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Chair

Mr. John Maloney

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● (1115)

[*English*]

The Chair (Mr. John Maloney (Welland, Lib.)): I'd like to draw our meeting to order.

We're here to consider on a clause-by-clause basis Bill C-53, an act to amend the Criminal Code on proceeds of crime and the Controlled Drugs and Substances Act and to make consequential amendments to another act.

We have just two amendments, so I would propose that we consider clauses 1 to clause 5.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Just before we proceed, and I apologize to the committee for the delay of this meeting with the officials.... As a result of an extensive discussion I had last week with the representative from the CBA and the criminal lawyers, an issue arose about a risk under the proposed amendments, combined with the existing co-provisions, that in some circumstances there is a potential for a co-accused—this would be the spouse or the business partner—to be precluded from presenting an argument that the asset was acquired by means other than from the proceeds of crime.

As a result of the discussion we've had outside, I'm going to be meeting with the officials and hopefully one of those two counsel, to see if in fact that is a real problem and to talk about how we might be able to resolve it. But we will do that subsequent to today's discussions.

The Chair: All right, if that's your wish.

Back to the act, then.

(clauses 1 to 5 inclusive agreed to)

(On clause 6)

The Chair: Clause 6, Mr. Toews.

Mr. Vic Toews (Provencher, CPC): Thank you.

The amendment I brought forward expresses my concern with respect to clause 2.07, which gives the court the discretion to decline to make an order of forfeiture where it considers it to be in the interests of justice. Perhaps crown counsel could advise us on what this phrase "interests of justice" means and on how the court's discretion is limited in view of the findings it has already made that an order of forfeiture should go. What limits the court's discretion in declining to make an order of forfeiture?

We know that courts give reasons for their decisions, so the fact that it says "the court shall give reasons for its decision" is neither here nor there. But what limits the court's discretion?

Mr. Shawn Scromeda (Counsel, Criminal Law Policy Section, Department of Justice): The "interests of justice" is a term that is considered and used often by the courts. Some of the considerations underlying this provision relate to the very nature of the forfeiture itself. Reverse-onus forfeiture is based on a presumption that property is the proceeds of crime, not on a direct finding by the court that it is the proceeds of crime. It's a distinction from our current proceeds-of-crime regime.

The effects of this are potentially wide-ranging. There may be circumstances where it is simply too difficult for an accused or a third party to mount an effective defence. I think we've heard, especially, some concerns about third parties who may be affected by reverse-onus forfeiture but who may not have the means or the capability to do this.

Given that we are proposing a fairly aggressive widening of the forfeiture power, it is felt that as a balance to that, discretion on the part of the court to address situations where the total amount of forfeiture may be disproportionate to what appears to be the total underlying criminality, or where, as I said, there might be third-party interests involved that haven't been adequately represented, which the court can raise of its own motion, is the sort of consideration we think the court would bring into play under "interests of justice".

I guess I would point out, as well, that other legislation that, in part, provided something of a model for ours—the Irish legislation, the U.K. legislation, civil forfeiture regimes in the provinces, although this is not civil forfeiture—also has, in terms of nature, an aggressive nature, and has similar provisions. It does not further qualify the "interests of justice", but uses the term, "in the interests of justice" to provide some judicial discretion on the total amount of forfeiture.

Mr. Vic Toews: Are there in those Irish or English precedents any phrases that define "interest of justice" or consideration?

Mr. Shawn Scromeda: No, there aren't.

Mr. Vic Toews: Just a broad statement.

Mr. Shawn Scromeda: Yes. We did give some consideration to that, but then you end up with, at the end of the day, a catch-all. Some of the examples I gave you would perhaps be some of the factors a court would consider, but at the end of the day you don't want to restrain the court's discretion.

Mr. Vic Toews: Why wouldn't you want to restrain the court's discretion if in fact it has made the ruling saying that the law demands in these circumstances that there be forfeiture? You've indicated there might be some exceptional circumstances. Why wouldn't it be wise then to place those kinds of exceptional circumstances in the legislation, so the courts give direction?

What I am concerned about in this kind of legislation is that basically it undermines the entire intent of the legislation. You simply say all the right things in terms of ordering the forfeiture, but at the end of the day it boils down to whether a judge thinks it's in the interests of justice or not. That is a serious concern.

This, in my opinion, is simply a huge loophole for organized crime, because every single application will now focus on, "well it's not in the interests of justice", and there simply is no way of determining that, other than through the judges' unfettered discretion.

My second question then relates to if the judge, in the interests of justice—whatever that might mean—declines to make the order, can the judge make that in whole or in part against property, or must he decline the entire application?

● (1120)

Mr. Shawn Scromeda: The intention is in part.

Mr. Vic Toews: Couldn't you then say "decline to make an order of forfeiture against any property, in whole or in part", or something like that, to indicate it shouldn't just be declining to make the order against all the property? That concerns me.

Mr. Shawn Scromeda: The intention of words "any property" was in whole or in part.

Mr. Vic Toews: Well....

The Chair: Are you finished, Mr. Toews?

Mr. Vic Toews: Yes. I'm thinking.

The Chair: Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): When I read the proposed subsection as it is worded, and on which we agree, I read:

> (2.07) A court may, if it considers it in the interests of justice, decline [...]

That's always been interpreted very restrictively by the courts.

You even refer to organized crime; I'm going to tell you about my clients. Perhaps it's not the same thing, but nearly. We nearly had to prove beyond a reasonable doubt or, in any case, to a very high degree of probability, that it was indeed in the interests of justice. We had to prove it.

Colleagues, I will tell you that it is an uphill battle to prove that something is in the interests of justice. That was interpreted like child welfare, and so on. I see this in a very limiting, restrictive way.

[*English*]

Mr. Vic Toews: And that's the point, that's exactly the point. What I just heard Mr. Lemay say is it's the interests of justice that the accused must then demonstrate on a balance of probabilities. Now, that's not in the legislation.

The legislation states that after the accused has failed to discharge the onus of it being on a balance of probabilities, then the judge, without regard to any onus—so essentially discarding the onus—says now it's in the interests of justice.

Now, what Mr. Lemay said is the accused must demonstrate on a balance of probabilities that it is in the interests of justice. This legislation does not provide for that. I would feel more comfortable, if we were proceeding in creating this huge loophole—which I oppose—if we make sure it says that the court may, if it considers it in the interests of justice, the onus of which is on the accused...and then proceed from there. I think that makes more sense, because then it demonstrates and maintains the onus.

Anyway, those are my comments.

The Chair: Mr. Cullen, and then Mr. Lemay.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chairman.

I want to pick up on how this legislation would work in the context of this amendment. We heard testimony about making sure that any forfeiture was consistent with the crime. In other words.... I'll put it in my words and you can correct me if I'm off.

Let's say a person is arrested and convicted on a small drug deal—and that's the only conviction—but this person has an array of assets that is quite amazing. Is the judge able to say that because we have a conviction on this particular drug offence, and this person has an array of assets, we're going to say this forfeiture and this reverse onus would apply to *x*, *y*, and *z* assets, which may not be the entire group of assets? Or would all the assets be automatically subject to the provisions? The reason I'm asking is that you mentioned the need to have some judicial discretion. I think sometimes it's important to do that, but sometimes it also creates some problems. Is it possible for a judge to attach the assets, with this reverse onus, to correlate with the extent of the crime that's in question?

Secondly, you talked about interested third parties. I'll try to bring that down to practical terms. Let's say that there's a huge mansion involved. So the judge says that they're going to call for that forfeiture and that reverse burden, but that mansion might be partly owned by a spouse or someone else. Couldn't the asset be identified, and then wouldn't a normal legal process be the responsibility or the right of a spouse or another third party to assert their interest in that aspect? Wouldn't that happen in the normal course of events?

You gave two examples. There might be many, many more, and I'd be interested in what the many, many more are.

Could you answer those two questions?

● (1125)

Mr. Shawn Scromeda: Your first question is how far or the extent a forfeiture can go in relation to the individual offence for which the person has been convicted that triggers this reverse onus forfeiture application. The answer is very broad. The forfeiture is any property of the offender identified by the Attorney General. So it is, and is intended to be, a very broad forfeiture power.

If it were restricted to property related to the individual offence, that's what we can do right now. The purpose of this provision is based on a presumption that, with respect to certain offences, and providing the Attorney General also demonstrates a pattern of criminality or unexplained assets...in that case, once that situation is fulfilled, there's entitled to be a rebuttable presumption that any assets of the offender are proceeds of crime. So it is—

Hon. Roy Cullen: What happens to those other elements, such as history of criminality?

Mr. Shawn Scromeda: That other element has to be there, but after that element, it is very broad.

Hon. Roy Cullen: So given that, why do we need to have this discretion in that particular context? In other words, in terms of.... I think the example you gave is matching the forfeiture with the extent of the crime.

Mr. Shawn Scromeda: No, it doesn't match with the extent of the crime for which the person has been convicted.

Hon. Roy Cullen: Okay, so that's not a reason to give judicial discretion, is it? I thought that's what you said.

Mr. Shawn Scromeda: Well, maybe it's the very broad nature of the forfeiture in the sense that it goes beyond the property for which he's actually been convicted, which is part of the basis for giving the judicial discretion.

Hon. Roy Cullen: I'm confused now. I thought you just finished saying that the crown prosecutor would put together a case that says, “Look, even though we only have this one conviction on this small drug deal”—I guess they'd have to have a history of criminality—“this individual has all these assets. So we're proposing to the court that all these assets be subject to this reverse onus. There's a presumption that they were derived from the proceeds of crime.” What kind of judicial discretion is needed? I don't follow.

Mr. Shawn Scromeda: The additional tests that we have set out for the pattern of criminality are specifically set in the legislation on a balance of probabilities, which isn't the normal criminal conviction standard. We have put in hurdles, but the hurdles are not very high. It is a potentially very broad forfeiture power, and it could lead, in some circumstances, potentially to excessive forfeiture. If a judge feels that it is excessive, based on the total amount of presumed criminality or apparent criminality, he could restrain that through the discretionary limit on the amount of total forfeiture.

Hon. Roy Cullen: Why couldn't that be left to the accused or the convicted, his or her attorney, to make that case and to limit it?

Mr. Shawn Scromeda: There may be circumstances in which it's difficult to demonstrate the legitimate origin of property that still does have a legitimate origin.

Hon. Roy Cullen: What about that third-party issue you raise? Give me some more information on that and why that might be an issue.

● (1130)

Mr. Shawn Scromeda: That was an issue, I believe, that came up in testimony before the committee. Although we do already have and have incorporated into the reverse onus scheme the right of third parties to make an application, there may be circumstances in which third parties are unable to do that. Given the fact that we've broadened the nature of the forfeiture power here, it was thought, as part of a balancing mechanism to that, including the third-party interest, to expand the ability of a judge, where he sees it's in the interests of justice, to relieve against forfeiture. And one of those, as I say, might be third party, where an unrepresented third-party hasn't made a case, but it's nevertheless clear to the judge that this property is not justified to be taken away. He may, of his own motion, say this is not in the interest of justice.

The Chair: Marc Lemay, and then Borys.

[*Translation*]

Mr. Marc Lemay: I simply want to add that you have to be careful when you interpret a clause or bill you're considering.

The debate is on the proposed subsection (2.07), thus on the corresponding lines. However, you have to be careful to read it as a whole, because it amends section 462.37, adding to it subsections (2.01), (2.02), (2.03) and so on. These contain a number of elements that are an integral part of the puzzle.

Earlier I was talking like a defence attorney who might argue subsection (2.07). However, I think the Crown attorney could prove it and so on and the judge would say no. A case that immediately comes to mind is one involving the Crown counsel who is seeking a seizure, whereas the accused is not represented before the court. As a result, following the Crown attorney's request, the judge would ask that he wait a moment and would discover, when the evidence was filed... There are assumptions. That's why subsection (2.07) is there. At least that's my interpretation. When I look at the case law, the decisions that have been given to us in our books, I don't think we can limit the courts to not having some kind of power. Otherwise, someone will question whether the section is constitutional because the court is given no flexibility to invoke the interests of justice and so on.

The example that comes to mind is that of an accused who is not represented in court, whereas, based on a small amount of narcotics, authorities would want to seize his girlfriend's property, and so on. I don't know, but there can be a lot of assumptions.

You have to read subsection (2.07) as a whole, because it is intrinsically related to (2.04) and (2.05). It all hangs together in there. That's why you can't take it out that way and say it applies. I applied it as a defence lawyer would, but I know that a Crown attorney would not see it in the same way as a judge... Consequently, I believe the purpose of this subsection is to give the court flexibility in accordance with the Charter.

[*English*]

The Chair: Thank you, Mr. Lemay.

Borys.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): I agree with the principle of putting the onus on the accused to show and prove how assets were acquired, but is there legislation that kicks in and says that there's a time limitation, there's not an expectation that someone would have to produce evidence of acquiring an asset beyond seven years into the past? Would other legislation kick in to put that sort of limitation on how far back into the past we could use this particular tool? And if not, should that be considered?

Mr. Shawn Scromeda: That hasn't been specifically incorporated in this legislation. We have other balancing mechanisms, like the limit on total forfeiture, like the fact that there's an additional hurdle of proving a pattern of criminality, but that particular limit isn't incorporated in the legislation. The assets of organized crime may have been accumulated over a lengthy period and.... We do have a limit in there in terms of establishing a pattern of criminality. I believe we have said it goes back ten years, but in terms of the actual assets, no.

● (1135)

Mr. Borys Wrzesnewskyj: Would other legislation kick in at that point, if this particular bill doesn't incorporate that concept? I don't have a problem with the onus being put on the accused to prove how these assets were acquired—

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): I thought he should be convicted.

Mr. Borys Wrzesnewskyj: Sorry, on the convicted person to show how these assets were acquired. But shouldn't there be a time limitation? There's not an expectation that any person, going past a certain point, would have the evidence required to provide that kind of proof.

Mr. Shawn Scromeda: You're suggesting, for example, some reference to assets acquired within the previous *x* number of years.

Mr. Borys Wrzesnewskyj: Oh, the past seven years. For instance, for income tax that's a requirement, seven years that you maintain records.

Mr. Shawn Scromeda: As I said, that particular limit was not added to this legislation. I suppose it would have been another way to do it. There's any number of different formulations. There were other balancing mechanisms added to this legislation, but that one is not there.

Mr. Borys Wrzesnewskyj: But that particular principle wasn't addressed. Okay.

The Chair: Any other comment?

Mr. Toews, final word.

Mr. Vic Toews: To clarify, then, once all of the conditions have been made, the convicted person has failed to discharge his onus, under paragraph 2.07 the court can, without regard to any onus at all, determine that it's contrary to the interests of justice and decline to make an order. Is that correct?

Mr. Shawn Scromeda: There would have to be an act of finding, on the part of the court, that it's not an onus per se, and I think an onus might be inappropriate in the sense that part of the aspect that is reflected here is the interest of third parties who might not be represented, or even, potentially, an accused. So yes, no onus provision, such as you're saying, is directly incorporated in here.

Mr. Vic Toews: So under this legislation there's no reference to onus, there's no reference to any criteria, there's simply an unfettered discretion based on the phrase "interests of justice" and it somehow has to be consistent with that phrase.

Mr. Shawn Scromeda: Yes.

Mr. Vic Toews: Thank you.

The Chair: Shall Conservative Party amendment 1 carry?

Mr. Vic Toews: Carried on division.

An hon. member: Not carried.

Some hon. members: Oh, oh!

Mr. Vic Toews: It was worth a try.

Mr. Marc Lemay: You make a good revision.

Mr. Vic Toews: Defeated on division, with Conservative members supporting the amendment.

The Chair: Shall Conservative Party amendment 1 carry?

(Amendment negatived)

(Clause 6 agreed to on division)

(Clauses 7 to 10 inclusive agreed to)

(On clause 11—*Copies of documents returned or forfeited*)

The Chair: Clause 11, BQ amendment 1.

[*Translation*]

Mr. Marc Lemay: I simply want to understand. I imagine you're going to give me an explanation.

When I read the present section 462.46 of the Criminal Code, which is at tab 11 in the binder, I see that the Attorney General may copy and retain seized documents before returning them, even where ordered to do so. Is that in fact the situation?

[*English*]

Mr. Shawn Scromeda: Yes.

[*Translation*]

Mr. Marc Lemay: The Canadian Bar Association tells us that there may be confidential documents, an order for their return, and thus documents that are not necessary, and that those documents should be returned. So if there is an order for their return and those documents are not necessary, the question I ask on behalf of the Bar Association, and that I was also asking myself, is this: why can you retain copies?

● (1140)

[*English*]

Mr. Shawn Scromeda: In some ways, this provision actually is of assistance to those people who've had their documents seized. There may be situations in the middle of a proceeding where the person requires their documents back. The proceeding is not over yet, the documents are still relevant to that, but the person needs their documents back. If you conserve an ability to copy that document, the interests of the Attorney General, investigators, and potentially the police who might still be working with that on an ongoing investigation are conserved, and yet the person can get their documents back at that stage.

So you can have an order to return the documents, but then the Attorney General can say, "I'm okay with returning the documents, but I still need a copy".

[*Translation*]

Mr. Marc Lemay: I can understand that when the proceeding isn't over. However, when the proceeding is over...

Going back to the example that still comes to mind, my client is acquitted by a court of law of the offence with which he has been charged. Supposing the court orders the return of all documents, which are highly personal, could you nevertheless retain a copy, even if he is acquitted?

[*English*]

Mr. Shawn Scromeda: As you say, this is not a new power in the Criminal Code, this is an existing power. Now, there may be some argument that there are additional procedural elements that could be put in this, though I would point out that in one case....

This power is not just connected to forfeiture. This is at subsections 490(13) and (14) of the code, and applies generally with the detention of things seized, so not just in the forfeiture provisions but elsewhere as well.

There has been some case law on this, where in one case it was challenged under the charter. I can provide you with a reference to the case, if you like. That challenge was not accepted, saying that, yes, the very intention of subsection 490(13) is to allow the Attorney General to keep copies. However, in another case, a case out of Nova Scotia, the Symington case, they qualified that just as a matter of judicial interpretation. They said that if there's no need whatsoever from an investigative point of view to keep the documents, at that point, though you've made copies, those copies should be destroyed.

Again, this is not with respect to the current provision, for which I could not find a judicial interpretation, but the analogous general provision of the code. So if there's no need whatsoever at that point, the current provisions do not operate to allow the Attorney General to keep on retaining the documents.

[*Translation*]

Mr. Marc Lemay: You're a good politician because you didn't answer my question. If I'm acquitted of the offence, what happens? Section 462.46 poses no problem for me during the trial. It's all clear: you need evidence, I need a copy of my income tax return, you return the original to me. What is a problem for me is what happens after the trial, if I'm acquitted.

Do you understand me? Is that clear?

[*English*]

Mr. Shawn Scromeda: If the crown cannot say there's any need for them in terms of any ongoing law enforcement purpose, the Symington case would indicate that at this point—if there's no further investigation being undertaken, for example, in a related matter—the copies should be destroyed under the current provisions.

[*Translation*]

Mr. Marc Lemay: Are you going to give me a copy of it?

[*English*]

Mr. Shawn Scromeda: Sure.

[*Translation*]

Mr. Marc Lemay: Then that's no longer a problem for me. We'll withdraw it. I withdraw it, Mr. Chairman. I'm satisfied with the explanation that's been given to me. So I'm going to withdraw my amendment. Please give me a copy of the decision. Thank you.

● (1145)

[*English*]

The Chair: Okay.

(Clauses 11 to 16 inclusive agreed to on division)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the chair report the bill to the House?

Some hon. members: Agreed.

The Chair: We shall not have any necessity of reprinting the bill.

This concludes our consideration of clause-by-clause of Bill C-53.

We'll now move on to Mr. Breitkreuz's motion on handguns.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): Thank you, Mr. Chair.

Everyone will recall that on June 28, 2005, the committee, in a six-to-five vote, negatived my motion to deal with this important issue, but Mr. Comartin made it very clear during that debate.... I'd like to quote from what he said, because it has given me the impetus to do what I'm doing:

> This is really a matter of the trust between us, as members of this House, the owners of those guns, and quite frankly the members of the House when Bill C-10A went through. It seemed to me, at that point, that the government as a whole—all parties—had said we were going to deal with this particular issue. I agree with Mr. Ménard. The guns generally, unless they're being used for practice shooting—and I think this would be fairly rare—are dangerous weapons. But that issue was addressed and dealt with in Bill C-10A, presumably, with at least the majority of the House of Commons agreeing that that was how we were going to deal with the problem. We can't avoid our responsibility to see that legislation carried through. There's obviously been an error made just because of the reality of the lateness of the bill coming into effect. I don't think we have the right, as members of Parliament, to stand back and say it's too bad. Our responsibility is to cure this problem.

That's the end of the quote from Mr. Comartin.

Mr. Marceau responded, and I'll refresh your memory on that as well—

Mr. Richard Marceau: I did?

Mr. Garry Breitkreuz: Yes.

Mr. Marceau said:

> Could we make Joe's suggestion a motion on which we could vote?

—and that's what I'm doing today—

> In that way, we could move forward the issue that Garry wanted us to review. We could do that on the basis of consensus, since this is what we all want, if I understand correctly.

That's the end of Mr. Marceau's quote.

And then, after we took the vote, the committee chair said, and I would like to quote again:

> I think there is a possibility that the motion could be brought, but certainly not today, because I don't feel you have consent to do that. Someone might want to consider that for the fall.

That's the end of the quote.

Well, this time has now come, so I am bringing forth a motion, which I think is self-explanatory, but let me read into the record the preamble that goes before it:

> Whereas the amendment to Firearms Act section 12(6.1) passed by Parliament in Bill C-10A [Royal Assent: May 13, 2003 Statutes of Canada: 2003, c. 8] has not been implemented due to an inadvertent delay bringing these amendments into force; And Whereas, the clear intent of Parliament by amending the Firearms Act was to "grandfather" the law-abiding owners of the handguns referred to in section 12(6.1); And Whereas, the Law and Government Division of the Parliamentary Information and Research Service have confirmed that section 12(6.1) can not be implemented without a further amendment to the Firearms Act; And Whereas, the Minister of Public Safety has informed the Justice Committee that the government has no intention of bringing in a further amendment to the Firearms Act to implement the intent of Parliament to grandfather these law-abiding handgun owners; THEREFORE BE IT RESOLVED, that the Justice Committee examine the issue and report to the House with their recommendations with respect to bringing section 12(6.1) of the Firearms Act into full force and effect.

In plain English, we, in Parliament, passed a bill with the intent of grandfathering these owners, but because the government inadvertently did not proclaim the legislation in time, these people could not legally register their firearms. I am trying to correct that.

It doesn't matter if the government has changed its position, the legislation was passed. In fact, I think you're all aware that on September 29, 2005, the Minister of Public Safety wrote us a letter stating her objections to implementing section 12.(6.1) of the Firearms Act, but her personal objections make no difference to this debate. Parliament already passed the section and it is the government's and the minister's duty to implement the law as it was passed. It doesn't matter if they have now changed their position.

There was some concern during the June 28 meeting that we didn't have an amendment to consider, but we now do. I attached my clause, Bill C-433, that private member's bill, to my motion, which you have probably seen. If you haven't, I can show it to you.

● (1150)

Hon. Roy Cullen: A point of order.

Mr. Garry Breitkreuz: I would like to summarize, in conclusion here. It will only take me—

The Chair: Excuse me, Mr. Breitkreuz.

Mr. Cullen, you have a point of order.

Hon. Roy Cullen: Mr. Chair, I have a couple of procedural questions for you to consider.

One, the committee dealt with this motion on June 28, 2005, and it was defeated six to five. I'd like a formal ruling from you, sir, as to why we're dealing with this again, if the motion was already defeated.

My second procedural question concerns Mr. Breitkreuz's private member's bill in the House dealing with precisely the same question and looking for the same remedy. Procedurally, why would this committee be dealing with this motion when there's a private member's bill that deals with the same topic and proposes the same remedies and that is on the floor of the House right now?

Mr. Garry Breitkreuz: Mr. Chair, can I respond to the point of order?

The Chair: Mr. Cullen, as long as it's not identical, I believe the motion is in order to proceed. I would rule that this motion can proceed.

Mr. Garry Breitkreuz: Mr. Cullen, the committee directed me to do this. I'm following the direction of the committee, so how can you object when you sat here and agreed to what we were doing? Now I am complying with the committee's direction, and the chair of the committee said to bring it forth in the fall. Well, it's November.

The Chair: Is this the same point of order?

Hon. Roy Cullen: Yes. If you could elaborate, does the remedy or the motion have to alter substantively what was said in the original motion? Or is it just a matter of putting an "and", or "the", or a comma? I'm confused. I don't know why we're dealing with the same motion again.

The Chair: It's a matter of interpretation. I don't have the original motion before us. Maybe our clerk could provide us with that, and I'll do the comparison.

It was the indication of this committee at the time that we may revisit this in the fall after we resumed sitting.

Hon. Roy Cullen: On my second point, why are we dealing with it if there's a private member's bill on the floor of the House? It's going to take up time in the chamber, and now it's going to take up time at committee. If the bill is accepted in principle in the House, probably it will be referred to this committee. We'd be dealing with it the second time. Why are we dealing with it potentially twice or three times?

Mr. Garry Breitkreuz: This committee directed me to come up with a solution to the problem, so I put it on the public record as per your request. You and I know that private members' bills don't automatically come before Parliament in any kind of a timeframe. At the end of the year, these people will become criminals if we don't act. That's going to result in a lot of drawn-out court cases, which the government would likely lose. I believe it's in your best interests to deal with this issue in the affirmative.

Hon. Roy Cullen: I'll deal with the substantive issues later. I had a couple of procedural questions I wanted to raise first.

Mr. Garry Breitkreuz: Okay, let me conclude. It will take me a couple of minutes here.

Hon. Roy Cullen: The chair is ruling on that, isn't he?

Mr. Garry Breitkreuz: I'm sorry....

The Chair: I'm comparing the two motions. They aren't substantially the same, although the intent is obviously the same.

I would say there's a sufficient difference that I wouldn't rule it out of order as the same motion.

Hon. Roy Cullen: Okay.

Mr. Chair, what about the second question? Are there any House rules to deal with things two or three times on the floor of the House, at committee...motions? That wouldn't make any sense to me.

The Chair: I'm not aware of any rules. Perhaps our clerk or researchers can provide some insight.

● (1155)

Mr. Philip Rosen (Committee Researcher): I'm not aware of any rules either, Chair. Of course, you could see that a private member's bill would deal with a particular issue, and if that were the rule, it would prevent a lot of issues being dealt with in committee. I'm not aware of a rule that allows that.

Hon. Roy Cullen: Okay, I'll come back to the substantive issues later.

Thank you.

The Chair: Thank you, Mr. Cullen.

Mr. Breitkreuz, do you want to conclude?

Mr. Garry Breitkreuz: Yes. I'm just really surprised that the government is now trying to use procedure to block this.

I just want to read into the record here today what I said when I introduced the bill on October 26, and I quote:

> The federal government issued the owners of these firearms a firearms acquisition certificate before they purchased these handguns. Then the government approved the registration of their handguns in accordance with the law that existed up until December 1, 1998.

They complied fully with the law then and they want to fully comply with the law now, the law passed by Parliament.

> All these law-abiding gun owners want to do is re-register their handguns in accordance with the Firearms Act as it exists today. The problem is that the government failed to implement the will of Parliament because it did not bring the Bill C-10A amendments into force in time to allow these law-abiding firearms owners to take advantage of the grandfathering privileges we provided for them in section 12(6.1).

My simple amendment to the Firearms Act would remedy this dilemma and save the government embarrassment, and of course the cost of hundreds of lawsuits.

And Mr. Cullen, I compliment you on what you said as the minister's parliamentary secretary on cutting to the heart of this issue. You told the newspapers on October 24 that handguns in the right hands are not a problem. And of course I agree with you; you're right. Parliament has already decided that the handguns in subsection 12(6) are in the right hands. So I urge the committee to get an amendment into the House and finish the job Parliament started in Bill C-10A, and I appreciate the opportunity to bring this forward once again.

The Chair: Thank you, Mr. Breitkreuz.

We have on the speakers list Mr. Cullen, Ms. Sgro, Mr. Marceau, and Mr. Toews.

Mr. Cullen, you're first.

Hon. Roy Cullen: Thank you, Mr. Chair.

Just on that first point, about what I said about handguns, I've issued some clarifying letters that have been published in a couple of papers. To put it into context, I stand by what I said: handguns in the right hands are not the problem. The best example is registered handguns in the hands of licensed law enforcement officers. There are probably others as well, such as the legitimate people who use them at firing ranges and so on. My remarks were made in the context of someone proposing that the government sue the handgun manufacturers, which I personally have a problem with. Suing tobacco manufacturers is one thing—at least there's some sort of cause and effect—but if you want to sue handgun manufacturers, I mean, why not just ban handguns? But I don't think that's a reasonable proposition either. At any rate, I just wanted to put that comment into context.

I'm absolutely amazed that Mr. Breitkreuz would be pursuing this matter. We were in Toronto last week with the Prime Minister, talking about a very serious and aggressive initiative with respect to handguns and gun violence in the city of Toronto. It's not limited to the city of Toronto, but we certainly have had a spate of violence with handguns there. Our government is very concerned, as is one of your colleagues with a private member's bill, about crimes committed with handguns. In fact, these guns—let's be very clear—are what we call the “Saturday night specials”. These are the handguns that are used by criminals to commit criminal acts.

There's another part of this that I think is important to put on the record, Mr. Chairman. We know that Mr. Breitkreuz has a long history of being against the gun registry and being supportive of gun owners. That's fine, but the individuals who acquired and registered their first subsection 12(6) handguns between February 14, 1995, and December 1, 1998, were informed in writing that they would not be permitted to keep the firearms should the Firearms Act pass as proposed.

Perhaps I could just put into the record some excerpts of what they were provided with in writing. It goes like this:

> Notice to prospective handgun purchasers: If you intend to acquire a 25- or a 32-calibre handgun, or a handgun with a barrel length of 105 mm or less, after February 14, 1995, that is not already registered or a subject of an application to register dated no later than that date, please read this note carefully.
>
> Present registrants of any of the above categories of guns

—and they go into the different categories—

> under the proposed legislation be permitted to continue to possess them and trade amongst themselves. Note that certain conditions may apply. Handguns that were registered or an application made by February 14, 1995, and that were manufactured before 1946 are exempt if they are being transferred to a spouse or brother, sister, child, or grandchild that were an eligible individual. Individuals who acquire any such handguns for the first time after February 14, 1995, will not qualify to possess them after passage of the legislation if it is passed in its present form. These firearms

—this is in bold and underlined—

> will be seized without grandfathering or compensation.

Then they were asked to sign it and date it, after:

> I have read and understood the foregoing.

Mr. Breitkreuz mentioned lawsuits. Well, what about the 2,500 individuals who complied with the prohibition and with the grandfathering provisions? What about Parliament's undertaking to them?

We also know, Mr. Chair, that these individuals have options. Before the end of December, they can turn them in or they can sell or transfer them to a grandfathered individual. The rules were very clear when this happened. They knew what they were getting into.

I'm pleased to note that in the last debate we had on this very same topic, the Bloc Québécois' Mr. Ménard, who has a lot of experience in these matters, said the following:

> ...we are going to be voting against the motion put forward by our Conservative colleague. In my opinion, it would simply encourage those who possess these firearms....These weapons are dangerous, and I do not think we should encourage their distribution.

● (1200)

He went on to say:

> I feel no sympathy for these people. Why would someone want to possess a weapon that can kill and has no other use except to kill or to inflict serious injury unless he or she wants to use it or sell it illegally?

These are Saturday night specials, Mr. Chairman. Given the extent of handgun violence in our cities, I would urge this committee to defeat this motion.

The Chair: Thank you.

Ms. Sgro.

Hon. Judy Sgro (York West, Lib.): I'll echo what Minister Cullen has said. I clearly have no sympathy on this issue. I would actually introduce a motion to ban all handguns in Canada, if I thought I could do that somewhere. I am clearly not doing that at the moment. I have no sympathy for any of them.

If you talk with our police officers who live in our cities in some of these areas, people are not driving around with shotguns in cars; they are driving around with handguns. I think the faster and the more easily we can completely eliminate handguns in this country, the far better off we will be. They're far too easy to hide, and they're far too easily stolen.

I think that for us to turn around and weaken our legislation by allowing this is clearly a waste of our time. These are weapons that are used to hurt people. You can tell me that you want to go for target practice, but I don't see the benefit of having handguns in the country.

I think that we should move on to the other major issues that we have on our agenda and not waste any more time on this one.

The Chair: Thank you, Ms. Sgro.

Mr. Marceau.

[*Translation*]

Mr. Richard Marceau: I said nothing.

Mr. Marc Lemay: For the moment.

[*English*]

The Chair: Mr. Toews.

Mr. Vic Toews: I think the issue here is on more than dealing with handguns. To me that issue is quite peripheral to what the issue is here.

I'm concerned that Parliament made either a legislative commitment or another commitment to a certain group of people. Whether we agree or not on the right for these individuals to possess a handgun is quite irrelevant. What I'm concerned about, and what this motion is asking for, is that we examine the issue.

My concern is that we've made a commitment to individuals. That commitment has apparently been broken. I simply want to know why the Government of Canada is going back on its word.

Whether I would ultimately support the motion in terms of having these handguns registered is an entirely different issue for me. I'm concerned that we made a commitment, and to now breach that commitment causes me some concern. It's why I would support this motion, not on the issue of handguns but rather on a broken commitment. This was a process where it was recommended that we proceed in this way, and that's why Mr. Breitkreuz has done this.

Where does this stand in terms of our integrity as parliamentarians when commitments have been made? Commitments have been made, and they've not been followed. Let's explain that very properly, rather than doing it in a preliminary way like this. That's all I am suggesting.

● (1205)

[*Translation*]

The Chair: Mr. Lemay.

Mr. Marc Lemay: We'll vote against Mr. Breitkreuz's motion for a number of reasons.

The first reason — and it's very important to emphasize this — is that individuals who acquired handguns between February 14, 1995 and December 1, 1998 knew that they had to get rid of them before the act went into effect. That doesn't affect gun collectors because, once the weapon is neutralized, they can obtain and keep their handgun. So we can't agree to that, that's clear, particularly since these weapons are dangerous and, especially, can easily be concealed.

They're not called handguns for no reason: they're very small. That, among other reasons, is why we oppose the motion. But it's especially because their owners knew they had to dispose of them, get rid of them before the act went into effect. Ignorance of the law is no defence, as a former Supreme Court justice I know well would say.

Thank you.

[*English*]

The Chair: Mr. Breitkreuz, a final word.

Mr. Garry Breitkreuz: There is an error in what you have said. Many people acquired these very same handguns during that period and are allowed to keep them legally and register them. The government screwed up. The government passed legislation. Mr. Cullen said a letter was sent to these people. That letter said that if legislation wasn't passed...but the legislation was passed. The government screwed up. They did not proclaim the legislation in time. So you are actually supporting the incompetence of the government if you do not support my motion. It's as clear as that.

Mr. Cullen said these people knew they couldn't keep.... The legislation was passed authorizing them to keep them. Many people acquired those exactly identical guns by the thousands, and are allowed to keep them, but a very small group is affected because their registration certificates expired and at the end of this year they can't get them, yet the legislation was on the books. That's what I'm trying to correct. It's as simple as that.

I don't understand. All these other arguments are really irrelevant. That's the issue. If we start focusing on all kinds of other things, we've missed the point of what I'm trying to do. You're not pro-gun control, you're not pro-gun registry or anti-gun registry; you are trying to ensure that the law of this land is kept. When we as Parliament speak, that voice should be respected. It was not. For the government to now go back on that is unacceptable, and I want to correct that. That's why I've brought this forward.

I hope you will focus on what I am trying to do here, not on all kinds of other peripheral issues.

Thank you.

The Chair: Mr. Cullen, and Ms. Sgro again.

Hon. Roy Cullen: Thank you, Mr. Chair.

I just wanted to correct Mr. Breitkreuz. He quoted me, and I was quoting from the notice to prospective handgun purchasers who bought these handguns. In this paragraph it says:

> Individuals who acquire any such handguns for the first time after February 14, 1995, will not qualify to possess them after passage of the legislation. If it is passed in its present form these firearms will be seized without grandfathering or compensation.

Mr. Breitkreuz knows full well that what happened here was this bill got split into 10A and 10B. There were certain grandfathering provisions because the legislation was not passed—

● (1210)

Mr. Garry Breitkreuz: It was passed.

Hon. Roy Cullen: It was not passed in the timelines that were originally contemplated.

Mr. Garry Breitkreuz: That's not true.

Hon. Roy Cullen: That's creating this problem.

So the point is that there were 2,500 individuals who complied with the grandfathering provisions, and what about Parliament's commitment to them as well?

I rest my case, Mr. Chairman. We should just get on and vote on this.

Mr. Garry Breitkreuz: Can I just...? That's not true.

The Chair: We have Mr. Thompson.

Thank you, Mr. Cullen.

Mr. Thompson, and I'll give you one final word, Mr. Breitkreuz, afterwards and then we'll call the question.

Mr. Myron Thompson (Wild Rose, CPC): I'll be very short.

I don't see how we can, in good conscience, not support this motion. I mean, we did, as legislators, pass this legislation to protect these people. They're tax-paying people. They're law-abiding people. They need the protection of which they're so deserving.

Why are we balking on this? We're going to make them criminals. That's exactly what it will do if we don't pursue this. I really fail to understand why people with any common sense would want to criminalize people who don't deserve to be.

The Chair: Thank you, Mr. Thompson.

Mr. Breitkreuz. Again, this is the final word and then we'll call the question.

Mr. Garry Breitkreuz: Yes, I go back to what Mr. Cullen said. We passed the legislation in Parliament. The problem was that it was not proclaimed. You know the procedure whereby you can pass legislation, but then it has to be proclaimed. There is the issue. It's not that we didn't pass the legislation. We actually passed the legislation allowing these people to register their firearms, and now, because the government didn't proclaim it, they can't register them. It's as simple as that. Don't you recognize that's the issue?

Hon. Roy Cullen: We're going to agree to disagree on that.

Mr. Garry Breitkreuz: Yes, that's....

The Chair: Okay.

I'm calling for the question.

Mr. Garry Breitkreuz: Could we have a recorded vote, please?

The Chair: A recorded vote?

Mr. Garry Breitkreuz: Just so we know who's voted which way, yes.

The Chair: Okay.

(Motion negatived: nays 6; yeas 5)

The Chair: Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chairman, I have a question to ask, now that the debate is over. I have nothing against the fact that Mr. Breitkreuz introduced that motion, but we weren't informed of the fact. I want to know how this works. Do I have to bring along all the motions we may potentially debate at a committee meeting? How does it really work? I had my staff go get the motion. I had all my documents and I took notes in order to be able to answer questions. I would have liked us to have a slightly longer debate, but it's done.

[*English*]

The Chair: Thank you, Mr. Lemay.

The procedure is that as long as there is a 48-hour notice of a motion, it can be debated any time thereafter. But you made a good practical point that members of the committee would like to perhaps have notice of when this motion is coming forward. Mr. Breitkreuz was not prepared to go forward with it at the first meeting after the 48-hour notice. He was prepared to go ahead today. But it's probably a good comment on your part that additional notice should be given on exactly when that member prefers to have his motion—-

Mr. Garry Breitkreuz: To my Bloc colleague, I didn't know I was going to do this today either. It's because we had time that we put it on the agenda.

[*Translation*]

Mr. Marc Lemay: All right.

[*English*]

The Chair: As a housekeeping item, on the supplementary estimates both Minister Cotler and Ms. McLellan are confirmed for December 1. Mr. Cotler will go between 11 and 12:30, and Minister McLellan will go from 12:30 until 2.

Hon. Roy Cullen: Will lunch be served?

The Chair: Lunch will be served, but I will bring to your attention that it will be televised, so it may be uncomplimentary or unflattering to be stuffing your mouth while on TV.

[*Translation*]

Mr. Marc Lemay: All right.

[*English*]

The Chair: You may wish to go to the back of the room to munch.

[*Translation*]

Mr. Marc Lemay: All right.

● (1215)

[*English*]

The Chair: On another point, on December 1 our liaison committee will consider any travel budgets from January to March. I don't feel that we have anything on board requiring travel, except perhaps Mr. Thompson's consideration of his desire to travel to various prisons. But from a practical aspect—-

Mr. Vic Toews: You know you won't get there by committing a crime in this country, so we have to send him through the justice committee.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Maybe we'll find them all.

The Chair: I propose a meeting of the steering committee at the end of our consideration of Mr. Steve Sullivan on Bill C-215 on Thursday, November 17. Those involved will be Mr. Comartin, Mr. Marceau, and Mr. Breitkreuz. Hopefully we won't take up the full two hours and we can consider future business after that meeting—or we might go a little bit longer, just those four people and me.

Mr. Thompson.

Mr. Myron Thompson: It might be better for the committee to look at my motion and proposal after the new year, because this is not going to be a two-week venture. This is a major project, and maybe we could consider it early in the spring next year.

The problem has been going on for far too long anyway, and it's completely out of control in a lot of places. If we don't take the time to serve it justice we won't be doing it any good. I recommend we move that motion to the first session we have in the spring, or whenever.

The Chair: We'll pick a specific date in the new year and let all the committee know.

Are there any other comments?

There being none, the meeting is adjourned.

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