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—
Chair

Mr. John Maloney

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Monday, November 28, 2005

• (1130)

[English]

The Chair (Mr. John Maloney (Welland, Lib.)): We are now opening the public session of the 63rd meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness.

I have some preliminary comments, and they deal with the following amendments: Liberal amendment 2, Liberal amendment 3, Liberal amendment 4, Liberal amendment 6, Liberal amendment 8, Liberal amendment 10, Liberal amendment 12, Liberal amendment 14, Liberal amendment 16, Liberal amendment 18, and Liberal amendment 20.

We have reviewed these, and in fact they're your amendments, Mr....

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Borys.

Some hon. members: Oh, oh!

The Chair: *Je m'excuse*, Borys, Mr. Wrzesnewskyj.

The problem is that Bill C-215 proposes a regime of consecutive sentencing for use of a firearm in the commission of an offence. The amendments I've just listed, proposed here, seek to give discretion to the judge imposing their first sentence, even to the extent of not imposing the minimum consecutive sentence.

I reference Marleau and Montpetit at page 654, which states as follows: An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

Consequently, it's my view, and the ruling of the chair, that these amendments go against the principle of Bill C-215, and are therefore inadmissible.

Yes, Mr. Toews.

Mr. Vic Toews (Provencher, CPC): I'd invite Borys to make the appropriate motion to challenge the ruling of the chair.

The Chair: Go ahead, Mr....

Mr. Borys Wrzesnewskyj: Mr. Chair, there were a number of issues raised about the bill, and I'd proposed a number of friendly amendments to assuage some of the issues that may have provided fodder for a court challenge to this bill. So that was my intent. My intent was to provide for an escape clause in unusual sets of circumstances.

If this escape clause, the way it's been worded, is out of order, according to your ruling, or rather just doesn't fit the intent of the bill itself, then I'm more than happy to pull those ones out. I assume, however, that my previously submitted amendments are in order.

The Chair: Yes, it's just those amendments that I referenced in my preamble. The following amendments have been ruled out of order by me as chair: Liberal amendment 2, Liberal amendment 3, Liberal amendment 4, Liberal amendment 6, Liberal amendment 8, Liberal amendment 10, Liberal amendment 12, Liberal amendment 14, Liberal amendment 16, Liberal amendment 18, and Liberal amendment 20.

Yes, Mr....

Mr. Borys Wrzesnewskyj: Especially taking into account that we won't have an opportunity, because of the particular dynamic we're in in the House of Commons, to resubmit amendments that would have the same intent but would be in order, and because there's not a chance, should the government fall today, that this particular bill will proceed, I think it's important that the intent be clear. The intent was to provide friendly amendments. And for future reference, because I'm sure something of a similar sort...whether from a private member's bill or from the government, when it comes forward. I believe it is important that when we do eventually enact mandatory minimums, we do take into account that there may be exceptional—and I have to stress exceptional—sets of circumstances, and that perhaps, in individual cases, an escape clause be part of such a bill.

I just wanted to put that on record.

Thank you.

• (1135)

The Chair: Thank you for your comments.

Any other comments? Yes, Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Do I understand that all of those are being withdrawn?

The Chair: That's correct, Mr. Wrzesnewskyj, that you're withdrawing those amendments?

Mr. Borys Wrzesnewskyj: That you listed? Yes.

The Chair: Yes, Mr. Comartin.

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

The Chair: Your amendment is in order, though, if that's what you're concerned about.

There being no objections, it would appear that the ruling of the chair is sustained. We'll move on to clause-by-clause consideration.

(On clause 1)

The Chair: Liberal amendment 1, Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: Once again, I think the amendment itself is quite clear. It is a friendly amendment. It was discussed with the sponsor of this private member's bill. This and the subsequent amendments deal with the component of the original bill that talked about fifteen years. There may have been a set of circumstances that could have provided for a challenge to the Supreme Court, and as I said, this is a friendly amendment to try to deal with that particular issue.

The Chair: Comments? Yes, Mr. Macklin.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): At some point, to comment on Bill C-215 in its entirety—and this is a point that's likely appropriate to make—if you reflect back, starting originally with Mr. Daubney from the Department of Justice, the Canadian Bar Association, last Thursday's witnesses, representatives of other NGOs active in criminal justice, the Canadian Council on Criminal Defence Lawyers, and Professor Kent Roach, one of the leading scholars in Canada on charter issues, I think we have heard that this whole bill, really, raises serious constitutional concerns.

Although this amendment that's being put forward, amendment 1, is attempting to deal with this, I don't think it comes even close. Even Steve Sullivan, who is president of the Canadian Resource Centre for Victims of Crime, agreed that there was credence to the concerns raised by the Department of Justice about the numbers in the bill—that is, numbers speaking to the amount of time one would get—and as to whether they would be constitutional.

Other witnesses have found that the bill as tabled contravenes section 12 of the Charter of Rights and Freedoms. I don't believe the amendment that has been proposed here, once again, is bringing us close to where we should be in terms of charter compliance.

If we go forward, and Bill C-215 were ever to become enforced—by some fluke, I suppose, based on today's situation—in its present form, it would clearly be subject to a charter challenge. I don't believe any of the amendments that have been presented today would get us to the point where we could save this bill.

The Supreme Court did strike down the seven-year mandatory minimum penalty for drug importation—that was trafficking in *R. v. Smith*—but upheld the four-year minimum in *R. v. Morrisey* for criminal negligence causing death. Again, I think the whole concept here is that you have to manoeuvre all of the penalty provisions that are proposed into the limited room to manoeuvre, I guess you would say, as seen by our justice system. Clearly, to have this viable, we have to work within that context.

I've asked justice department officials to examine and look at these amendments that were being proposed, and in their opinion, we couldn't find any that would in effect deal with these serious charter flaws that the bill reflected. Almost all of them would have had the effect of raising the mandatory minimum penalty to at least ten years, and in some circumstances we don't think that could have been sustained under the charter.

No amendment proposes to eliminate clause 2, which has the five-, ten-, and fifteen-year consecutive mandatory minimum penalties for murder. Murder already carries a mandatory minimum of life imprisonment, so one can't really, in all fairness and candour, attach an additional mandatory minimum on top of life. I think that brings us into not only disrepute but ridicule. In addition to the charter flaws that are in this, the entire approach of the bill is problematic in that it's not really sound in criminal policy and sentencing policy.

Each and every one of us feels, and I mentioned this the other day, that in fact this bill has helped us focus on a very important issue. It is an issue that deserves study and a response. But I respectfully submit that this response, even with the amendments, is not the response that will be able to deal with the issues in a constructive way. Rather, we would be sort of putting ourselves in a position where the bill would simply be a key to open a charter challenge, and likely a successful charter challenge.

I just want to put it on the record that although we're very appreciative, from my perspective, of the bill being here to help us go forward with the debate, in the end I don't think it would have been helpful. As I say, it's doubtful it will ever go before the House again, but had it gone forward, I certainly would have had some serious concerns.

● (1140)

I just thought I should put on the record today the principle that we're driving and striving to achieve, and that is to deal with those who have guns and who are involved in gang activities and violence within our communities. It absolutely needs to be denounced, but this denunciation goes way beyond the ability to be effective; therefore, I think it loses its ultimate goal.

So I thank the member for bringing it forward, but I believe this is where it should likely end.

The Chair: Thank you, Mr. Macklin.

Any other comments? Vic Toews.

Mr. Vic Toews: One of the things that concerns me is that the government continuously relies on constitutional opinions but never produces these. In fact, the example raised now was about the striking down of the seven-year minimum—a very different situation, the seven-year minimum, in the importation of drugs. That importation dealt with minuscule amounts of even marijuana, and it is substantially different from this kind of situation. This deals with a very specific, recognized, and stated threat by the Supreme Court of Canada—substantially different.

The precedents cited by the parliamentary secretary simply don't support what he is saying, and I would actually like to see an opinion from the Department of Justice confirming that. In the absence of that kind of an opinion, I cannot accept simply the political statement of the parliamentary secretary, who is acting on behalf of the minister, who in turn has consistently demonstrated his professional, personal, and philosophical opposition to mandatory minimum sentences.

The Chair: Thank you, Mr. Toews.

Any other comments? If not, I'll call the question.

Shall Liberal amendment 1 carry?

(Amendment agreed to on division—[See *Minutes of Proceedings*])

The Chair: Shall clause 1 as amended carry?

Some hon. members: No.

Some hon. members: Carried.

Some hon. members: Carried on division.

The Chair: Maybe we should have a vote.

Mr. Garry Breitzkreuz (Yorkton—Melville, CPC): They agreed to carry it on division.

The Chair: But I heard “no” over here.

Carried on division...?

[*Translation*]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): I'm curious to find out what members opposite think. I'd like a recorded division, please.

[*English*]

The Chair: Recorded vote, please, Madam Clerk.

(Clause 1 as amended agreed to: yeas 6; nays 5)

• (1145)

I think we'd better call for a recorded vote on clause 2 as well.

(Clause 2 agreed to: yeas 6; nays 5)

(On clause 3)

Mr. Wrzesnewskyj, are you going to move Liberal amendment 5?

Mr. Borys Wrzesnewskyj: Yes, I will move Liberal amendment 5.

The Chair: Do you have an explanation?

Mr. Borys Wrzesnewskyj: The intention is the same as what I'd previously stated with regard to all of my amendments, which are friendly amendments. It's to address some of the concerns raised in terms of constitutionality.

The Chair: Any other comments?

Shall Liberal amendment 5 carry?

(Amendment agreed to on division—[See *Minutes of Proceedings*])

(Clause 3 as amended agreed to on division)

(On clause 4)

The Chair: Shall Liberal amendment 7 carry?

(Amendment agreed to on division—[See *Minutes of Proceedings*])

(Clause 4 as amended agreed to on division)

(On clause 5)

The Chair: Mr. Wrzesnewskyj, I believe Liberal amendment 9 is yours. Would you like to make that motion?

Mr. Borys Wrzesnewskyj: I would just be repeating my previous comments, thank you, Mr. Chair.

The Chair: But you wish to make that motion?

Mr. Borys Wrzesnewskyj: Yes.

The Chair: Does Liberal amendment 9 carry?

(Amendment agreed to on division—[See *Minutes of Proceedings*])

(Clause 5 as amended agreed to on division)

(On clause 6)

The Chair: Liberal amendment 11, Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: I'd like to move it.

The Chair: No comments on amendment 11?

(Amendment agreed to on division—[See *Minutes of Proceedings*])

(Clause 6 as amended agreed to on division)

(On clause 7)

The Chair: Liberal amendment 13, Mr. Wrzesnewskyj.

• (1150)

Mr. Borys Wrzesnewskyj: I'd like to move it.

The Chair: Any comments?

Mr. Vic Toews: A good amendment.

The Chair: Shall Liberal amendment 13 carry?

(Amendment agreed to on division—[See *Minutes of Proceedings*])

(Clause 7 as amended agreed to on division)

(On clause 8)

The Chair: Liberal amendment 15, Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: So moved.

The Chair: Any comments?

Shall Liberal amendment 15 carry?

(Amendment agreed to on division—[See *Minutes of Proceedings*])

(Clause 8 as amended agreed to on division)

(On clause 9)

The Chair: Liberal amendment 17, Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: So moved.

The Chair: Any comment?

Mr. Vic Toews: Well done.

The Chair: Shall Liberal amendment 17 carry?

(Amendment agreed to on division—[See *Minutes of Proceedings*])

(Clause 9 as amended agreed to on division)

(On clause 10)

The Chair: Liberal amendment 19, Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: So moved.

The Chair: Any comments?

Shall Liberal amendment 19 carry?

(Amendment agreed to on division—[See Minutes of Proceedings])

(Clause 10 as amended agreed to on division)

(On clause 11)

The Chair: Liberal amendment 21, Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: So moved.

The Chair: Any comments?

Shall Liberal amendment 21 carry?

(Amendment agreed to on division—[See Minutes of Proceedings])

(Clause 11 as amended agreed to on division)

The Chair: We have a new clause 12.

Mr. Comartin, would you like to move that, with any discussion?

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

It's fairly straightforward. It would be referred to, in its traditional way, as a sunset clause, that the provisions of this bill would cease to have any effect after five years or, if Parliament is not sitting, within 90 days of their resuming sitting.

My intent, similar to Borys', is to try to inoculate this from the challenge that I expect inevitably will come at some point to this bill. The communication in effect, and the argument we would have before the courts, would be to the effect that we are faced with a significant crisis with regard to gun crime in this country; that the legislature has a responsibility to deal with that issue, and to deal with it as effectively and efficiently as they deem appropriate; and to recognize that at some stage it may very well be unnecessary to have what everybody agrees are very stiff prison terms if in fact the crisis can be abated and we can reduce our violent crime rate to what it was before this last year or two.

The argument before the Supreme Court is that we've identified a crisis, we are reacting to it within the appropriate framework of the legislature, but we're recognizing that at some stage it will no longer be necessary. So we've put in a sunset clause.

I would move the amendment, Mr. Chair.

The Chair: Our legislative clerk has a comment, and he'd like clarification from Mr. Comartin. That may affect what others have to say as well.

Mr. Clerk.

Mr. Jean-Francois Lafleur (Procedural Clerk): Good morning. Actually, I certainly wouldn't want to comment on the bill; I'd just ask for some kind of direction.

The first part of the amendment states: The amendments made by this Act cease to have effect on the day that is five years after the day on which this Act comes into force or,

—and this is in the next part—
if Parliament is not then in session

It's creating some kind of mechanism to study, I presume—and correct me if I'm wrong, Mr. Comartin—the said sunset clause. It's not quite clear for us if you wanted to include an action, or...?

• (1155)

[Translation]

Mr. Joe Comartin: The purpose of this initiative is to give Parliament an opportunity to pass another resolution, or another amendment, if it wants the act to remain in effect. I do not want the act to be reviewed. I want the amendments to cease to have effect at that point in time.

Mr. Jean-Francois Lafleur: I want to be very clear on this. The review provision kicks in five years after the coming into force of the act. The second part of your amendment would allow the relevance of the act to be reconsidered.

Mr. Joe Comartin: No, I'm not asking that we study the act, but simply that Parliament come to a decision about the act.

Mr. Jean-Francois Lafleur: I understand. Thank you for clarifying that for me.

Mr. Joe Comartin: If Parliament decides that the act should remain in effect, then it will have to take steps to ensure that happens.

Mr. Jean-Francois Lafleur: I understand. Thank you very much.

[English]

The Chair: Mr. Macklin, your discussion is on the discourse between—

Hon. Paul Harold Macklin: On the amendment that's proposed.

The Chair: If it's not on Mr. Comartin's discussion, I'll go to Mr. Breitzkreuz first.

Hon. Paul Harold Macklin: It's on Mr. Comartin's—

The Chair: Discussion with the clerk?

Hon. Paul Harold Macklin: Well, as to the meaning and the intent of 90 days. Is that 90 sitting days, first of all? Secondly, if we're really being pragmatic about this, what amount of time do you think is required for a Parliament to initiate and complete an amendment through all stages and through both the Commons and the Senate? I think in practical terms you would be cutting yourself extraordinarily short. I don't know whether it would be possible, short of absolute unanimous consent in Parliament, to have any amendment that would retain this within that period of time.

As I say, I raise that to be pragmatic. If we're going to approach this in a meaningful way, I think that needs to be examined.

The Chair: Mr. Comartin.

Mr. Joe Comartin: We just ran four bills through last week, three of which were tabled and passed in less than 60 days—less than 30 days, I think, in one case—so it's quite possible to do it. If we are in a crisis situation at that point, it'll behoove the Parliament to move expeditiously.

The Chair: Thank you.

Mr. Breitzkreuz.

Mr. Garry Breitzkreuz: Thank you, Mr. Chair.

My concerns are along a similar vein. Nowhere here is it specified clearly that a review is mandated. And we know how things operate around here; anybody who is not in favour of this could drag out any kind of a review process.

I think I could support this if there was a review mandated by Parliament after five years and then a recommendation made. To simply have a sunset clause that clearly states that it will cease to come into force is not, I think, acceptable. So I would oppose it on the grounds that it does not clearly mandate a review by Parliament and time to do that review.

The Chair: Mr. Comartin, do you have a response?

Mr. Joe Comartin: First, Mr. Chair, I don't see a review as being a friendly amendment to this; it's not. I am very clear, and I think I've made it clear to this committee, that I'm generally opposed to minimum mandatory sentences, or consecutive ones, as we are doing here.

I'm prepared to support this bill on the basis that we are in a crisis with regard to gun crime in this country, and that we would support it, but I'm not prepared to do that indefinitely. I want my support to be contingent on this bill terminating after five years. If we are still faced with the crisis, then Parliament at that time, well in advance of the five years, can bring a resolution to the House that would extend the life of this bill. Otherwise, it's determinate.

The Chair: Mr. Thompson, then Mr. Toews.

Mr. Myron Thompson (Wild Rose, CPC): I'm pretty much on the same line with Mr. Breitzkreuz. I just fail to understand how anyone could determine that in five years that's going to be the end of the crisis. I don't have that crystal ball, and I don't know who does.

I think these kinds of things need to be kept in force until we're absolutely at some time when it may need to be discussed or reviewed in the future. But to specifically state a time of this nature, on this kind of crisis, really doesn't make any sense to me.

The object is to clean up this mess, get ourselves rid of this crisis, and let's hope it happens long before five years. I don't like to play guessing games or crystal ball games. Let's stick with what our intention is, let's fight this issue, and let the chips fall where they may.

• (1200)

The Chair: Thank you, Mr. Thompson.

Mr. Toews.

Mr. Vic Toews: I'd just like a clarification from the mover. Is the mover saying that his support for the bill, as amended to this point, is conditional upon the passing of this amendment?

Mr. Joe Comartin: Yes.

The Chair: Is there any further discussion?

I'll call the question on new clause 12.

An hon. member: Recorded vote.

The Chair: A recorded vote, please.

(Amendment agreed to: yeas 6, nays 5 [See *Minutes of Proceedings*])

The Chair: Shall Bill C-215 as amended carry? We'll have a recorded vote.

(Bill C-215 as amended agreed to: yeas 6, nays 5)

The Chair: Shall the title carry?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall the chair report Bill C-215 as amended to the House?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall the committee order a reprint of the bill as amended?

Some hon. members: Agreed.

The Chair: Are there any other points of interest or business here this morning?

In the event that we don't have our session tomorrow morning, I wish you all a good Christmas holiday and a good vacation—and that you, or some of us, come back refreshed.

Mr. Garry Breitzkreuz: Mr. Chair, we thank you for your work. You've been very fair, and we wish you the same as well from our side of the House.

The Chair: Thank you.

Mr. Marceau.

[*Translation*]

Mr. Richard Marceau: In a similar vein, Mr. Chairman, I too would like to wish Mr. Devillers, who is leaving us, the best of luck. He will not be running for re-election in his riding. I've had the good fortune of working with him on countless occasions on this committee and elsewhere. I greatly appreciated working with Paul.

On behalf of the Bloc Québécois, I wish him all the best in his future endeavours, whatever they may be.

[*English*]

The Chair: Thank you.

As a final word, I'd like to extend our thanks to our researchers and clerks for all the good work they've done in this session.

Some hon. members: Hear, hear!

The Chair: Adjourned.

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