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Chair

Mr. Bernard Patry

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● (1530)

[*Translation*]

The Chair (Mr. Bernard Patry (Pierrefonds—Dollard, Lib.)): Good morning. This is our second meeting.

[*English*]

This is the Legislative Committee on Bill C-27. Pursuant to the order of reference of Thursday, April 5, 2007, we are studying Bill C-27, An Act to amend the Criminal Code (dangerous offenders and recognizance to keep the peace).

Appearing in front of us now we have the pleasure of having Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada; and from the Department of Justice, Mr. Doug Hoover, senior official. Welcome to both of you.

Mr. Nicholson, please give your introductory remarks.

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada): Thank you very much, Mr. Chairman.

I'm pleased to be here with Mr. Doug Hoover from Justice Canada. He has been looking at this piece of legislation and this particular area of law for quite some time. He is an expert in the area and I'm pleased to have him join me today.

I'm pleased to have the opportunity to come before this legislative committee to talk about some of the significant reforms to the Criminal Code, in particular to section 810.1 and section 810.2, the peace bonds; and to part XXIV of the Criminal Code dealing with dangerous offender provisions.

This bill was tabled last October as a response to the concerns of Canadians and all provincial and territorial governments that the existing provisions of the Criminal Code that target the most dangerous and high-risk offenders in the country required some changes to respond to the emerging issues in the courts. The government indicated previously that it was committed to reforms in this specific area, as we believe that repeat predators sometimes escape dangerous offender designations and are then released into the community without adequate supervision and management.

This bill tackles the problem by giving prosecutors the tools they need to achieve dangerous offender designations against offenders who clearly present the threat of serious injury to the general public. It also toughens the peace bond provisions in the Criminal Code that allow attorneys general to place strict conditions on individuals released into the community, often after serving their full sentences, even though there is clearly a high risk of their reoffending violently or sexually.

I wish to emphasize that these reforms were in large part based on ongoing consultations with our criminal justice partners in the provinces and territories. Most of these measures were the subject of extensive review and recommendation by senior justice officials from every jurisdiction in Canada. At the same time, we have taken every step to ensure that the constitutional rights of individuals are protected. In my view, this bill achieves a proper balance between the rights of Canadians to be safe from violent and sexual offenders, and the fundamental rights of an accused facing a lengthy prison term.

As I indicated, Bill C-27 focuses on reforms in two areas of the Criminal Code, which I would like to explain in greater detail.

First, this bill introduces a number of important amendments to section 810.1 and section 810.2, peace bond provisions that impose conditions on high-risk sexual and violent predators released into the community. The maximum duration of these conditions will be doubled from 12 months to 24 months. This reform will allow police to avoid having to return to the courts to renew peace bonds in the appropriate circumstances. This will give police and justice workers a much greater degree of flexibility in the long-term ability to monitor and supervise these individuals.

The bill further enhances society's ability to control these individuals under peace bonds by making it clear that a court has the ability to consider and impose any reasonable conditions necessary in the circumstances to ensure the safety of the general public from future harm. The bill also stipulates that a number of specific types of conditions are available that many courts in the past have refused to consider. These include electronic monitoring, medical or psychiatric treatment, residency conditions, and drug or alcohol prohibitions. These new provisions respond to a number of recent court cases that had the effect of limiting the range of conditions under the current wording of section 810.1 and section 810.2. Bill C-27 will therefore improve the way we manage the risk to the general public posed by individuals in the community.

The second major area of reform that Bill C-27 targets is individuals who are at the highest risk of offending sexually or violently, to ensure that they are not released into the community unless and until they can demonstrate that they no longer pose a threat to public safety. The bill accomplishes this by giving crown prosecutors the tools they need to secure dangerous offender designations against these individuals, which result in an indeterminate sentence of imprisonment with no opportunity for parole for seven years.

● (1535)

The reforms also encourage crown prosecutors to be more vigilant in using the dangerous offender sentencing option.

Bill C-27 accomplishes these objectives through four significant amendments to the dangerous offender provisions in part XXIV of the Criminal Code.

First, crown prosecutors will be required to consider and declare in open court whether they intend to bring a dangerous offender designation whenever an individual has been convicted of a third prerequisite violent or sexual offence. This amendment ensures that the dangerous offender provisions will be used more consistently in all jurisdictions.

I note that since the bill was tabled, some provinces have expressed concern that this amendment would fetter prosecutorial discretion in sentencing decisions. Therefore I wish to emphasize that this amendment does not force a provincial prosecutor to make the actual dangerous offender application. It requires only that the Crown consider and indicate to the court whether they have considered the dangerous offender option.

If the reform went so far as to make the hearing automatic, in such cases the provinces would have a very strong case that the bill intrudes on their traditional and important discretion to seek appropriate sentences.

Secondly, section 753 is amended so that any offender convicted for a third time of a short list of serious violent or sexual offences will be presumed to fully meet the dangerous offender criteria. The onus will then shift to the offender to rebut that presumption. This change will make it easier for crown prosecutors to obtain dangerous offender designations in the very worst cases of violent and sexual misconduct. I believe this provision will withstand any constitutional change, as the presumption does not go to the issue of presumed innocence, given that this offender has already been found guilty.

While the Canadian Charter of Rights and Freedoms protection regarding the right to be presumed innocent is a basic right entrenched in paragraph 11(d), it does not extend to the offender once found guilty. This view is consistent with the Supreme Court of Canada decision in Regina v. Lyons, where the court held that the right for a trial by jury does not extend to a dangerous offender hearing as, again, the individual subject to the dangerous offender application has already been found guilty.

Thirdly, section 753 is amended to codify the need for the sentencing judge in every dangerous offender hearing to consider whether or not there is a lesser sentence available that can adequately protect the public. This amendment is required to properly respond to the landmark constitutional decision of the Supreme Court of Canada in the case of Regina v. Johnson.

As it currently stands, there are varying interpretations of that decision being applied in different jurisdictions, resulting in confusion and uncertainty and what amounts to a handicap against crown attorneys in some provinces in dangerous offender hearings. This amendment will ensure that prosecutors in all jurisdictions are not necessarily handicapped due to varying interpretations of the principles in Regina v. Johnson. Consistent with that decision, this amendment will stipulate that when the requirement to consider whether a lesser sentence can protect the public is applied, the burden is in fact not on either the Crown or the offender.

Finally, the bill introduces two amendments to section 752.1 to provide procedural relief regarding the filing of part XXIV psychiatric assessments. These amendments are intended to respond to specific concerns that forensic psychiatric resources in many jurisdictions are often stretched thin by the requirements of dangerous offender hearings. By extending the time periods for the filing of the mandatory psychiatric assessment under section 752.1, crowns will be better able to meet the prosecutorial requirements of a dangerous offender application.

● (1540)

Before I conclude, Mr. Chairman, I would like to address concerns that have arisen recently in regard to this bill.

I'm aware that a number of jurisdictions have requested an amendment to allow for a dangerous offender rehearing when an individual who has been found to meet the dangerous offender criteria, but who was sentenced as a long-term offender, breaches a condition of the supervision order. I would note that on this issue my officials are currently engaged in consultations with senior officials from all provinces and territories to identify a viable and constitutional methodology that can be supported by all attorneys general across Canada.

So while I'm supportive of that process, I am aware that there are a number of concerns that must be considered, not the least of which are some serious constitutional issues, such as the potential paragraph 11(h) charter challenges, regarding the right not to be punished twice for the same offence. Having said that, it is imperative that we continue to move forward with Bill C-27 while we continue to develop options to address the new and emerging views of the provinces and territories.

In closing, I wish to thank honourable members for allowing me the opportunity to come before you today. I would be pleased to respond to any questions you may have, as time permits.

[*Translation*]

The Chair: Thank you very much, sir.

[*English*]

Now, we'll start with Q and A. It's going to be a seven-minute round.

We'll start with Mrs. Jennings, please.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Mr. Chairman.

Thank you, Minister, for your presentation.

We Liberals have a few concerns about the reverse onus clause in Bill C-27. At present, the burden of proof usually rests with the Crown when a hearing is conducted further to an application to declare a person a dangerous offender. Further to your bill, the burden of proof will now rest with the offender who has been convicted of a minimum of three offences.

Firstly, has this provision been put to the proportionality test set out in section 1 of the Charter?

Secondly, if the bill is eventually adopted and passed into law and down the road, someone challenges the reverse onus clause, if the court were to find the challenge well founded, would this put all, or part, of the dangerous offender regime at risk?

Thirdly, why does the violation of a long-term supervision order not automatically result in a hearing to declare the offender a dangerous offender? The fact of the matter is that many offenders have already been declared dangerous offenders at a hearing on the basis of prima facie evidence presented by the Crown. However, because of jurisprudence, the judge is required to assess whether the risk and threat that this offender represents can be controlled in the community by means of supervision orders.

Can you explain to me why that is? The Liberals are very tempted to bring in an amendment which would ensure that violating such an order would allow the Crown to request a hearing to declare the offender a dangerous offender.

● (1545)

The Chair: Minister.

[*English*]

Hon. Rob Nicholson: Thank you very much, Mr. Chairman.

Thank you, Madam Jennings.

Of course we look very carefully at the constitutionality of all the provisions of Bill C-27. As I indicated in my opening remarks with respect to the change of presumption, it's very narrow in the sense that it's only at that third conviction. It's after the individual has already been found guilty. As I indicated to you, the indication we have from the Supreme Court of Canada is that, among other charter protections, the presumption of innocence is not offended at the sentencing stage. I'm confident, having looked at this, that changing the onus as to who has to prove what at the dangerous offenders application is drawn narrowly enough from a narrow group of offences that it would withstand that scrutiny.

You indicated that if there was a problem with that with other sections in the dangerous offenders...it seems to me this is a refinement of that. Again, we not only had a look at that in terms of its constitutionality, but we codified the provisions and the remarks and directions of the Supreme Court of Canada in the R. v. Johnson case, so I'm prepared to believe, in terms of the advice I have received, that this will withstand a constitutional challenge.

You referred as well in your comments to why we don't bring an amendment with respect to those out on long-term offender designation who have breached the terms of their release. I guess I fairly briefly indicated to you that there may be some constitutional issues. Of course that's very important any time there are constitutional issues, but in addition to that, this is the subject of a number of discussions between the federal Department of Justice and our provincial counterparts. While I'm very sympathetic to making sure individuals who don't live up to their court-ordered sanctions are meted out with the proper response, I would ask you, rather than going ahead with an amendment at this time, to withhold that. Let's get this part of it through and we'll continue to follow up in the other area.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: On the breach of a long-term offender supervision order, I've had discussions with crown prosecutors and attorneys general, and I know a letter has been sent to the chair of this committee indicating that the Ontario Attorney General and the Saskatchewan Attorney General...and apparently there are other provincial attorneys general coming on board in favour of the Liberal proposal that a breach of a long-term offender supervision order be included in the offences that may trigger a dangerous offender hearing.

In fact, you would probably be in the best position to tell this committee how many long-term offenders were designated long-term offenders as a result of a dangerous offender hearing.

● (1550)

Hon. Rob Nicholson: We do have that information. We have information on a number of those. But on the first part of that, Madam Jennings, one of the provinces you included, the Province of Saskatchewan, actually wants the discussions between the federal, provincial, and territorial justice departments to conclude. So I would ask you to wait until that is concluded. I believe that's what most of them want at this particular time.

Again, you're aware of this government's justice legislation. We're very sympathetic to strengthening and clarifying the provisions of the Criminal Code, so I would suggest to you that you hold that for another day and let's get this bill passed, because this, I'm sure, will be very welcomed.

Could you shed some light on that?

Mr. Douglas Hoover (Counsel, Criminal Law Policy Section, Department of Justice): On the specific issue of long-term offenders who meet the dangerous offender criteria, it's really not possible to give a definitive number, because you'd have to actually look at the reasons for the actual designation.

Certainly I've taken a hard look at all the cases that have come down post-Johnson. Sometimes a judge is quite explicit. He will say, I've considered and I find you meet the dangerous offender criteria, but you don't meet the Johnson test; therefore, you can be managed successfully and you are an LTO. Other times the judges aren't very specific as to their rationale, so it's difficult to place a really strong number.

I can suggest that when we look at a number of the decisions post-Johnson, there have been about 40 appeal cases brought by designated dangerous offenders on the strength of a Johnson-type argument. About half of those have resulted in an order for a rehearing or a lesser sentence. That tells us again that a significant number are out there. It's a tell-tale sign, I think, that a significant number of long-term offenders are in fact meeting the dangerous offender criteria, but in terms of specific numbers, we have not done a study to analyze all the judgments, and I don't know that such a study would give you an empirically valid number.

It's difficult to really respond to that.

[*Translation*]

The Chair: Mr. Ménard.

Mr. Réal Ménard (Hochelaga, BQ): Good day, Minister. Good day to all of you as well.

As you know, we have worked closely with you in the past. In fact, as a minister, you have been rather blessed. However, where this bill is concerned, I hope that you are not counting in any way on our cooperation. In my opinion, you have exceeded the boundaries of what is considered reasonable. As much as I think your bill on camcorders and film is praiseworthy, I find this particular bill goes too far.

As it is currently worded, this bill would make it possible to declare someone a dangerous offender after a first serious offence. Your bill is a combination of arbitrary provisions and preconceived ideas and from a legal standpoint, it is ill-conceived.

I have two questions for you. What problem are you trying to address? What is wrong with the dangerous offender regime? That is what we are discussing. We do not quite understand why you are bound and determined to go with this list of 12 offences, when other equally serious offences, notably child pornography, impaired driving causing death and robbery, are not on the list.

So then, can you tell me what problem we are trying to address, as lawmakers, what is wrong with the current dangerous offender regime and why you came up with this list of 12 offences? Please try and keep your answer short, because I have two other questions that I would like to ask you.

[*English*]

Hon. Rob Nicholson: Thank you very much. I hope I continue to be blessed by the gods in your turn, Mr. Ménard.

You asked about the rationale particularly. There are a number of provisions. One is with respect to peace bonds. We've had basically universal agreement that moving it from 12 to 24 months actually would be of some assistance in terms of dealing with some of those individuals.

In addition, we are trying to address the Supreme Court of Canada decision in the Regina v. Johnson decision. We've had actually a decline in the number of successful applications. In some cases, even attempts to designate an individual as a dangerous offender added some uncertainty to the process, and there has been uneven interpretation across the country, so we are trying to standardize that.

In addition, you asked what the rationale would be between some of these offences and the study by Mr. Hoover and others. These were the ones most often the subject of those dangerous offender applications. Yes, we are zeroing in on the ones who have been found to be dangerous offenders, and part of what we are trying to do is to make sure that through inadvertence or oversight we are not missing the opportunity to have someone.... So that's why we asked the Crown to direct attention to this.

● (1555)

[*Translation*]

Mr. Réal Ménard: Designating someone a dangerous offender is, hopefully, an effective, practical measure provided for in the Criminal Code. According to the figures supplied to us by the Library of Parliament staff, approximately 334 criminals have already been so designated and between 24 and 30 new names are added to the list every year.

Can you explain to us why it is a problem for you to make the existing provisions effective? Would it not be better to focus our efforts on making them effective? If you were to table a bill to improve the operation of the dangerous offender regime, I would be very surprised if it did not receive the backing of my party. However, the fact that the three strikes you're out rule applies here is highly questionable. Why model our justice system after the American one? Please tell is in clear terms what is wrong with the current regime.

[*English*]

Hon. Rob Nicholson: Monsieur Ménard, I actually don't agree with your characterization that this is similar to—I think you indicated—American law, whereby you get three convictions and you're automatically given a particular sentence. This is very much unlike that. All we are saying is that when that third offence has been committed, the presumption shifts to the individual to show why he or she should not be a designated offender. That presumption can be met, and ultimately it's at the discretion of the judge as to whether there is that designation or a lesser one. So to that extent, it makes it very, very different, in my opinion.

[*Translation*]

Mr. Réal Ménard: Tell us specifically what is wrong with the regime and the problems that you are facing.

[*English*]

Hon. Rob Nicholson: Why are we doing this?

Monsieur Ménard, it's our job to clarify the law and to make sure that this particular proceeding is actually considered. That's why we have the crown attorney indicate to the court whether he or she will consider it, and then it seems to me only reasonable at that time that the presumption go to that individual. These are long, very difficult, expensive cases. They use up a great deal of resources. And in terms of the outcome—

[*Translation*]

Mr. Réal Ménard: So then, you have a problem with the Crown prosecutors. Again, I ask you: what isn't working with the existing regime? Perhaps it needs to be modified, but what is the problem exactly? Are prosecutors not invoking the regime's provisions? Is it a question of evidence? Is the regime too complex?

[*English*]

Hon. Rob Nicholson: Mr. Hoover, did you want to make a comment?

Mr. Douglas Hoover: On a procedural issue, especially post-Johnson, we heard a number of crowns in our consultations suggest that a new strategy used by defence counsel in dangerous offender proceedings was beginning to manifest itself. Specifically, if the offender chose not to participate actively in the psychiatric assessment, because the burden of proof is beyond a reasonable doubt for the criteria portion of the hearing, it became exceedingly difficult to prove based on the offender's actual condition today. What they would have to do is resort to more forensic-type analysis of his past record, especially if the offender was, either by desire or incapability, unable to participate actively in the prior studies as well. It was actually in some cases perhaps close to impossible to achieve the objective of being beyond reasonable doubt.

So the presumption will definitely help. It will draw out the offender in that situation. They will have to come forward and make their case. They will not be able to go mute. They will not be able to stop participating. And certainly again because of the narrowness of scope of the offences, this is carefully tailored to target those offenders who clearly on the surface, on the face of the facts, would fit *ab initio* that definition of a dangerous offender.

● (1600)

[*Translation*]

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chairman.

[*English*]

Thank you, Mr. Minister and Mr. Hoover, for being here.

To some degree, I want to follow up on Mr. Ménard's question as to why we're using the reverse onus in these circumstances. I guess I'm looking for some numbers.

Mr. Minister, this is information I got from your department regarding how many are being designated at this point. From the time we started using the dangerous offender designation, there's been a total of 384 designations. That's going all the way back to 1978. In fact, the number of those being designated on an annual basis is increasing now. In the early years it was only eight, and now it's running at about 17 to 18 a year.

I don't know if this is available, but my question is—again following up on Mr. Ménard's—what problem are we trying to resolve? How many cases do we have on an annual basis—if you can give me this—where this would apply, where there would be a third offence and the individual after the assessment would be required to prove why he...? And I'm saying "he" advisedly because there have been no women designated as dangerous offenders as far as I know. So I'm asking if in fact there is a problem.

I want to add to that. I have a perception, from the experiences I've had and from what I've noted in the criminal justice system, that by and large for most of the offenders we're going after, we're usually going after them—when it's a serial killer or a serial rapist, somebody who has committed a series of crimes—after the very first time, and we're not waiting for the third time. I'm back to asking whether we do in fact have many cases where this is going to be used.

Hon. Rob Nicholson: In response to your question, Mr. Comartin, we expect that about 50 cases would fall into the category that I described to you.

Mr. Joe Comartin: I'm sorry, is that per year?

Hon. Rob Nicholson: Yes, 50 cases per year.

You're quite correct that the Crown can apply for a dangerous offender designation on the first conviction; there's nothing stopping them. I guess we're making the point, and this comes to our attention from time to time, that there are individuals who repeatedly commit some of these very serious sexual and violent crimes, and people ask, well, what's the problem? Mr. Hoover indicated to you some of the challenges that have crept into the system.

In terms of your question to me, I think it's only reasonable that if you've been convicted twice, and now for the third time.... These are convictions of serious sexual violent crimes. It seems to me that what we are asking to do is only reasonable. To ask, "Could you please tell us why you shouldn't be designated a dangerous offender?" is, I think, a reasonable question to ask.

In terms of the presumption that the individual is guilty, we're talking about somebody who has done it. Again, I think the public has a right to require these individuals, if they're not going to get that type of sentence, to come forward and say why.

As I indicated to Monsieur Ménard, ultimately the judge has the discretion to give whatever sentence he believes appropriate. In that case, it doesn't have to be a dangerous offender. So that part of the system is preserved; it's still part of it. But again, I think what we're suggesting here is just reasonable.

Did you have anything to add on that, Mr. Hoover?

Mr. Douglas Hoover: No.

Mr. Joe Comartin: Mr. Nicholson, you know as well as I do that if you're sitting there as a judge...and again, I want to point out these figures from you. Of those 384 who went in, I think it's a very small number who have been released. If the designation is found, very few, I think fewer than 18 out of the 384 who went in, have ever come out. The prospects of their ever coming out, from what we can see by past pattern, are extremely limited.

So if you're sitting there as the judge and you're saying you're sending this person for life.... It's not life for first or second degree murder or manslaughter or other serious violent crimes, where the person is going to be out in 10, 15, or 25 years maximum; this person is going to stay in prison for the rest of their life. So if you're sitting there as the judge and saying this person has to tell you why you're not going to keep him in jail for the rest of his life, don't you agree with me that the vast majority of judges in this country, certainly at the upper levels of our superior courts, are going to say that's offensive to the charter and are going to strike this provision down?

● (1605)

Hon. Rob Nicholson: I couldn't disagree with you more, Mr. Comartin. I don't believe that's the case. I indicated to you that the Supreme Court of Canada indicated that the presumption of innocence as articulated in the Canadian Charter of Rights and Freedoms applies to individuals who have not been convicted. Once convicted, you don't get that presumption. In the cases that you indicated, you quoted the statistics correctly, but again, I ask the question, how many individuals escaped and didn't get that dangerous offender designation who should have had it, but by reasons of the challenges that Mr. Hoover indicated to you, and the procedures that criminal defence lawyers are developing in terms of having their clients avoid that designation when in fact they should get the designation...?

So as to whether a judge has the ultimate discretion to give a lesser sentence than that of dangerous offender, I believe that would be perfectly in order if that's what a judge concludes. But as for saying that he or she would be offended that we are asking that individual who has been convicted of three serious violent sexual offences to show why they shouldn't get a particular sentence, I disagree with you that it would be a problem.

The Chair: Now we'll go to Mr. Norlock, please.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you for appearing, Mr. Minister and Mr. Hoover.

We've had similar legislation, dangerous or habitual offender legislation, since about 1947. Recidivism has always been a condition. In addition, we've found over time that because there were significant numbers in our society who were committing, at least in the past, offences with punishments in excess of two years, they were included as dangerous offenders.

We notice that in this legislation we've actually narrowed the scope, as it were. Since 1997, of course, we've significantly changed the legislation to preclude those offences, but of late...and I know one of my confreres was discussing the actual historical changes, referring to some numbers. In looking over some of the research that the researchers were so kind as to present to the panel, we notice that we've gone from about 14 to 22, and I'm talking about over a decade. So over a 10-year span, we went from 14 to 22. I see on page 5 of the research that the numbers are currently up to 39, and today we heard that your estimate is approximately 50 people who it's anticipated might be classed as such.

I'm just wondering, in this category, why would your analysis indicate that we are going to continue on the incline? Most of the argument against this is that there should be a decline. If we're to assume that this legislation won't have an effect, I can't see that. Historical patterns are showing us that there's an increase in people who are designated as habitual criminals.

My question is very simple. Could you go through some of the analysis you've done in order to come up with the number of about 50 persons?

● (1610)

Hon. Rob Nicholson: I might ask Mr. Hoover to talk about this, but trying to predict these things, indeed predicting human behaviour, is always a challenge. One of the significant changes that have taken place in this area is the Supreme Court of Canada decision in R. v. Johnson. As I indicated in my opening remarks, this has presented its own set of challenges to crown attorneys. We are facing the situation where we have different interpretations of that particular decision.

I think this will clarify that. It will standardize the tests that are being used. In my opinion, it will facilitate those individuals getting the designation who should get the designation.

Again, it's not something I look forward to or hope there will be lots of. Nobody wants to see this kind of behaviour. It's the last resort. Let's face it, that's why there haven't been thousands of these applications. They're long, difficult, expensive, challenging, and they stretch resources of the crown attorney's office.

So it is the last resort to try to bring some measure of control to individuals who have demonstrated that they have to be incarcerated. Again, it's the last resort. We think this particular piece of legislation can play a part of that role, and a reasonable one, in protecting the public.

With respect to the numbers, I'll ask Mr. Hoover if he has any comments.

Mr. Douglas Hoover: When we began consultations a number of years ago, we tried to listen to what the concerns were of all jurisdictions and we heard different concerns, depending upon the jurisdiction. Ontario, British Columbia, and Alberta typically have a very high rate of applications relative to other jurisdictions. The Northwest Territories, Yukon, and Nunavut have a very low rate as a percentage of the number of those types of offenders in their jurisdictions, and when you ask why, you'll see different types of answers.

A lot of it has to do with the resource implications. As the minister has pointed out a number of times, these are extremely resource-intensive. They often last one to two years or longer, and also they're often appealed. A jurisdiction without the resources to manage this will in many cases be scared off these.

We think that because of the combination of the Crown declaration and the reverse onus, there will in fact be a bump in the number of applications, especially in these traditionally non-participatory jurisdictions. As well, you are going to see, even in places such as Ontario and B.C., probably a more aggressive approach when an individual is before the Crown who typically might fit the pattern. They'll be more inclined right from the beginning, I think, to seek the psychiatric assessment, which again is a very expensive process. Resources are very stretched even in the more resource-rich provinces, and until you get that assessment back, you can't be sure whether or not this guy is manageable in the community, and thus you're taking a bit of a risk.

So a big part of this legislation is to take that first step and figure out whether or not the individual merits further consideration.

Mr. Rick Norlock: Thank you.

The Chair: You may have a very short questions, Mr. Norlock.

Mr. Rick Norlock: We also notice in the legislation peace bonds being increased from 12 to 24 months. Is this as a result of consultations with crown prosecutors and other attorneys general?

Hon. Rob Nicholson: This, in my opinion, is long overdue, quite frankly. For everybody involved with the criminal justice system, whether on the front lines or as a policy-maker, if there is unanimity about any particular segment of this bill, I would guess it's in that particular area: that 24 months is a more reasonable period of time to set down the conditions upon which an individual will be out in the community. I don't anticipate any controversy on that at all.

The Chair: Thank you.

Now we'll go to the second round, which is a five-minute round. I understand Mr. Murphy will share his time with Mr. Bélanger.

Mr. Murphy, please.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Minister, and Mr. Hoover.

We are getting into the world of reported designations and the nomenclature of applications. If information on the number of applicants is available, it wasn't canvassed in the material we had, and we would certainly appreciate getting whatever information you can give us with respect to the numbers of applications over various years and by various provinces.

I can say from talking to many prosecutors in the province that in New Brunswick the current average is, I think, one to two per year. It doesn't sound as if it's a big issue, but of course it is, because prosecutors respect the process and use it judiciously, if I can use that word, and are looking for some improvements, of course. So the resource issue is a big issue.

Let me start by saying that I'm totally in support of tweaking the dangerous offenders system, which has worked pretty well but has some tweaking to be done to it. I think that in contradistinction to many of the other justice bills presented thus far, this is really targeting.... The dangerous offender community is a community that should be locked away. These are recidivists; these are people over, on average, 40 years of age who in some cases—a quarter of them—have committed 15 or more offences. They're dangerous and they're...I won't say bad people—it's too moralistic—but they're dangerous to society.

So we want to support you in making this bill better, Mr. Minister, but I think—and you can nod and make a face if you wish, but it's very sincere—you've glossed over the charter aspects. Wanting this to work means that you, I think, should have canvassed section 7 as it relates to liberty and the Supreme Court of Canada cases in respect to the necessity to show, on sentencing in aggravating circumstances, that those aggravating circumstances are proven beyond a reasonable doubt.

In that DOs are going to lose their liberty, which is the fundamental aspect of section 7 of the charter, are you not concerned that this standard must apply to aggravating circumstances, which in this case are the triggers, if you will, of your bill?

● (1615)

[*Translation*]

The Chair: Thank you, Mr. Murphy.

Mr. Bélanger.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Mr. Chairman.

Good day, Minister, Mr. Hoover.

Mr. Hoover, what is your title exactly and what duties do you perform? I want to know where you fit in on the Justice Department's organization chart.

Minister, I have a feeling that this committee's work will continue into the fall. Those who are just now learning about this kind of study will have a little time to do some background reading this summer. Would you be prepared to share with the committee the documentation pertaining to the bill, for example, statistics or forecasts based on number, category and so forth. I would also like to know if you commissioned any studies in conjunction with the drafting of this bill. Could we possibly have a list of the studies that were conducted at the department's request or those used by the department in the course of its work?

Earlier, you said you had received some legal opinions on the constitutionality of some of the bill's provisions. Are you ready to share these opinions with the committee? Lastly, given that the reverse onus clause will, if the bill is adopted, result in costs for persons convicted of offences, I would like to know if any additional resources have been budgeted for this, so that persons convicted can assume this financial burden.

[*English*]

The Chair: Mr. Minister.

Hon. Rob Nicholson: Thank you very much, Mr. Chairman.

I'm not quite sure, Mr. Murphy, what you mean by tweaking the bill. It seems to me that if you're pursuing the route of the previous questioner from your party about introducing amendments with respect to breaches by long-term offenders, that would be a major change to the bill, in my opinion, and you heard my opinion to Madam Jennings that we should leave that issue for another day.

If there are minor amendments that improve the bill, again, I'm always open to suggestions on this or indeed any other bill.

With respect to your comments about whether this will meet a challenge under the charter, these are always considerations when we put legislation before Parliament. Indeed, that's one of the specific items the Attorney General has to direct his or her mind to before tabling legislation. The analysis that we, at the Department of Justice, have undertaken with respect to this legislation indicates that this is constitutional and that it will withstand a challenge if and when that takes place. I'm going to ask Mr. Hoover to make any further comments.

With respect to statistics, we are prepared to provide any statistics we have on this. I think we have given them a number. I'll have Mr. Hoover have a look at that.

With respect to a note that I have reviewed, I'm not sure I said a specific note. My analysis of my discussion with the Department of Justice with respect to the bill is that it is constitutional and of course, they, Mr. Hoover among others, direct their attention....

You had asked what exactly is his role. He describes himself as a counsel within the Department of Justice and, as I indicated in my opening remarks, that he has had a particular connection with this particular piece of legislation.

In terms of the costs of an individual, the best estimate of detaining an individual for one year is about $87,000. They would be within the federal penitentiary system, of course, and we believe the resources are there to handle any increase of individuals. As others on this committee will know, when people ask me the cost, I always tell them that society pays a tremendous cost when some of these individuals don't get the sentence they should get—and the havoc and the cost to society up to this point.

But I think you're anxious to either give me a supplementary or more clarification, so I will—

● (1620)

[*Translation*]

Hon. Marlene Jennings: Mr. Chairman...

[*English*]

The Chair: That was not the question Mr. Bélanger asked you. I'm just going to ask him to repeat the question, and you can give us a real answer, please, on this one.

Mr. Bélanger.

[*Translation*]

Hon. Mauril Bélanger: I will say it in English, to be sure the Minister understands.

[*English*]

I referred to your quotes. You said you had received advice, presumably in the written form, so I was wondering if you would be prepared to share that advice.

I also referred to an inventory of studies that the department might have had, conducted for itself, or referred to.

And finally, when I spoke of resources, I meant not resources for people incarcerated; I meant that if we reverse the onus onto those found guilty for the third time, have any provisions been thought of for resources for those who now have to make the proof that they may or may not be dangerous offenders?

Hon. Rob Nicholson: With respect—

The Chair: Could you make it a short answer—because time flies—on these three questions from Mr. Bélanger—

Hon. Rob Nicholson: Any advice that I receive, Mr. Bélanger, would be protected by solicitor-client privilege.

With respect to the resources, I'll ask Mr. Hoover to make comments on that.

Mr. Douglas Hoover: In the first place, the vast majority of dangerous application defences are actually conducted under provincial legal aid programs, with some federal funding. So the impact of resources of these changes would actually be borne—a very large majority—by the provinces themselves, who primarily support the ability, as best we can, to provide these reforms to the dangerous offender provisions.

The actual impact again will depend upon the number of applications brought. There is nothing being done here to fetter the Crown's discretion as to whether or not to bring a Crown application. Ultimately it will be the attorney general of each province who has to approve a dangerous offender application and determine what the impact is going to be on their resource base.

I think that answers that part.

The Chair: Thank you.

Now we'll go to Mr. Moore, please.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair.

And thank you, Mr. Hoover and Mr. Minister, for being here today.

Sometimes what gets lost in all this as we discuss the details of a bill is what exactly we are talking about. I'm wondering if you could comment a bit on who is a dangerous offender. It's a relatively small number of Canadians. There are over 30 million Canadians, and yet we have these very few people who are designated. I'd like maybe a snapshot of what type of person, what type of traits these people have shown with regard to the justice system and with regard to their fellow Canadians.

● (1625)

Hon. Rob Nicholson: That's one of the reasons psychiatric assessment is done in these matters, to get a better insight into that individual. But suffice it to say that this bill is particularly directed at those individuals who have shown a repeated pattern of sexual violence against individuals for which they have received considerable penitentiary terms, or the individuals have received two or more years in the past over a number of occasions. They have been convicted.

It's not a question that we get the right person or the wrong person. We have the right person here, because they've now been convicted on three separate occasions.

So these are the worst individuals, the most dangerous individuals, and these are the ones who I think Canadians, for the most part, are most concerned about. And Canadians want to see them dealt with in a manner that's consistent with their respect for the rule of law and their respect for the criminal justice system. To not take the steps that I believe a bill like this takes has the opposite effect on people's confidence in the justice system.

But again, in terms of the profile of that individual, I think Mr. Hoover—or perhaps it was Monsieur Ménard, I forget—indicated that by this time they're usually in their forties. It's usually not somebody who is in their early twenties. These are people who have shown a consistent pattern of unsocial behaviour that results in violence and pain and suffering for those around them. That's who it's directed at.

Did you have any comments on that?

Mr. Douglas Hoover: I believe you will be hearing from Mr. Jim Bonta of the correctional directorate at Public Safety Canada. He has a great deal of expertise in this area and is much better able to answer those types of questions than I am.

I would add that Correctional Service Canada is perhaps noted around the world as one of the leading agencies, not just for keeping high-risk sexual and violent offenders in prison, but for attempting to analyze and understand what makes them tick in the first place and what types of programs can help treat and cure the propensity for violent sexual behaviour. Essentially we rest much of our analysis for dangerous offender proceedings on the expertise coming from there. From those psychiatric assessments, the judges are now looking for indications that individuals are simply unable to respond to the treatment that state-of-the-art facilities and psychiatric caregivers are providing, and that by failing to respond they show that regardless of how many resources you pour into them they are going to reoffend violently and sexually.

I think Mr. Bonta will be able to provide a lot of detail on that process.

The Chair: Madame Freeman.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Good day, Mr. Nicholson. Thank you for joining us. I have two or three short questions for you.

Under this bill, if a criminal commits three primary designated offences at the same time, namely kidnapping, attempted murder and sexual assault, will he automatically be declared a dangerous offender? Is that how it will work?

A voice: No.

Mrs. Carole Freeman: Right now, we understand that offences may have been committed in 1990, in 2000 and in 2007. The reverse onus provision applies after the third primary designated offence is committed in 2007. However, if the criminal commits three primary designated offences at the same time, what happens under the bill?

● (1630)

[*English*]

Mr. Douglas Hoover: There's a fine line sometimes. You break and enter, you steal something, you might commit a sexual assault, and there might be a robbery. There might be a number of primary designated offences in those acts, but if they were all connected they would only be able to count as one offence, for example, assuming you got a total of two years.

Today you can be convicted for a bunch of different offences you did historically—one in 1978, one in 1982, and one in 1985. Those would most likely be interpreted as three primary designated offences, because the acts were not connected in time and there was no nexus. So based on current jurisprudence, in that scenario the latter would have three primary designated offences qualifying for the presumption, and the former would not.

[*Translation*]

Mrs. Carole Freeman: I see.

What happens to the offender who commits three offences before the bill passes into law?

[*English*]

Hon. Rob Nicholson: An application could still be brought on the first offence, as Monsieur Comartin indicated. The crown attorney could make an application for a designated offence. The change this brings is if we have three of those convictions under the circumstances Mr. Hoover enumerated, on an application.... Again, it's still discretionary by the crown attorney whether to go forward with that, but if they do go ahead there would be a reversal of the onus. The onus would shift to the individual who has been convicted for the third time.

[*Translation*]

Mrs. Carole Freeman: My question was somewhat different. I was wondering about crimes committed prior to the coming into force of the bill. If the proposed legislation is in fact adopted, how would offences committed prior to this time be dealt with?

[*English*]

Mr. Douglas Hoover: Again, given current jurisprudence regarding the issue of retroactive/retrospective application of current law, if an individual was, for example, charged prior to the coming into force of this legislation, these provisions probably would not apply. But if a person committed the act, as I say, in 1978 but was charged after the coming into force, we believe that a court would find these provisions consistent with prior jurisprudence. So yes, they would apply for those types of individuals.

[*Translation*]

Mrs. Carole Freeman: You will take into account...

[*English*]

Mr. Douglas Hoover: Yes. As long as the trial started after coming into force, I don't think there would be any question. There might be some question if the trial started before coming into force but he wasn't sentenced until after coming into force. So there might be a gap, and that'll be for the courts to decide.

The Chair: Before closing, I know Mr. Comartin wants to raise a point of clarification to the minister.

Mr. Comartin, go ahead, please.

Mr. Joe Comartin: Mr. Minister, I think you left an impression here that's not accurate, and I'm not suggesting that you did this intentionally. You indicated, in response to a question from me, that there are about 50 cases a year that would get caught by the reverse onus. My calculation is that it's as little as four or five.

There are two types of designation. There's the dangerous offender, and there's the long-term offender. In total at this point, those are running at, according to the stats we have, about 53 a year: 14 dangerous offenders, 39 long-term offenders. Of the dangerous offender designation, my assessment of it is that only four or five of those will fit into the category of third serious criminal violent offence.

Do you agree with that assessment? You've left the impression that there are going to be 50 to which this is going to apply. My sense is that it will be only four or five per year.

The Chair: Mr. Hoover.

Mr. Douglas Hoover: We actually do have some data we can provide. It's a little bit rough, because we're looking at the number of offenders who committed one of the primary designated...and then is there another one, and is there another one? It's sometimes a little bit difficult, because they can show up more than once.

According to the analysis—and we can provide the numbers—that our research department did, it varies from year to year, but 30 to 50 individuals actually are convicted of a third offence and actually receive jail sentences of two years or more. So I can undertake to provide that to you.

● (1635)

The Chair: *Merci beaucoup.* That's it.

Thank you very much, Mr. Minister. I feel that your presence will help the members to make an analysis and a decision concerning this bill.

This meeting is adjourned.

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