsel give us input on that for the record?

Ms. Susan Baldwin (Procedural Clerk): The Speaker normally does not select amendments that could have been moved in committee. I realize there was a difficulty; nevertheless, they usually—

Mr. Garry Breitkreuz: Along that point then, would it be seen by the Speaker? I have it on the record here right now that we had these in, but somebody misplaced them and there wasn't anything we could do about it. Is that going to qualify as something the Speaker would take into consideration?

The Chair: It's getting more to me that perhaps we can't deal with clause-by-clause today because of these. I'd rather do it nice and neat and have the legislation proceed in the House with the amendments either voted on and amended or approved or disapproved. Let's do it as a package. Let's not do things what I would consider perhaps sloppy, and then no one is going to be criticized.

Yes, Mr. Toews.

Mr. Vic Toews (Provencher, CPC): Are you suggesting that we postpone clause-by-clause? Quite frankly, I'm not opposed to that. I do want to hear from officials on their concerns about these particular amendments, but I would certainly be willing to postpone clause-by-clause.

I've basically just received amendments today. I know I sent committee members my proposed amendments yesterday. Again, that took place as a result of discussions I had with some of my colleagues in the opposition, so the final form was only completed yesterday.

Again, all I say is that there are amendments I have not yet seen. I've had a chance to speak to Mr. Marceau about his amendments. They seem like amendments I would support.

Similarly, some of the concerns that Mr. Comartin has expressed during committee are now finding their way into amendments. Again, those are amendments I have not yet seen, but I think I would be favourably disposed toward some of them.

Lastly, in regard to my colleague Mr. White, I have not had an opportunity to review his amendments.

What I would suggest is that we dedicate today to having our staff from the Department of Justice express their concerns or comments about the legislation and then save clause-by-clause. I can only guess what kind of a mess this is going to be if we try to proceed with everyone's amendments at the same time.

The Chair: In all fairness to our witnesses from Justice, they haven't had an opportunity to really digest these either. It's perhaps putting them in an unfair position to comment on material that has just been provided to them as well.

Mr. Vic Toews: Mr. Chair, that makes my point even doubly.... If we're the ones responsible for these amendments and the justice department can't explain them to us, then I think we should be even more concerned.

The Chair: Mr. Macklin, and then Mr. White.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Clearly, this causes a great deal of concern for all of us who are interested in passing legislation that is in fact coherent and complete. The concept of delaying clause-by-clause for approximately a week after you have heard all of your witnesses was specifically done to make sure people would have ample time to get their amendments in at least 48 hours ahead of time, so that there could in fact be consideration. Obviously, there doesn't appear to be that level of cooperation in trying to do this, and that's of some concern.

We've generally tried to work together in a cooperative fashion to try to produce legislation that is coherent and effective, so I am concerned about the fact that we're getting amendments faxed to us 45 minutes before the meeting and are expected to have officials review and comment on those in a manner that is constructive to the process. I think it is really unfair of committee members to do that. I think they're asking far too much of officials.

As much as I would like to go forward, I am in agreement that today I would like to hear from the witnesses, based on what's before us. Obviously they don't have clairvoyance, so they can't deal with Mr. White's, because his still aren't filed. Let's do as much as we can to see where there are issues of concern. I would suggest for the moment that we move this actual clause-by-clause to next Thursday. Hopefully there will be no more amendments pending that we haven't heard about so that we can go forward at that time.

● (1115)

The Chair: That seems like a reasonable solution. Do you wish to carry it into a discussion?

Richard, Monsieur White has the floor first, and then you.

Mr. Randy White: Mr. Chairman, it's not a lack of cooperation at all. In my case, I had no intention of being unfair to anybody. I did just confirm on the phone that the documents I was looking for were actually misplaced inadvertently.

The Chair: My understanding is that your office has phoned, and they're on their way here as we speak.

Mr. Randy White: Yes, but it's a little late to be going through that. I personally support this piece of legislation and would like to see it go through, but I'd like to see it go through with as little pain as possible. I think we should wait and defer it.

The Chair: Monsieur Marceau.

[*Translation*]

Mr. Richard Marceau: For the benefit of my colleagues in general and of Paul Macklin in particular, I'd like to clarify something. The last person to testify on Bill C-16 was an RCMP official who appeared as a witness last Thursday. Following his testimony, I submitted my requests to the law clerk and parliamentary counsel. I didn't receive a final answer until around 8 p.m. last night. I received my amendments this morning, while I was chairing the subcommittee. We submitted our amendment proposals last Thursday afternoon, but didn't receive the actual text of the amendments until this morning.

Therefore, it's not that we're unwilling to co-operate. Quite the contrary, in fact. The problem lies with the office of the law clerk and parliamentary counsel. If we can't get our amendments quickly, then the goodwill of members shouldn't be called into question. Rather, we should be looking at the service provided by the House which, in my opinion, is not up to par in the case of our committee.

[*English*]

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I would say almost exactly the same thing, except I got mine somewhere around seven or eight o'clock last evening.

The Chair: Okay. Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I'm looking at the draft amendments that we received. I still would have liked to ask questions about them. Mr. Macklin has just presented one or two amendments. This point has already been argued before the Supreme Court of Canada. That's why "as soon as is reasonable" is used, rather than "forthwith". I don't understand why you're suggesting again the use of the word "forthwith", when the Supreme Court of Canada has already ruled on this matter. All of this needs to be examined. I'd like to get some recommendations as soon as possible.

This is in fact a very important consideration. Many impaired driving cases are pending. Many people are waiting. I don't think society will be outraged if the committee takes an extra week or two to review the issue thoroughly. However, if we defer the bill, that doesn't mean we should consider additional amendments next week. Enough is enough. We must work with the amendments currently on the table.

● (1120)

[*English*]

The Chair: That last point is very good, Mr. Lemay, but there was consensus here that we'd postpone clause-by-clause. Mr. Macklin has suggested this coming Thursday, and that's okay as far as our schedule and agenda go.

Is that agreeable to everyone?

Mr. Garry Breitkreuz: I have a question on that.

The Chair: Yes, Mr. Breitkreuz.

Mr. Garry Breitkreuz: What we had scheduled for Thursday would then be bumped over to next week. Is that right?

The Chair: Yes.

Did you say November 3 or November 27?

Hon. Paul Harold Macklin: I guess it would be a week from this Thursday.

The Chair: A week from this Thursday is open.

Mr. Garry Breitkreuz: That's the difference between eastern Canada and western Canada. This Thursday is I think two days.

The Chair: Okay, it will be November 3. That gives everyone lots of time.

Are our officials ready to comment on any of these amendments? I understand we have received seven at this point and there are four more from Mr. White that will be delivered here soon. I don't want to put you on the spot if you don't feel confident commenting until you've had a chance to review them yourselves.

Ms. Catherine Kane (Senior Counsel, Director, Policy Centre for Victim Issues, Department of Justice): I have a comment.

The Chair: Ms. Kane.

Ms. Catherine Kane: Perhaps if the committee wants to hear preliminary thoughts, we can provide that, but we would certainly benefit from more time to look at them in detail. It would also benefit us and others if those proposing the motions explained the rationale for the motions, because there are often other ways to get the same result.

The Chair: Good point.

Mr. White, one final question and then we'll move into discussion of these amendments.

Randy, did you have your hand up?

Mr. Randy White: I didn't. My brother did.

The Chair: Your good-looking brother!

A voice: Richard White.

A voice: Randy Marceau, right?

[*Translation*]

Mr. Richard Marceau: Can we agree that committee members will not be proposing any further amendments, aside from the four that Randy has?

[*English*]

The Chair: I think it's certainly important to agree with that.

Mr. Comartin.

Mr. Joe Comartin: It's understood that are there minor amendments, adjusting wording and the like, that are made from the floor, because I think that's possible with some of the wording.... We're not excluding those.

A voice: No, no.

Mr. Comartin: All right.

The Chair: Which amendments had we received first? Was it Mr. Toews'?

All right, the government amendments are first.

Mr. Macklin or Ms. Kane, are you prepared to explain your government amendments?

Mr. Pruden.

Mr. Hal Pruden (Counsel, Criminal Law Policy Section, Department of Justice): Mr. Chair, most of the government amendments relate to modernizing some of the wording and to including words that will ensure that the intention of Bill C-16 is maintained. So I would say, first, in proposed clause 2, there is a proposal to use the word "forthwith". A number of witnesses who appeared at the committee—

Mr. Richard Marceau: Excuse me. Are we talking about G-1?

Mr. Hal Pruden: Yes. Sorry, I don't have the same paper you have, but I do have the list of government motions. This is proposed clause 2. These are primarily wording changes—all of the ones that you see listed for clause 2.

Where the police officers are demanding the screening level, which would either be physical screening level or the approved screening device screening level, at the present time the Criminal Code says the demand is to be made forthwith. The benefit of that is the courts have said because the person is required by law to give the sample forthwith, the person does not have a legal right to counsel at the roadside. This limit on the right to counsel at the roadside is reasonable given the necessity to go forthwith. If we were to change it, defence would argue that the person should have the right to counsel at the roadside, which would take a much longer time. So that particular amendment will help with the limit on the right to counsel.

Secondly, in proposed clause 2, again, using the word "practicable" will retain wording rather than moving to wording that is not presently in the code. A number of witnesses suggested doing that so there would be the avoidance of any litigation over a change in wording. That is also picked up in the next set of amendments, which would be to clause 5, and the same with clause 7—a wording change to continue with the word "practicable".

The next one, I assume, is G-4, which is proposed clause 8. This does two things. One, it replaces a line to include that a number of offences...where the officers might have started out with an investigation of section 253, impaired driving, they might find at the end of the day that they wish to lay a dangerous driving charge, but they still might want to bring the evidence that had appeared during their impaired driving investigation. These changes in (a) and (b) would allow them to use that evidence for their investigation of other driving offences, as well as using it, for example, under the Aeronautics Act.

The more significant changes come in (d) and (h). These are to ensure that provinces will be able to continue doing what they now do, which is to impose consequences on individuals who they have found to be violating provincial laws in the course of a Criminal Code investigation for impaired driving. This was a matter that was overlooked. Drafters have now provided us with wording we believe will help provinces to continue imposing, for example, driver's licence suspensions and other consequences such as vehicle seizure, or vehicle impoundment in some provinces.

So that is the gist of the government motions to amend Bill C-16.

● (1125)

The Chair: Are there any comments?

Mr. Cullen.

Hon. Roy Cullen: Thank you very much, Mr. Chairman.

How did you come up with these amendments?

I understand that you may notice drafting errors later on, but there's also a risk of introducing amendments and they haven't been the subject of full consultation. Have you consulted on these changes with law enforcement agencies in Canada and in the provinces where this has an impact on them?

Mr. Hal Pruden: We have certainly consulted with the provinces, particularly on the need to include the provincial consequences in clause 8. We've heard a lot from them on that one.

On the matter of "forthwith", we've heard from witnesses in this committee. We agree with those witnesses that we need to use the word "forthwith" to avoid the charter problem and the right to counsel at the screening stage.

Hon. Roy Cullen: The use of "forthwith" is in response to testimony that we heard.

Mr. Hal Pruden: Yes.

Hon. Roy Cullen: All right. Thank you.

The Chair: Are there any further comments?

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: A portion of amendment G-4 reads as follows:

> (d) adding after line 19 on page 9 the following:
>
> *(c)* for the purpose of imposing under the law of a province a penalty in connection with the operation of a motor vehicle, or a legal restriction of a right or privilege to operate a motor vehicle, in a case in which alcohol or a drug is involved.

Would that mean that the police could, if permitted by the law of a province, seize the motor vehicle in question? Do you understand my question?

[*English*]

Mr. Hal Pruden: Yes, I understand what you're saying. Our thinking is that the province would be able to have a penalty in connection with the operation of a motor vehicle. For example, it could be a penalty of seizure or impoundment.

● (1130)

The Chair: Mr. Cullen.

Hon. Roy Cullen: Thank you.

On the same amendment G-4, it says: "replacing, in the English version, line 15 on page 9 with the following: any of sections...under Part I of the *Aeronautics*". Presumably that's the Aeronautics Act. Is the word "Act" not being replaced, so you don't have to add the word "Act", or is that a typo?

Mr. Hal Pruden: Yes, that may be a typo. It should be "Act".

Hon. Roy Cullen: Okay. Thank you.

Seeing the word "Aeronautics" kind of tweaked my interest in the sense of flying under the influence of drugs. Is that what this is about? What's the reference to the Aeronautics Act for? I thought we were talking about drugs and driving?

Mr. Hal Pruden: Yes, sir. In section 253 of the Criminal Code, impaired driving includes the modes of "motor vehicle, vessel, aircraft or railway equipment", so it would be covered. The Aeronautics Act is therefore consequentially amended to ensure that the information from the investigation could also be used by the people who might have to do an Aeronautics Act investigation.

Ms. Catherine Kane: For clarification, it's a very picky point, but the motion is correct as it's drafted. We're replacing line 15, and the word "Act" is on the existing line 16. It's just the weird way in which motions have to be drafted.

Hon. Roy Cullen: It's correctly presented in the way it is there.

Ms. Catherine Kane: It is correctly presented.

Hon. Roy Cullen: Okay.

The Chair: Are there any more questions on government amendments?

There being none, Mr. Toews, I'll ask you this. You have one amendment at the top of the package. Maybe you could make your presentation, and then we'll move on to Mr. Comartin.

Mr. Vic Toews: Yes. It's amendment CPC-1. The intent of this amendment is to keep illegal drugs out of motor vehicles.

The experience in Canada with impaired driving with alcohol where there is no breathalyzer has been dismal. Most prosecutors no longer prosecute impaired driving without a breathalyzer because it's simply too difficult to prove.

I'm very skeptical of the ability of Bill C-16 to actually address the issue of drugged driving. It's very complex, and I think you'll find most prosecutors simply won't do it. Most courts won't convict.

That's the reality. I'm not suggesting I don't support Bill C-16. I think it's such an uphill struggle.

The Americans have realized the nature of this struggle a long time ago. You cannot prove impairment by drugs in the same technological way that you can with alcohol. We have the wonderful breathalyzer, and even in those situations, it's very, very difficult.

What the Americans have done is tied two things together: care and control of or driving a motor vehicle, exactly like it is with impaired driving, plus the possession of an illegal drug. They brought the two together and said it's irrelevant whether or not the person is impaired. If you have care and control of a motor vehicle and you have possession of an illegal drug, that is the offence, and the same penalties flow as if you were impaired. So it's exactly the same thing.

So what I did for the Canadian context was to bring that type of legislation here into an amendment. I've had discussions with some of my colleagues in the opposition. I haven't had a chance yet to speak to the members of the governing party. I understand there is some concern about doing this in respect of marijuana, given Bill C-17 and the fact that 30 grams of marijuana may well be decriminalized in Bill C-17. So at their request, I put in an addition to make that an exception so that this new offence would not include the 30 grams of marijuana if we're moving towards decriminalization.

Quite frankly, I still think you have the illegal drug in your car; it's still illegal whether it's decriminalized or not. But as a concession to my colleagues and because of Bill C-17, I would be satisfied that an individual who has care and control of the motor vehicle or driving the motor vehicle, as is presently the case with impaired driving, and has possession of a narcotic in the car....

When we deal with possession, it's not simply that the narcotic is in the car. For example, if I were to borrow the Honourable Judy Sgro's car, I'm obviously driving that vehicle, I get stopped on a spot check and there's a lawful reason to look into the trunk, and there's a pound of marijuana...I'm not suggesting there would ever be, but the point in that case is that I would not be liable, because there is no knowledge or control, just in the same way as possession of a narcotic today has to be knowingly.

The other point that I put into this is to make sure that it's knowingly and without lawful excuse. For example, if I have a prescription drug in my pocket and I have a prescription, obviously it's a lawful excuse, even if it is a narcotic. So that, again, would make the offence irrelevant.

It wouldn't help you beat the actual impaired driving charge if you were so impaired by the narcotic that you were falling all over. The rest of the provisions of Bill C-17 would flow. What I say is that this fills an important gap, given the lack of a technological ability to determine impairment through a narcotic, except in the most extreme of cases—when the police officer, for example, opens up the door and the person falls out of the vehicle, which happens. You put that person onto a breathalyzer and he blows .02 blood alcohol. Well, the breathalyzer doesn't demonstrate, but the physical evidence does.

● (1135)

What this amendment simply does is to say that the issue of impairment is irrelevant. You have an illegal narcotic—with the exception, of course, of the 30 grams or under of marijuana—in your possession, and that is knowingly and without lawful excuse, and you have care and control or you're driving a motor vehicle. That's the offence.

It has been very effective in the United States, and I think it fills a gap that Bill C-16 simply doesn't address.

The Chair: I stand to be corrected, but I think the government legislation on marijuana was going to go down to 15 grams.

Hon. Paul Harold Macklin: It's optional up to 30 grams at the moment.

The Chair: Okay.

Borys, and then Mr. Cullen.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): I'd just like to apologize because it doesn't deal directly with this, but just for a point of clarification on this legislation, Mr. Cullen raised the issue of planes and we were told that planes, trains, boats, and cars were covered off.

What about impairment? I believe people can be charged if they're riding a bike. A lot of roadways are shared by bicycles and motor vehicles. So does this strictly deal with motor vehicles?

Mr. Vic Toews: I can answer that. Most provincial highway traffic acts or motor vehicle acts have a prohibition against driving a vehicle other than a motor vehicle while impaired, and indeed they have a prohibition against riding a horse while you're impaired. So that is usually dealt with in provincial legislation. I think most provincial legislation still has those provisions.

The Chair: Mr. Cullen.

Hon. Roy Cullen: Thank you, Mr. Toews and Mr. Chairman.

It seems to make some sense to me what you're proposing. I just want to clarify. Is this additive? A person could take drugs, not take any with them into the car, but the same rules would apply. In other words, the same process under Bill C-16 would apply, but you're saying this would be additive.

Mr. Vic Toews: This is additive. This in no way compromises what the minister in fact is doing in his legislation. This, in fact, as I say, fills a gap in his legislation that the Americans, through bitter years of experience, have found is quite helpful.

I've had an individual do research for me, and the Library of Parliament has done research for me. It's quite extensive, the American states that have it; it has become quite commonplace, given the technological problems we have with drugs at this time.

● (1140)

Hon. Roy Cullen: I have one more question, if I might, Mr. Chairman.

Concerning the question of care and control, I imagine there is a lot of jurisprudence around that, but that's an important point, because you could innocently get into someone's vehicle or a rental car and someone has left some stuff in the trunk or something.

Mr. Vic Toews: Absolutely.

Care and control of the motor vehicle relates to the operation of the motor vehicle. There has been extensive case law ever since we brought forward impaired driving legislation in Canada. The term "care and control" is coming right out of existing Canadian legislation, so that is not a new concept. So you have to have care and control.

For example—

Hon. Roy Cullen: Of the vehicle, though.

Mr. Vic Toews: Of the vehicle.

Hon. Roy Cullen: I was also referring to the drugs.

Mr. Vic Toews: Therefore, I've imported into this amendment exactly what our current law is regarding illegal possession. That is, what do you have to prove in order to ensure that an individual is actually liable for possession? You have to prove exactly the same thing here, so it doesn't change it. You have to prove knowledge and control.

That's the example I used. Perhaps I shouldn't have used Ms. Sgro's name, but the point is, if I used her car and there was marijuana in that car and I had no knowledge of it, even if technically I had control of the motor vehicle, it still would not make me liable for possession.

So all this does is take those two concepts, put them together, and then impose the same penalty as if you were convicted of impaired driving. Quite frankly, what legal excuse is there for you having an illegal drug—let's say heroin—in your car when you're driving?

The other benefit that the Americans have found is that not only does this discourage impaired driving, it discourages the use of motor vehicles to do trafficking in drugs. So people who are coming around a schoolyard with drugs in their car to sell to schoolchildren won't use that, because under provincial law now in many provinces, the motor vehicle will be seized. That is something that kicks in for 30 days or so, for the motor vehicle. It's a small inconvenience, but it's enough of an inconvenience to a drug dealer to say, "Look, this is not what I want to be doing". So that drug dealer will then have to deliver the drugs on foot or bicycle, as the case may be.

Hon. Roy Cullen: May I ask a final question?

The Chair: One final one, Mr. Cullen.

Hon. Roy Cullen: Thinking about this, wouldn't an argument be that if a police officer pulls over a vehicle and in that car there is an illegal drug, the driver would be charged with a more serious offence right on the spot? The idea of driving while under the influence of drugs...I suppose it has the added feature that their licence could be suspended for a year or whatever, but having the illegal drugs in the car is surely an offence in itself, because a person can be charged with—

Mr. Vic Toews: All right. Let's take your regular meth addict who steals a car and then has a couple of points of meth in his pocket and is stopped by the police. Even if he's impaired, the possession of meth itself will give him a conditional sentence or a $100 fine, or something like that—very insignificant.

What this will do is give him the same penalties as an impaired driving charge, including the suspension of licence. Now, many meth addicts probably don't care about the suspension of licence, but the point is that I think this will keep drugs out of cars, especially more responsible drug users, if I can use that term. Your casual cocaine user will say, "I'm not going to get into my car with a bag of cocaine, because not only will I get the conditional sentence on the cocaine, but I will lose my licence for six months."

What we're trying to do, and what the Americans did, is keep drugs away from cars. This is a powerful incentive to keep drugs away from cars, because the offenders will lose their licence.

The Chair: Mr. Wrzesnewskyj, and then Mr. White.

Mr. Borys Wrzesnewskyj: This is a question for the department officials. Let's say Mr. Thompson says to Mr. Toews, "I've got a deal going down, drive me over to this particular school".

Actually, we shouldn't be using other parliamentarians as examples in illegal activities, so let's avoid that and use hypothetical people as opposed to people at this table. I'm sorry, Mr. Thompson and Mr. Toews. I shouldn't have used you as an example in that sort of case. I'm sure you'd like to say the same to Ms. Sgro.

Let's say there's a situation where a dealer approaches someone and says, "Drive me over to this particular location to do a deal". The driver is aware that the person he is driving has drugs on him and they get stopped. The driver is then potentially facing charges that the person doing the deal is not, as a passenger, although both are aware of it.

Do you potentially foresee a problem of additional jeopardy to someone who may not be the primary person involved in this particular set of circumstances? Could that come back and provide cause for a challenge? If so, what way could we fix this so that both sets of circumstances would be covered?

● (1145)

Ms. Catherine Kane: You've raised a number of questions. The driver who knows that he's transporting the drugs, under Mr. Toews' proposal, would knowingly be in care and control of the vehicle, maybe not care and control of the drugs, so they might argue that he didn't have control of the drugs. But he knowingly transported them, so he would likely be subject to criminal charges under that scheme.

The person who is the passenger, who possesses the drugs, maybe for the purpose of trafficking and so on...all the current offences with respect to possession of drugs that are restricted under the Controlled Drugs and Substances Act would apply to that person.

But at first glance, we'd have to look at the whole scheme. We do have some concerns that perhaps the penalties imposed for impaired driving don't exactly flow from this particular conduct, and maybe this needs to be looked at as a separate offence, with a view to what the appropriate penalties are for the offence of driving around with drugs in the vehicle.

There are a lot of issues that really should be examined, although our minister is certainly not averse to exploring any good ideas to prevent harm. We simply think there needs to be more time to do that analysis.

Mr. Vic Toews: I have a comment on the double jeopardy. I think it is a good point, but if you look at how the current prosecutions occur, let's say with impaired driving and .08%, you have essentially the same act that you're concerned with. But you have two separate charges arising out of it, the impaired driving and the .08%, which is essentially a per se offence. What happens in that case is that when the individual pleads guilty or is convicted of .08%, for example, the Crown, in 100% of the cases, stands up and says, we're staying the other one, to avoid any issue of double jeopardy. In some cases, in fact, the court says it is entering a stay of proceedings because there is a double jeopardy issue there. They've said it. Now, arguably, it's different.

In this case, I would suggest that exactly the same thing would happen. The same penalties flow. We're talking about essentially the same issue, and you're addressing the same concern. Could there technically be two separate convictions? There could be. But I can tell you that as a former crown attorney, if someone were to come to me and say, "I will plead guilty to the impaired and you stay the possession of a narcotic while having control of a motor vehicle", I'd say "Fine". The essential crime is being addressed. The issue of double jeopardy in this context is dealt with on a day-to-day basis in the courts. We don't have any specific statutory provisions to deal with double jeopardy, other than our protection in the Criminal Code and that kind of thing, or in the Charter of Rights and Freedoms. It's simply dealt with as a matter of case law. There's a long history of case law dealing with exactly that.

The Chair: Mr. White.

● (1150)

Mr. Randy White: Mr. Chairman, this is an important issue here. I know we tend to be somewhat behind the dealers out there, but it is not necessarily the driver or the passengers who possess drugs at all. In fact, they're very careful not to posses them; they have them in compartments in cars, throughout the cars.

There is a very fast-growing organization in Canada called Dial-A-Dope. That organization actually has delivery agents in many cities now. They are strictly for the use of transporting drugs from point A to point B and selling them. One recent situation I was involved with—in fact one of the Dial-A-Dope transporters was complaining he was put on the midnight shift by his supervisor. That's how serious this is. It's like delivering pizza. So this is going to address this problem in part.

Another situation I've been involved in had a van with a large amount of drugs in it and four people overturned in that van. They all got off because they denied any knowledge at all of the drugs in the car, which was basically a lie in the courtroom, but they got away with it. I think this is a very smart way to move, and it will catch up, finally, with the antics of the dealers out there.

The Chair: Ms. Sgro.

Hon. Judy Sgro (York West, Lib.): I'd like to thank our witnesses.

Are you saying that you have very serious concerns about Mr. Toews' proposal, that it would need more study and would need to be looked at in a separate piece of legislation, and so on? Is that what you're saying?

Ms. Catherine Kane: Certainly, that would be our preferred approach, so we could do some consultations with the police community, with the bar, and with our provincial colleagues to see what's currently covered under provincial legislation.

The issue is what a person would be charged with. If they're charged with possession of a drug and also the new offence of possession of a drug while having care and control of a car, it might lead to the plea bargaining that was referred to. Somebody may plead to the possession because it doesn't take them into that whole realm of penalties that were designed to deter driving while impaired and addressing the harm caused by impaired driving, rather than by only having drugs in a vehicle.

We think a little bit more homework is necessary, and we're prepared to do that as quickly as we can. But that offence may live separate and apart from the drug-impaired driving reforms that are before you now.

Hon. Judy Sgro: My concern is that we're going through all of this exercise to bring in legislation that's going to help in a variety of areas. I would hate to see us leave out an area that, if we included it, would strengthen the legislation and make it more effective. I clearly hope you would be able to come back with the homework done on this particular amendment that would allow us to move forward with it.

Ms. Catherine Kane: We would also note that there's no similar proposal for somebody who's driving with alcohol in their car, although that is covered by provincial legislation. If the concern is whether we are going to get convictions for impaired driving...the concern is that drug-impaired driving is a new offence and there are some challenges to the enforcement of that. Certainly, the goal is to prevent impaired driving, and that's why all these provisions have been...years of reforms of alcohol-impaired driving and now drug-impaired driving. This is a little bit different from that, and if the goal is to get successful convictions for impaired driving by making a link with possession, then maybe we'd even be looking at possession of other substances as well.

Hon. Judy Sgro: Just further to that, we know how difficult it is to be able.... Even with alcohol there are huge problems, and to be able to convict somebody with a drug is going to be even more difficult. Whatever we can do to provide that opportunity for the police to be able to recognize it and move forward on it with whatever additional evidence they might have is only going to be helpful to them.

The Chair: Mr. Pruden, go ahead.

Mr. Hal Pruden: I simply wanted to make the observation that what is being proposed is a species of possession offence, possession by someone who has it in a vehicle. It is not a species of impaired driving offence, and as Ms. Kane was saying, Bill C-16 is really designed to address the impaired driving aspects. The person could have drugs in the vehicle and that person might not be impaired by any drug; far less, they might not even have consumed any drugs.

There is a significant difference between the proposed new offence and impaired driving, which this bill is dealing with at the present time. That is why there would be a need, as Ms. Kane said, to really have a look at those U.S. situations to find out whether they're dealing with it as criminal law or highway traffic law. In the States they don't have a situation like we do in Canada, where the federal level looks after the criminal law and the provincial level looks after the highway traffic law. In the United States, in each state they look after their own criminal law as well as the highway traffic law.

● (1155)

The Chair: Mr. Wrzesnewskyj, and then Mr. Toews.

Mr. Borys Wrzesnewskyj: Some of my difficulties, the things I'm mulling about, have just been addressed, because you do have a law that seems to be dealing with impairment, yet this seems to be dealing with the possession aspect of it.

I support the intent of what we're trying to achieve here. I'm just starting to wonder if it would not be better in the long run, as opposed to trying to graft something onto the existing legislation, to have something separate drafted to deal with this in particular and then allow ourselves the opportunity to also take a look at the penalties involved, especially if we look at the possession and distribution components, the right to seize the vehicles, etc.

I'm just having some difficulty with those two components and I am just layering and drafting on something I think needs to be done. That's just a stream of thoughts following on some of the advice that's been provided.

I don't know if there's any additional commentary the department would like to make.

Mr. Hal Pruden: I'll just mention that while it is not yet law, Bill C-17 does contemplate a higher level of fine, I understand. I believe clause 6 of Bill C-17 concerns a person who has cannabis in the vehicle. You're right in the sense that there may be other approaches, and Bill C-17 is an example, at least for cannabis, where having cannabis in the vehicle would be seen as an item that would raise the fine level the person would be looking at.

The Chair: We'll move to Mr. Toews, the mover of the motion.

Mr. Vic Toews: Again, the point here is that we're not just dealing with cannabis in this particular situation. We're dealing with cocaine, we're dealing with methamphetamine, and we're dealing with heroin; we're dealing with all kinds of drugs that cause impairment.

The evidence before this committee is consistent. There is no effective way of determining impairment through any kind of technological instrument like the breathalyzer with alcohol, and that's what separates alcohol and other drugs very distinctly: we have the breathalyzer. In a situation where we have an individual with beer beside him in a motor vehicle, we can either charge him under the provincial act that prohibits open liquor in a motor vehicle or use the breathalyzer and charge him with impairment with .08%, so that is covered off.

Now we are looking at the decriminalization of marijuana. We have significant increases in the use of motor vehicles by people impaired through drugs. As some of our evidence has shown here, kids prefer to toke and drive rather than drink and drive, and they also use many other kinds of drugs while driving, much more than alcohol.

Again, the situation is, how do we address a growing problem that is simply not addressed? Is this used in the United States for both traffic purposes and criminal purposes? Absolutely. They can stick it into one piece of legislation because the state itself has control over both the highways and the criminal law. In this situation what we're doing is trying to address a gap in the existing law regarding impaired driving.

We simply do not have any technology. If we had technology to address this problem, this, in my opinion, would not be necessary, but this is directly related—directly related—to the increase in impairment through means other than alcohol. Therefore, we need to address it somehow, especially if we're going down the road of more marijuana use through decriminalization. I believe that's going to be the impact of Bill C-17.

Are there other benefits to the legislation other than trying to keep drugs away from cars, which I think is a good idea even if the person isn't impaired? Why do we want heroin or cocaine or meth inside a motor vehicle? There is no legitimate excuse.

So yes, it deals with the issue of impairment. It treats it essentially as a per se offence in the same way we deem anyone who has .08% in their bloodstream to be impaired. It's a per se offence; you are impaired whether in reality you're impaired or not. In the same way, we're making the same association here: you have a narcotic and you have care and control; you are subject to the same penalties as for impairment with .08%. It's a logical argument the Americans have used, I would say, for decades now—or a decade at least—in addressing this serious problem.

Our legislation doesn't address this problem. This is a convenient way of doing it, given the difficulty of putting forward other legislation and trying to get it through this committee. We can say we'll just dump this and bring forth another bill, but you and I both know that is not going to happen in this Parliament.

● (1200)

The Chair: Thank you, Mr. Toews.

Mr. Comartin, would you like to present your amendments, please?

Mr. Joe Comartin: Thank you, Mr. Chair.

I can do these in a summary fashion, and I would say, again, that because of the lateness I got them back, I do want to hear from the department as to whether I've accomplished what I set out to accomplish.

We heard, and Mr. Toews has just confirmed this, that there in fact is no technology by which we can assess impairment with drugs as we can with alcohol. I'm convinced at this point, with the provisions we have in Bill C-16, that when the testing is presented before the court, we're inevitably going to be faced with a challenge under the charter, and I think ultimately that challenge will be successful.

Our courts have been quite clear, all the way to the Supreme Court of Canada, that they are quite prepared to allow for bodily samples to be taken if in fact they have a meaningful purpose. So in those circumstances, they are prepared to breach the privacy rights individuals have to secure their own person for the greater good of society.

But we don't have that here. We don't have the technology. It seems to me, from the evidence we heard, that we're getting fairly close on marijuana. We may be a couple of years to a decade away from being able to take a bodily sample establishing the amount of marijuana in the bloodstream and being able to say it equates to impairment, as we have done historically with alcohol. But we're not there yet, and until we are there, I think the courts are going to say they're not going to allow for that invasive procedure of taking a urine sample or taking a blood sample. They're not prepared to allow our police forces to do that, unless it's in fact going to accomplish something meaningful.

The other point—and this didn't come up and I didn't raise it myself because I got to thinking about it after the fact—is that we may not even get to a charter challenge. I think we're going to have a number of judges who are simply going to look at the tests, if they are taken, and say, “I'm not letting this in. It's not relevant. It doesn't tell me anything as a judge other than that this person had some quantity of drugs in his or her system. It doesn't tell me anything about impairment, and the elementary essence of this charge is about impairment. I'm not letting it in.”

I think we may just get a series of practical decisions across the country from judges who look at these tests and come to that conclusion. And I think they will do that, Mr. Chair, particularly because the prejudicial impact of those results is quite high, especially if any of these charges end up—it's not likely, but it's possible, even in front of judges—in front of a jury in particular. If you're going to put in evidence that says this person had this quantity of heroin or marijuana or cocaine in his or her system, you're not going to get juries acquitting, just on that evidence, even though it's not relevant to the charge that is in front of them.

So for those reasons, I think the attempt we're making here in Bill C-16 to take those bodily samples is ultimately going to fail. It's just premature. That part of the legislation is premature.

What I've done with the amendments I'm proposing is to take out the third step, which compels people to go for the bodily sample. I think it makes sense, and I think it will add some degree of credibility in the courtroom if both the officer at the roadside and the evaluating officer—if a person has to go and be examined in a police station.... And that may give us some increase in the number of convictions we'll get for impairment as a result of drugs. I think that's a worthwhile effort on our part. Going that third step of requiring the accused person to allow for a bodily sample is what I'm trying to eliminate, and that in effect is what the amended sections are that I'm proposing.

I'm not sure, Mr. Chair—and I say this in all honesty, because I haven't gone back through it since I just got the final changes last night—whether in fact I've accomplished that. I've differentiated clearly between phase one and phase two—the roadside evaluation and the evaluation by the evaluating officer—and have kept those in the bill and eliminated the taking of bodily samples. So that's the part on which I really would like to hear from the department.

● (1205)

The Chair: Mr. Comartin, before we hear from the officials, do Mr. Cullen or any other members have comments or questions?

Hon. Roy Cullen: We can hear from the officials first, but I would like to make an interjection at some point. I could do it now, if you like.

The Chair: You could do it now.

Hon. Roy Cullen: Okay.

Maybe I'm missing something here. It comes out of Mr. Toews' amendment and Mr. Comartin's amendment. We understand there are challenges in terms of the technology and drugs and impaired driving. It doesn't fit the model of .08%, or whatever, so you can't analyze and come to the same definitive conclusion. My understanding of this legislation is it's built on what I call the three legs.

One, an officer notices or makes note that there is someone driving in what seems to be an impaired way. They pull the person over, they do some roadside tests—the typical ones—and maybe some samples. There is some technology available to do that right by the motor vehicle. Given that there's some continuing evidence that this person may be impaired, they're called for a full sample, and a lab then goes through a more definitive screening.

I'd like the officials to respond as to whether I've got this bill right or not: if the person fails those three tests—they were visibly driving irregularly, they failed the roadside test, and then there's clearly evidence in a laboratory setting of drugs in their system—then the charge would be laid.

Even with that, am I hearing that it's going to be challenged and may not stick in a court of law? I mean, what are the probabilities? Are we passing legislation that is not going to be effective?

I think, Mr. Comartin, my assessment would be that you're weakening it further, so that's my question. I'm confused.

The Chair: Let us have comments from the officials.

Mr. Hal Pruden: The first observation is that in 1969 Parliament added the offence of driving while over .08% or 80 parts per million, and there is machinery available to test a person's blood alcohol concentration either through breath testing or blood testing. It is a separate offence under paragraph (a) of section 253 to drive while impaired by alcohol or a drug, and up until now the police have had a difficult time enforcing paragraph 253(a).

The police have asked that we adopt in Canada a system used in other parts of the world under the aegis of the International Association of Chiefs of Police. They set out a protocol or a standard under which there are the three stages: what we could call roadside screening or sobriety testing; evidential physical testing back at the police station; and then, when the officer does the evidential testing, the officer says “this is the family or families of drugs involved in the impairment we are observing”, and in order to confirm that the DRE officer is not out to lunch, they obtain a bodily fluid sample, test it, and look for the presence of the family of drugs the officer was calling. In a way, it's a check and a balance that is there for the benefit of the accused person. The defence counsel would not want to see it go, and I think quite rightly would not want to see it go.

Also, with us today is Constable Evan Graham, who is the RCMP's national DRE coordinator. If the committee wishes to hear from Constable Graham, I'm sure he could tell more about the need for the third stage.

Certainly we feel it's necessary. I would also point out that even without this legislation, there are already provisions in the Criminal Code under which the bodily fluid sample analysis that is taken for perhaps paragraph 253(b)—over .08% charges—can also already be used in cases that involve paragraph 253(a), impaired driving; for example, impaired driving causing death or bodily harm. One can bring the evidence of the bodily fluid results into court.

Finally, I would just point out that already courts accept that officers who find someone who, on a voluntary basis—which is of course more difficult than what Bill C-16 proposes, because Bill C-16 has demands for each stage—is willing to go through these three stages can have that evidence submitted into court.

Will we see challenges? Yes. Did we see challenges related to breath instrumentation in 1969 when we had an approved instrument, and in 1976 when Parliament brought in the approved screening device at the roadside? Yes, we did see challenges, and we still have with us today those possibilities of using these testing devices.

We've tried to mirror, for paragraph 253(a) purposes of investigation, which Bill C-16 is about, the provisions of the code that require the police officer to have “reasonable suspicion” for the screening tests and then to have “reasonable grounds” that an offence has occurred in order to demand the next level test, where Bill C-16 sets out the requirements of the belief that is necessary on the part of the officer or the suspicion necessary on the part of the officer. We think it will withstand challenges in the courts.

● (1210)

The Chair: Constable, do you have any comments?

Mr. Evan Graham (National Coordinator, Drug Evaluation and Classification Program, Royal Canadian Mounted Police): As Mr. Pruden pointed out, we currently have the ability to obtain bodily fluid samples in impaired driving investigations. The only difference between Bill C-16 and what we currently have is how we obtain the sample. The process for analyzing it is done the same way. The process for processing the charge is the same. It's simply a matter of how we have arrived at obtaining the actual sample.

The Chair: Thank you.

Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chair.

I had a similar question. I want to confirm that we're talking of three steps when in actuality there are four steps. There's the initial individual driving in an unsafe manner, and that would initiate the officer to check it out and pull the person over, followed by a roadside sobriety test, followed by a DRE—drug recognition expert—determining that this person is impaired with a substance, and then it's supported by the bodily fluid sample. There are those four steps.

Your recommendation, I'm hearing, is that we need that third step in the legislation to support that the impairment is determined at the roadside. Then the DRE would suggest what drug they are likely impaired with and it's confirmed. The bodily fluid sample doesn't say if the person was impaired by the amount of drug in their system; it just confirms the DRE report that they had cocaine in their system, they had the symptoms of cocaine, and they were indeed impaired and shouldn't be driving a vehicle. It's all part of the equation to get a conviction. Is that what I'm hearing?

● (1215)

Mr. Evan Graham:

That's correct.

The initial phase is the driving portion. Your investigation at roadside is to see whether you have reasonable and probable grounds to read a breath demand or a demand for the drug evaluation. The second phase is to show the actual impairment and categorize the impairing substance. Lastly, the bodily fluid sample is simply to corroborate or refute what the DRE has called.

Mr. Mark Warawa: We've heard from some witnesses that the taking of bodily fluid is deemed intrusive by some. In this case it's felt warranted because the person has been deemed impaired by the roadside and by the DRE.

To Mr. Comartin, do you want to have this removed because you were suggesting the taking of bodily fluid is intrusive?

Mr. Joe Comartin: That's not my position; that's the position of our courts, all the way up to the Supreme Court of Canada. What they've always ruled is.... Are there circumstances that allow for the intrusive nature of a search by the state into the body of the individual, of a member of society? There have been a number of occasions when they've said yes, it's permissible to do it. I believe this is one of the times they're going to say it's not.

Mr. Mark Warawa: Our witnesses are pointing to this as an example where it would be permitted.

Mr. Joe Comartin: You've heard that from these witnesses, but if you heard all the testimony, it was probably equally divided between all the lawyers we heard.

The Chair: There being no further comments or questions, we'll move on to Bloc amendments.

Mr. Marceau.

[*Translation*]

Mr. Richard Marceau: Mr. Chairman, these are two very straightforward amendments. My colleague Randy White presented similar ones.

First of all, further to discussions with Ms. Kane, we decided to add “For greater certainty” at the beginning. A police officer would thus be permitted to video record roadside tests following a person's arrest and this recording could be used in court.

The other amendment would allow a nurse, and not solely a qualified medical practitioner or technician — which registered nurses apparently are not — , to take a blood sample.

[*English*]

The Chair: Are there any questions or comments from the members?

Are there any preliminary comments from our officials?

Mr. Pruden.

Mr. Hal Pruden: With regard to the matter of officers using video evidence in court, we're not aware of any cases yet where the courts have said the videotape evidence of police officers cannot be admitted, so we feel it is currently admissible. We don't have any difficulty with this amendment to say, for greater certainty, that the police may have it. Maybe it would be a reminder to the police to get video equipment and start using it. Many forces already have it, but perhaps it would be an impetus for more forces to use it. In that respect, it could be very good.

We've only briefly looked at this, so we would need more time to look carefully at the other proposals for amendment. The major concern that springs to my mind is that in section 254 of the Criminal Code we have a definition for “qualified technician”. Within the definition it says that the attorney general of each province may designate who is a “qualified technician”. That definition isn't being amended by Bill C-16, so we can't directly see a motion, I understand, that would change the definition of “qualified technician” to say that for greater certainty a registered nurse can be included under the understanding of “qualified technician”. That would be an easy way to do things, to make it clear that registered nurses could be designated by the attorney general. I'm sure many of them already do designate registered nurses.

The difficulty that arises from not doing it in the definition section for “qualified technician” will be, with respect to registered nurses, that in other sections the attorney general won't get a chance to designate. The code will have said: here are the qualified technicians designated by the attorney general, and registered nurses will be able to do certain things. It's something that may impact upon the attorney general in each province, and the provinces may have something to say about that type of amendment. Whereas currently the attorney general of the province is the one who designates all qualified technicians, if these amendments go through it might be that registered nurses would not come under the requirement to have the attorney general of the province designate a registered nurse, which might be a concern to provinces.

● (1220)

The Chair: Mr. White has a series of amendments as well, many of which are similar in content to some of the others presented.

Is there anything you would like to say specifically, Mr. White, on your amendments?

Mr. Randy White: I have just a couple of comments.

I prefer Mr. Toews' amendment on subsection 253(1), so I'd be willing to withdraw this if that's more appropriate. His is more inclusive on some of the issues.

The second one I have, on replacing line 17, page 4, is the same thing. I have “practitioner or a registered nurse”. I like the idea, quite frankly, of the “qualified technician”. I don't really think that's at all restrictive, so I would prefer to go with the Bloc wording on that.

Finally, the other one is identical to the Bloc's and was requested by many witnesses coming here: that the peace officer make a video. I see the Department of Justice is more or less in agreement with that as well.

That's all I had.

The Chair: Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Pruden, section 254(1)(b) of the Criminal Code, under the definition of “qualified technician” refers only to the taking of blood samples. You would like to see the bill include a provision for taking urine and saliva samples as well. That's why my colleague Mr. Marceau and Mr. White proposed this amendment.

The definition of “qualified technician” would have to be amended in the Criminal Code, if I understand correctly.

[*English*]

Mr. Hal Pruden: I believe I do understand this question.

It is the case that for taking a blood sample, the attorney general designates who can be a qualified technician. But for the taking of samples of urine or the taking of an oral fluid for analysis, under the bill in clause 2, with reference to proposed new paragraph 254(3)(a), there is no requirement for a qualified technician. I defer to Constable Graham, but the officers who collect the urine sample or oral fluid sample don't have to be qualified technicians. A police officer can ask the person to provide a urine sample or take a saliva sample.

● (1225)

[*Translation*]

Mr. Marc Lemay: Fine then. Thank you.

[*English*]

The Chair: Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: Following up on Mr. White's question and on what was raised just prior to that, when you talk about technicians, do all provinces uniformly state that registered nurses are allowed as technicians to take blood samples?

Mr. Hal Pruden: I'm sorry, I don't know whether they do it by class or by each individual person in terms of making a designation of qualified technician. It may vary from province to province.

Mr. Borys Wrzesnewskyj: So perhaps the Bloc amendment is a good amendment. Let's say there's a big party somewhere in Hull, and some people go back across to Ontario and some stay in Quebec. They're stopped in one province and stopped in another, and there may be a whole different set of procedures at that third step. So perhaps it is a good amendment from the Bloc, to make sure that there is federal uniformity when it comes to the technicians who are allowed to test.

Mr. Hal Pruden: In the case of qualified technicians, what they're doing is drawing blood, which will be very uniform across the country already. The difference is that in terms of the Criminal Code, it says it will be the attorney general of the province who designates. And many provinces jealously guard what their attorney general is able to designate.

The Chair: Are there any further questions or comments?

There being none, I would excuse our witnesses. Thank you very much for being here this morning. I think we've saved a lot of time in clause-by-clause. We have a week now to consider the commentary, and hopefully we'll move along on November 3 to dispose of this legislation and get it reported to the House.

Before you run away—we're not finished, Mr. Marceau—we have a few housekeeping matters. The clerk has circulated a list of suggested witnesses on Mr. Kramp's bill, Bill C-215, on consecutive sentencing. Could you review these as we speak?

If anyone has any comments, I'd like to hear them now.

Ms. Sgro.

Hon. Judy Sgro: I wanted to add to this. I will get you the actual name later, but I'd like somebody to come from the state of Virginia to speak to the committee. Mr. Kramp referred to this as well.

The Chair: Okay. Would you provide the name as quickly as possible?

Hon. Judy Sgro: Yes, I will. I will get you the name.

The Chair: Mr. Toews.

Mr. Vic Toews: There's overwhelming evidence from the American states where mandatory prison sentences have worked to dramatically reduce gun crime. Virginia is one of those jurisdictions. The other jurisdiction is the state of Florida. I'm going to get names from both those. There are many other states where we've seen dramatic reduction in use of guns for violent gun crime, where they've imposed mandatory prison sentences. I will be doing that.

The list that Mr. Cullen brings forward here is...we can probably guess each and every one of their positions. We want to have something that would sort of give a better balance maybe.

● (1230)

The Chair: Are there any other comments?

There being none, we'll explore the possibility of these witnesses coming.

Mr. Macklin.

Hon. Paul Harold Macklin: Looking at our schedule and looking at the witnesses that are being suggested, would it be appropriate at this point to seek an extension from the House in reporting back on Mr. Kramp's bill? We have a week's break coming up. I think it's around November 19 that this actually—

The Chair: It's actually November 16.

Hon. Paul Harold Macklin: Oh, it's even sooner.

The Chair: Your suggestion is appropriate, and subject to what the committee has to say, we'll make those representations now.

Hon. Paul Harold Macklin: It was simply a suggestion. You know what our schedule is like.

The Chair: Practically speaking, we're not going to be able to schedule all of these witnesses by that time, especially in view of the comments of Ms. Sgro and Mr. Toews.

Ms. Sgro.

Hon. Judy Sgro: For the information of the committee, I was going to try to get together with the legal department and Mr. Kramp over the next day or two. We will look at that and see if we can find some ways of ensuring that we can move forward with that bill.

Mr. Vic Toews: I think that's good.

The Chair: Mr. Comartin.

Mr. Joe Comartin: I don't have a problem with seeking the extension. I would still like to see us finish this bill and get it back to the House before the break at the end of the year.

The Chair: Okay.

On the Corrections and Conditional Release Act, Mr. Warawa and Mr. Cullen have both spoken to me on this situation. Would either one of you wish to make a comment on that? We know the response of the minister in the House. We know it was referred to the committee on security, but they're bogged down as well.

Hon. Roy Cullen: Mark, why don't you kick it off? I think we're on the same page, but I just want to make sure I understand fully what you're talking about.

Mr. Mark Warawa: Thank you, Mr. Chairman.

It is a very important issue to the Conservative Party, and also I think to most Canadians, that we have appropriate sentencing. There's been concern as to whether there has been. I think that's what we need to answer. And what is the best body to deal with this adequately? Should it be here in this committee or should it be a subcommittee? I'm open to suggestions, but for it to be shelved and given a low priority...hopefully, that's not the desire of anybody here, but that it is given the high priority it needs.

The Chair: Mr. Cullen.

Hon. Roy Cullen: Thank you, Mr. Chair, and thank you, Mark.

The Deputy Prime Minister wants to deal with this. She wrote to the committee in April. We know the workload on this committee, we know the workload on the subcommittee, so nothing is happening. I think she would prefer that the review happen at committee, the justice committee or a subcommittee.

I thought you had made the suggestion, and I think it's a good one, that the solicitation subcommittee, once they finish their work, may have the infrastructure in the sense of the clerk and a researcher and could perhaps take on the task of looking at the question of corrections and conditional release. That's certainly an option that we favour.

The Chair: Can I have comments from the researchers? We know they're bogged down as well.

Mr. Philip Rosen (Committee Researcher): If I may, Chair, as you know, this committee now has three subcommittees as well as the standing committee. It's essentially the same four people who are doing all this work.

I would remind members that in 1999 the committee did strike a subcommittee that took a year to do this. It was a fairly comprehensive review of the corrections and conditional release system, involving many penitentiaries and other programs across the country. So this is something that will take a fair amount of time.

My understanding is that the three subcommittees will be reporting between now and the mid-December break. I don't, frankly, from a staffing point of view, see how it would be possible to undertake this, whether it's here or in a subcommittee or in a new subcommittee, between now and then.

My suggestion is that we give some thought as to how this is going to be done and when it's going to be started. But from a staff point of view, I would hope we would complete the tasks we already have before us before we actually get under way. There's no reason why this couldn't be set up and preparatory work be done in December and early January. I remind you that the staff would likely be one of the staff from the solicitation committee and myself. They are the people who were involved five years ago.

● (1235)

The Chair: Thank you.

Mr. Cullen, Ms. Sgro, and then Mr. Toews.

Hon. Roy Cullen: I was going to say that I think the idea would be to have this work started once one of the other.... I didn't realize there were three. I know there are two subcommittees. What's the other one?

Mr. Philip Rosen: Judges.

Hon. Roy Cullen: But for this work to start, once one of those subcommittees has reported out....

Frankly, if resources are an issue, maybe we need to deal with that. But my thinking, and I think Mr. Warawa's thinking, is that once one of the subcommittees has completed their work, we can take on this task of looking at corrections and conditional release, because I can tell you, the minister wants to deal with this, and she'd rather deal with it through a committee of Parliament. But faced with other options, she might strike a blue-ribbon panel or get some eminent expert. The problem with that is that even though the committee might have some input into scoping that out, that report will come in, and by the time this committee or a subcommittee gets into this topic, a lot of that work will be undone. It's not a very reasonable option, but she's not prepared to wait much longer. She understands the workload of this committee and the subcommittees.

So that was the intention. Once one of those subcommittees has reported in, there are some resources that sensibly could be freed up. But if resources are an issue, I think we need to deal with that, because this is an important topic. The members opposite are agreeing it's an important topic. The government agrees it's an important topic. It's been in the hopper since April and we want to get on with it.

The Chair: Ms. Sgro, and then Mr. Toews.

Hon. Judy Sgro: A couple of issues. You made reference to the fact that the whole issue of corrections and conditional release was looked at extensively. Could you elaborate a bit more on that for me?

Mr. Philip Rosen: Yes, I can, if I may.

There was a review clause in the Corrections and Conditional Release Act, and this committee struck a subcommittee in 1999. Mr. Marceau was on it, so he'll remember this. That subcommittee essentially spent a year travelling the country, visiting penitentiaries and various programs across the country, and tabled the report, if memory serves me correctly, in March 2000, or sometime in early 2000. The staff involved were myself and one other person.

Were we to follow a strategy of waiting until one or more of the two subcommittees complete their work and then using the same resources, and presumably the same members' resources as well, to do that, that would probably work.

I remind you also—and I don't remember the bill number—but there is now a piece of legislation pending in the House that is an outgrowth of that subcommittee's report, now five years ago.

Hon. Judy Sgro: I guess going on to what our workload is as a committee and what our priorities are that have already been established, have our priorities been established beyond the Christmas period?

The Chair: No.

Hon. Judy Sgro: They haven't.

We should take a look at what's been done already and what were the recommendations that came out in March, and then maybe we need to look at our priorities. I think this is a really important issue. As Mr. Cullen has mentioned, we clearly acknowledge the priority for the Deputy Prime Minister, so maybe we need to look at what our priorities are going to be. We could start on this in January, but we shouldn't redo everything that was so very recently done either. We can build and get some input on what was already done, get a presentation done by them early in the new year when we come back, and then move forward on it, depending on what else we have that's a priority.

The Chair: Mr. Toews.

Mr. Vic Toews: What I would propose, and I think it would help with both the research staff capacity and the urgency of the matter.... For us to simply sit down and talk about conditional sentences in the abstract I think is not particularly helpful. It will take us a couple of months to narrow down what the issues are. What should already be happening in the Department of Public Safety is some kind of a position paper. We know there have been significant problems with conditional sentences over the past 10 years, and certainly there must be some policy people or political people in the Department of Public Safety who have come up with some conclusions and have given certain recommendations. That paper could be presented to us, focus our discussions, and we can add on to it. But at least in that way we would have researchers from the Department of Public Safety already looking at the background, giving us facts and focusing on what some of the important issues are.

Whether we go with the subcommittee thing...and I think that seems to be the route, using an existing subcommittee when they complete their present assignment; then at least we can hit that full stride, rather than sitting around for another couple of months determining where to go. I think that should be done, and if that's agreeable to the committee, that should be communicated to the minister.

● (1240)

The Chair: Not yet, Mr. Cullen; we'll have a comment from our researcher, please.

Mr. Philip Rosen: I'm sorry, Mr. Cullen; I'd never cut off members. The chair did it.

I'm a little confused, because I thought we were talking about the Corrections and Conditional Release Act, which deals with parole and penitentiaries. Conditional sentencing, of course, is a different topic entirely and is not under the Corrections and Conditional Release Act. So I'm a little bit confused and I think we need some clarity on what we're doing.

The Chair: Okay, Mr. Cullen.

Hon. Roy Cullen: Maybe I could offer some clarity, Mr. Chair.

First of all, the minister, in a letter to this committee in April, talked about asking this committee or a subcommittee to undertake a review of the corrections and conditional release system. In that same letter, she scoped out some of the areas.... It's a fairly comprehensive description, in my judgment, but I think Mr. Toews is right, and the clerk and the researcher are right, that maybe we need to spend a bit of time scoping the topic.

The other thing I'd add is that Bill C-46 is in the House, and it responds in part to the work that was done in 1999. The problem is, the topic that's being proposed here is a little broader than what's encompassed in Bill C-46. I think it would be useful, in terms of the scoping, to go to the minister's letter and Bill C-46 to see how to scope this piece of work, because I agree it is a big piece of work, unless we chunk it into bites that are realistic. But I think there is information there; there is Bill C-46.

The problem is, I raised at the subcommittee of this committee months ago the idea of using Bill C-46 as a way to get into this topic, and that was not very favourably received because of the scoping issue and other matters—and the workload. The subcommittee is looking at the anti-terrorism legislation, and there is a whole pile of other stuff in the pipeline.

Why don't we, say, take the minister's letter—this is to the researchers—and take Bill C-46 and work on some way of scoping the work, so that when the subcommittee takes it on we're all agreed as to what issues we want to tackle?

Mr. Vic Toews: Just on a point of order, would that include conditional sentencing then?

Hon. Roy Cullen: No. Conditional sentencing is not something that was referred by my minister.

The Chair: Mr. Macklin.

Hon. Paul Harold Macklin: I want to intervene on that very point; that is, on conditional sentencing. The question was being directed to the Deputy Prime Minister. In fact, it is Justice.

The minister has said he is bringing forward shortly—and I think it will be shortly—a piece of legislation upon which we can have that inquiry. So I think it's appropriate that we wait a short period of time. We should be able to have it before us. Then we as a committee will have to figure out how we accommodate that review, if it meets with the priority of the committee.

The Chair: Mr. Cullen.

Hon. Roy Cullen: I want to add that what the Minister of Public Safety and Emergency Preparedness has referred to this committee is a review of the corrections and conditional release system. That's what she wants to review. I think it's what Mr. Warawa raised. That letter I think was circulated to the members of the committee. Let's have the researchers look at that letter and look at Bill C-46, because Bill C-46 does respond in part.

The only other thing I would add is that I need to work on the assumption that a subcommittee will be made available to look at this, once we're agreed on the scope, because otherwise the government is going to move ahead with some other vehicle, which I don't think is as palatable. Certainly it shouldn't be, to members of this committee, because the government wants to get the input of this committee or a subcommittee of this committee.

The Chair: Is there any further discussion?

We have a direction, and I think a lot of it hinges on how quickly those subcommittees can report, so we can give you some more good stuff to assist us with.

● (1245)

Mr. Mark Warawa: Right now, Mr. Chairman, we have three subcommittees, and all three are expected to be completing their work by the end of the year.

Hon. Roy Cullen: No, not the public safety and national security —

The Chair: Certainly the solicitation committee would like to.

Mr. Mark Warawa: And there's the judicial review subcommittee.

The Chair: Mr. Marceau, what about the judges committee?

Mr. Richard Marceau: That will be on December 15.

Hon. Roy Cullen: We have two subcommittees that will be winding down sometime within the next month or so. Can we have an agreement then that once we have scoped this project, it will be taken on by one of the subcommittees?

The Chair: I would say there's a consensus. Yes, we're agreed.

Thank you, Mr. Cullen.

I have a further update on Bill C-53. We have at least two witness groups scheduled for November 1. We changed the date, if you recall. It will be the Canadian Bar Association and the Criminal Defence Attorneys Association. Le Barreau du Québec cannot appear, but they will send a brief. After that period, I would suggest that we go to clause-by-clause.

On Mr. Warawa's motion about sexually explicit material in prisons, I wish to confirm that letters have gone to our corrections people as well as to the union.

I guess that's probably enough for today.

Class is dismissed early.

Mr. Vic Toews: On Bill C-215, just to be clear, Ms. Sgro is going to have some conversations with Daryl Kramp. I know that I'll be having conversations, but generally speaking, we have no specific date for when those witnesses will be here.

The Chair: You have to make some preliminary inquiries, but we'd like to move this along as quickly as we can.

Mr. Vic Toews: But we have no specific dates for hearing the bill right now.

The Chair: That's right.

Mr. Vic Toews: Okay.

The Chair: It will take more than one meeting to hear the witnesses we already have.

Okay. Thank you very much.

The meeting is adjourned.

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