House of Commons
CANADA

# Standing Committee on Justice and Human Rights

JUST • NUMBER 023 • 1st SESSION • 39th PARLIAMENT

**EVIDENCE**

## Monday, October 23, 2006

---

## Chair

**Mr. Art Hanger**

# Standing Committee on Justice and Human Rights

**Monday, October 23, 2006**

● (1540)

[*English*]

**The Chair (Mr. Art Hanger (Calgary Northeast, CPC)):** I call this meeting to order.

The justice committee will now be dealing with the clause-by-clause consideration of Bill C-9.

I see before me that there are three amendments, two of which to be dealt with at the outset.

The first amendment, L-1, is submitted by Ms. Barnes, London West.

**Hon. Sue Barnes (London West, Lib.):** Do you want me to speak to it?

Mr. Hanger, I can say right off the bat that I've had the opportunity to speak to your legislative clerk and the head of her team before she was assigned to this bill. She told me that especially because of the one-paragraph way in which the bill was formulated, it is very difficult to amend this bill at this stage.

There were many people who in testimony brought in the idea of discretion and the concept of denunciation. Basically this is the way the former Liberal government envisioned this section in the previous Bill C-70, going with some of these elements that under the rules—whether because of those two elements—I'm told will be out of order.

I was also told, and had verified by both her and the head of the department she works in, that any list would be out of order.

I am aware that this is out of order. I would still like to table it for the record for all those people who testified, saying that this is the way they would have preferred to go.

**The Chair:** Okay, fair enough.

In that particular case then, I will just put the ruling on the record as well.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** On a point of order, Mr. Chair, in terms of the description we've just had from Ms. Barnes, could we have the legislative clerk confirm that in fact they determined it's out of order and give a brief synopsis of the reasons for it being so? I'd like that on the record.

**The Chair:** The explanation is given in the ruling, if I may read it here.

**Mr. Joe Comartin:** I'm sorry. I didn't know you had it there, Mr. Chair.

**The Chair:** Yes, I will read the ruling. Then if any other questions come up, you can bring them up at that time.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** On a point of order, Mr. Chairman, you're reading what you refer to as a ruling. By any measure, what you're about to read is not a ruling, it is your ruling.

**Hon. Sue Barnes:** That's right.

**Mr. Derek Lee:** Any clerks we have at the table give advice to the chair and the committee.

**The Chair:** That's right. It's an admissibility statement I am making.

**Mr. Derek Lee:** You can't delegate this decision to anybody else, whoever he or she may be—

**Hon. Sue Barnes:** That's why he wants to read it.

**Mr. Derek Lee:** —and therefore I wanted to clarify it. This is what you're going to rule; you've made the decision.

**The Chair:** This is my ruling on the admissibility of the amendment L-1.

**Hon. Sue Barnes:** Further to that, Mr. Chair, I'm saying that it's on the advice of your clerk. I want it confirmed that what I said from her was accurate.

**The Chair:** Yes.

**Hon. Sue Barnes:** Thank you.

**Mr. Derek Lee:** Mr. Chairman, again, the clerk is not the party.

**Hon. Sue Barnes:** I know that.

**Mr. Derek Lee:** There are any number of clerks who serve us very well. As I understand it, the chairman is about to make a ruling —not the clerk.

Is that right, Mr. Chairman?

**The Chair:** That's right, Mr. Lee.

**Mr. Derek Lee:** Thank you, Mr. Chairman.

**The Chair:** I also understand Ms. Barnes' position here, as she sought information often from the same source, Mr. Lee.

So I'll go through the ruling here now.

Bill C-9 makes just one substantive change to section 742.1 of the Criminal Code. It provides that conditional sentences will not be available for offences prosecuted by indictment and punishable by a maximum term of imprisonment for 10 years or more.

The amendment proposes to replace this with an alternate scheme. The offences to which the amendment would apply are in some cases outside of what is covered by the bill.

In addition, proposed subsection (2) of the amendment allows for the exercise of discretion, which is not in keeping with the principle of Bill C-9.

On page 654, Marleau and Montpetit state: "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."

I must therefore rule the amendment inadmissible, as it introduces an alternate scheme, which goes against the principle and beyond the scope of the bill.

**Hon. Sue Barnes:** Mr. Chair, if you could indulge me, I wanted the clerk to verify that I had met with her for advice, and that the type of advice you just ruled on, including the listing, is what was given to me.

**The Chair:** Okay, the clerk acknowledges that.

**Hon. Sue Barnes:** Thank you very much, Mr. Chair.

Thank you.

**Mr. Derek Lee:** Mr. Chair, on that subject—

**The Chair:** Yes, Mr. Lee.

**Mr. Derek Lee:** —I heard your decision, and for the record I wanted to differ with it. There hasn't been an opportunity to debate that here at the committee. I'm not going to prolong the debate; I wanted to make the point that the specific scope of the bill involved the restriction or adaptation or modification of the circumstances in which conditional sentences could be used. The amendment you've just ruled on clearly operates within that scope; it deals with the times or circumstances in which conditional sentencing can be restricted. And in my view, I did not see the amendment as beyond the scope of the bill. I wanted to put that on the record, and my remarks end there.

Thank you.

● (1545)

**The Chair:** Thank you, Mr. Lee. I think any issue opens the door for discretion, and the bill is clearly defined—I think that is the issue here—and it does deviate from that particular point.

Mr. Ménard.

[*Translation*]

**Mr. Réal Ménard (Hochelaga, BQ):** Mr. Speaker, I know it's your prerogative to rule amendments submitted by committee members either in order or out of order. I also know you make those rulings with the help of the good advice of our clerk. I just want to understand the meaning of the ruling you have made. You say the amendment is out of order and you state two reasons, the first one being the scope of the bill. We know the bill is quite limited; it contains just one clause. Then you mentioned judicial discretion. I'd like you to explain to me what you meant by that.

The clause of the bill leaves some discretion to the judge. That's always the case in criminal law. I'd like to give you a chance to give us a bit more of an explanation of the ruling you have made. I'm not challenging your prerogative to make a ruling. There are others that you occasionally abuse, but this one was your prerogative.

The future of the bill is uncertain, but I know you will keep your cool come what may.

[*English*]

**The Chair:** First of all, we can get into a lot of depth in this particular amendment, but it has been withdrawn, number one, I should point out.

**Hon. Sue Barnes:** It's ruled out of order; it's not withdrawn.

**The Chair:** It's ruled out of order. So how far do we carry the discussion?

The point that I think you bring up is stated in proposed subsection (2) of amendment L-1, where it leaves the court to be satisfied in these particular instances, in the interests of justice, and to look at exceptional circumstances. The other one is paragraph 2(d) on the next page: "the expression of society's denunciation should take precedence over any other sentencing objectives". So who is to decide? The court.

[*Translation*]

**Mr. Réal Ménard:** I don't know, Mr. Chairman, whether you have had the pleasure of reading the Proulx decision, which was handed down in 2000. It's 100 pages long. It refers to the following principles: deterrence, denunciation and rehabilitation, a great novelty that must have pleased you, Mr. Chairman. We all understand that the judge has some discretion. However, I don't see how this amendment gives the judge more discretion than the very bill tabled by the government. In any event, I shall abide by your ruling.

[*English*]

**The Chair:** We can certainly get into this discussion, but we're not going to unless you wish to appeal the ruling. The discussion ends here.

Mr. Comartin.

**Mr. Joe Comartin:** I want on the record that I adopt and support Mr. Lee's position. I'm putting that on the record now because I expect this government is going to bring similar bills drafted this way. The only reason I'm not challenging the chair at this point in this ruling is that we have an alternative that I find acceptable. I don't want to be caught somewhere down the road on some other legislation, being bound by this ruling.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Comartin.

We'll go on to amendment L-2.

Yes, Ms. Barnes.

**Hon. Sue Barnes:** Mr. Chair, I also consulted the legislative clerk, and she advises me that this was one of two ways that this could have been legally amended. The only other way, for the record, was to increase the number of years from 10 to 14, or life, which was not a useful exercise for discussing this bill.

So I would like your ruling. First of all, I'll say that I believe that it is.... My advice is on the record, and before I start talking, I'd like to hear whether you're ruling it in order.

● (1550)

**The Chair:** We consider this amendment admissible.

**Hon. Sue Barnes:** Thank you very much.

Mr. Chair and colleagues around the table, we've had a number of witnesses come before us, all bringing their opinion to bear on this. Why I'm offering this amendment...as you can see, it takes from the prior amendment, which was ruled out of order, those areas that the previous government had considered when they were trying to limit this area of conditional sentencing. What you see before us is: "... serious personal injury offences as defined in section 752, a terrorism offence or a criminal organizational offence prosecuted by way of indictment, for which the maximum term of"...and then we go on with the ten years.

So the amendment, as you see, interjects categories of offences that we are seeking to have removed at this time from the areas where it would be available for a conditional sentence.

We believe that in these areas you have the whole section of criminal organization of the Criminal Code, where it could encapsulate very many provisions of the Criminal Code if there are more under the definition of that part—so many of the areas, if they were involved in criminal organizations—for instance, drug trafficking—would be captured under this part. That would leave free those areas where you have an individual operating alone, who, as we heard with the evidence of the Gladu court and some of the other testimony here, the drug treatment courts could successfully put into a treatment program if this section was widened, as the bill originally imagined.

I look at the terrorism offence sections, and again, a lot of the areas, if they were caught, would be...the list would be expanded if terrorism was involved. I think Canadian society is very concerned with terrorism activity, and we believe that anybody involved in that type of activity, who is proved successfully by the Crown to be so engaged, should have the conditional sentence removed.

I would remark that the "serious personal injury" offence, again, is flexible enough in the situation to add those areas that would cause the greatest concern to the public. My information is that we consulted on this, these were the areas that were most concerned, and that we were not really intending to be originally...before the Proulx decision. These are the things where we think the appropriate constraints should come in.

This has the effect of removing some of the property offences that were widely in this legislation. I remind the committee members that when the minister came before us he told us to talk amongst ourselves and to our colleagues, which has been done. I gave the parliamentary secretary notice of where we were heading. I've certainly said it here in the committee many times.

We received some statistics today, a little late I might add, but that's what happens when you're working under these types of deadlines. The statistics today said that a lot of the area, I think it was 29%, was in the serious violent.... I can't place those statistics at this moment, Mr. Chair.

● (1555)

I don't intend to talk a long time, because my government chose these areas with care in the last Parliament. I could not add the area of denunciation that we had also added, because it was introducing another concept to the bill that wasn't structured in the one-paragraph bill, nor was I capable of doing a listing. So this is the option I was forced to follow, because this bill did not come to us before second reading. It complies, and I think at this point in time this is a partial restraint on conditional sentencing. Our government's belief is that conditional sentencing....

The testimony we heard from many witnesses is that we should not even be going this far. The most compelling answer was when I posed the direct question to Julian Roberts, who had done a lot of the work for the justice department, who stated that this is the area we should be going in.

I will leave my case there. Some of my colleagues may wish to comment. I don't submit that this is all I could say in this area. I think it's one paragraph, I have limited ways to amend, and this is the way that most fit with what we had considered doing in the previous government.

**The Chair:** Thank you, Ms. Barnes.

We will have discussion now. Mr. Ménard.

[*Translation*]

**Mr. Réal Ménard:** Mr. Chairman, I am pleased to announce to the committee, without wanting to surprise anyone, that the Bloc Québécois is going to support this amendment. It is an amendment that exhibits genius in its own way, given that the rules were not easy and that having just one clause made the scope quite limited.

It think when our work is done, after this amendment, there will be a few lessons to be learned. It should be pointed out, first of all, that conditional sentencing is not used all that often in our justice system. We know for a fact that only 5, 6 or 7% of convictions give rise to a conditional sentence. Despite what some people have suggested, in all of our deliberations and discussions with witnesses, there has been no basis for this committee to find that conditional sentencing is overused.

As a matter of fact, the Canadian Criminal Justice Association pointed out to us that only 38% of conditional sentences involved property offences. Furthermore, if you combine offences relating to the administration of justice and offences relating to the Highway Safety Code, the total is over 50%.

There are very effective limits on conditional sentencing. So we can't share the government's concern. What worries the Bloc Québécois more and causes us to support this amendment is the issue of the 10-year marker. The list the government has presented is completely lacking in differentiation. This had better not happen again in future bills. The government is going to have to work with a bit more intellectual dexterity, flexibility and skill. The witnesses certainly told us the 10-year maker was obviously too general.

One of the witnesses gave us the example of breaking and entering. There is a difference between an individual who commits a burglary in the middle of the night on Darling Street, in the riding of Hochelaga-Maisonneuve, and a former spouse attempting to recover assets that are part of the family property. Under the Criminal Code, it is the same offence, but the situations are completely different.

Obviously, that does not mean legislators have to refrain from sending messages. I think you and I will agree on that. There are things I like about Ms. Barnes' amendment. A person who spends a number of years working with Ms. Barnes in committee may discover that she has quite a subtle personality. Of course, she may occasionally come on a bit strong, but who can claim to have gone through public life without ever taking a bit of a stand? I suppose the same thing goes for deputy ministers. When you have responsibilities, there are times when you have to be assertive.

Unless you want to be on the overly long list of spineless people —and here, I am not going to name any names on this committee— there are some positive aspects to be found. A witness whom you probably hold in high regard, a member of the Montreal Police Force, told us it was acceptable, in some cases, to provide some guidelines. Cases of terrorism were mentioned. In that connection, let's recall Bill C-36. I am not suggesting here that we are in favour of security certificates. Whatever the case, that is another debate, and we look forward to reading the Supreme Court's report on that.

My Bloc Québécois colleague, the highly talented Serge Ménard, who is clearly not the only talented person of that name in our caucus, has taken a position. We agree that in some circumstances, judges have to be given guidelines. We still have confidence in judges. That may be a factor that sets the people on this side of the table far apart from those on the other.

Terrorist and organized crime offences are a very good example of situations where new law has to be created. I remember meeting with senior officials from the Department of Justice—and it was not you, madam, but some of your colleagues—who were confident the major organized crime networks could be dismantled simply by using the conspiracy provisions.

As the member for the riding where the car bomb went off, costing the life of young Daniel Desrochers, aged 11, I certainly knew that new law had to be created, a new offence.

In cases of terrorism, organized crime and personal injury offences, as described in section 752, the use of conditional sentencing is not desirable. In closing, I would like to say that one thing really disappointed me on this committee. Throughout our deliberations, people have implied—and I may feel obliged to put a question to the parliamentary secretary and to Ms. Kane—that conditional sentencing, as defined by the Supreme Court of Canada in Proulx, was not a sentence of imprisonment. Mr. Chairman, a conditional sentence is a prison sentence. This is so true that if you go to the trouble of re-reading Proulx, the 94-page judgment concurred in by the majority and delivered by Justice Lamer, you will see that a judge has to give reasons for his or her judgment.

It even says—and you will correct me if I am mistaken, Ms. Kane —that reasons must be given for a decision to impose a conditional sentence or not to impose one. In addition, the Supreme Court says there are three conditions: ideally, there should be a curfew and electronic surveillance, and there are, of course, all of the minimum conditions, including keeping the peace and being of good behaviour.

Mr. Chairman, with your permission, I am going to put a question to our parliamentary secretary and to Ms. Kane. Are you a deputy minister? If not, I hope you will be.

In light of the Proulx decision, do you think that we, as parliamentarians, can properly consider conditional sentences, as set out in section 742 of the Criminal Code, to be tantamount to sentences of imprisonment?

● (1600)

[*English*]

**Mr. Rob Moore (Fundy Royal, CPC):** I didn't know that this was a question. It's different being on this side of the table for question and answer period.

**M. Réal Ménard:** If you want the right side, come here.

**Mr. Rob Moore:** I do want to comment a bit on this amendment, and I thank Mrs. Barnes for bringing it forward. The government, though, will not be supporting the amendment, and I'll tell you why.

The breakdown seems to be on the issue of.... You've listed terrorist offence, criminal organization offence, and serious personal injury offence. There's a reason why this bill was drafted the way it was. There's a reason why the maximum was set. Where we used the maximum of 10 years or greater, it is because we wanted to have a law that generally applied in that area, without going through an itemized list.

I'll give you a good example, something that wouldn't be captured by your amendment: Internet luring. A private member's bill has been introduced in the House. This is something that's very serious. It seeks to increase the maximum punishable to 10 years. This bill wouldn't capture that. And we, on this side, do not feel that for the offences we've listed here, which the Government of Canada has already said they recognize as punishable by a maximum of 10 years, and in some cases a maximum of 14 years.... We've already identified them as being serious offences. We feel that when we proceed by way of indictment, a conditional sentence should not be available. And your amendment does not capture that. It means that someone who's been convicted of Internet luring—

● (1605)

**Hon. Sue Barnes:** I have a point of order.

[*Translation*]

**Mr. Réal Ménard:** My question, Mr. Chairman...

[*English*]

**The Chair:** Your point of order, Ms. Barnes. I recognize you.

**Mr. Réal Ménard:** And my question will be after that.

**Hon. Sue Barnes:** I have a point of order. Mr. Hanger, I believe the Internet luring was sent to committee here, so it may be captured.

**The Chair:** The bill is going to be before the committee, but that's the status of that particular bill.

Go ahead. Do you have a point of order?

**Mr. Réal Ménard:** No.

**The Chair:** Mr. Moore, continue.

[*Translation*]

**Mr. Réal Ménard:** Please, I would like to get to my question.

Do you believe...

[*English*]

**The Chair:** Monsieur Ménard, he wants to finish his statement in reply to your first question. So—

**M. Réal Ménard:** I don't want to stress you.

**The Chair:** You're not stressing me at all.

**Mr. Rob Moore:** That bill has been sent to committee, but it's not captured. It's not defined as a serious personal injury offence as defined in section 752, so if our bill were to be amended as suggested, that would not be captured.

There are other serious offences that would not be captured by the bill if we chose to amend it in this way. We said very clearly that we do not want the conditional sentence to be available for serious offences. We've heard from victims groups; we've heard from those groups that Internet luring, break and enter with intent to commit an indictable offence, or being unlawfully in a dwelling house are also serious offences. They would not be captured by the bill if we adopted Mrs. Barnes's amendment. That is why I cannot support it.

We put forward a bill that recognizes that the use of conditional sentences has increased. We know that. We saw evidence of that. This is a way of ensuring that people who commit serious crimes, as set out in the bill, do not receive house arrest.

Those are my comments on the amendment.

**The Chair:** Thank you, Mr. Moore.

There are other speakers on the list, and you've had your opportunity once, Mr. Ménard, but I will allow you to ask a point of clarification if you need to.

[*Translation*]

**Mr. Réal Ménard:** There is no time limit on amendments in committee.

[*English*]

**The Chair:** I'm not cutting that off. You've had an opportunity to speak once, and Mr. Petit is on the list.

[*Translation*]

**Mr. Réal Ménard:** I will conclude.

I just want us to understand one another clearly on one point. I respect the government's reasoning. It is your prerogative to vote for or against this, and the same goes for us. Here, we will restrict ourselves to the law as it now stands and to the way in which the Supreme Court has interpreted conditional sentencing. My question is for Ms. Kane.

Would you agree with me that in the Supreme Court decision in Proulx in 2000, it was clearly pointed out to us as lawmakers that a conditional sentence was indeed a prison sentence?

I will not go into other subtleties of the decision. All too often, during our committee's work, members have acted as if conditional sentencing was not imprisonment. I agree that the system may have some deficiencies, but as we complete our work I would not like anyone to be left with the impression that a conditional sentence is not a sentence of imprisonment. Have I understood the Proulx decision correctly?

[*English*]

**Ms. Catherine Kane (Senior Counsel, Director, Policy Centre for Victim Issues, Department of Justice):** Yes, you're correct that the Supreme Court of Canada has made it clear in relation to conditional sentences that the first point is to determine whether a sentence of imprisonment is appropriate. Then the next consideration is whether that term of imprisonment can be served in the community, and if so, under what conditions. In that case and in subsequent cases the court also clarified that, under the present law, no particular offences were ruled out of the scope of a conditional sentence, but that it was up to Parliament to decide what the parameters should be.

Bill C-9 is resetting those parameters to clarify when a conditional sentence should be considered appropriate.

[*Translation*]

**Mr. Réal Ménard:** Thank you, Mr. Chairman.

[*English*]

**The Chair:** Monsieur Petit is next.

[*Translation*]

**Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC):** Like Mr. Lee, I would like the following facts to be on the record. I read Ms. Barnes' amendment rather late, but I did nonetheless read it. Like my government, I will be voting against the amendment, but I would like to explain why.

One of the reasons I am here in Parliament is that, as a practitioner of law—like Mr. Lemay—I have worked both for victims and for the Crown. In Bill C-9, Parliament's intent is to protect victims. I would like it known that I, Daniel Petit, wish to protect victims and do not wish to try by all kinds of means to protect what we have already tried unsuccessfully to protect in the past.

I would like it clearly noted that I am absolutely against the idea of having the amendment passed in this fashion. I want to stand in the way of leaving victims unprotected against crime, regardless of whether those victims are children, women or even men. I think that is very important. This is not about procedure and legal argument; this is about putting victims first.

● (1610)

[*English*]

**The Chair:** Thank you, Mr. Petit.

Mr. Comartin.

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

I, like the Bloc, will be supporting this amendment. The evidence I heard that stuck with me, quite frankly, even before the committee work started, and certainly during the course of the committee, was that we had concerns in the country over the conditional sentencing regime being used inappropriately where the crime itself cried out from the public perception for a more severe sentence than what would be entailed under a conditional sentence. I believe this amendment addresses that.

I have to say, Mr. Chair, when I first saw it and did some analysis of it, I was still quite concerned about whether it wasn't too restrictive on the extent that conditional sentences could be used, and some of the directions and restrictions we were placing on the courts. But after further analysis, I believe we have struck the proper tone and I think we're developing the proper response to the concerns that we've heard from our communities right across the country. In that regard, Mr. Chair, we heard evidence that if the government's amendment, which is Bill C-9, was to go through, roughly 5,500 incidents—that is, charges—each year would have been precluded from consideration for conditional sentences.

I've done an analysis—it's not exact—that if all of the charges that are precluded, at least on the surface, under section 752, which is basically going to be the test for the courts now if this amendment goes through both here and in Parliament, only about 1,500 charges per year will be precluded from consideration. We know, Mr. Chair, that in addition to those that, strictly speaking, are precluded from this, a number of them will still be dispensed with by way of probation, which, quite frankly, is a worse alternative than conditional sentencing because of the restrictions the judges have on any conditions or terms that they can place on probation orders. Again, we heard extensive evidence on that point.

The final concern I had, Mr. Chair, was over costs. We know that the figures would be quite extensive if all 5,500 of those charges were excluded from consideration and a large number of those people ended up in provincial prisons. Of course, the costs would be to the provinces, not to the federal government. Again, I believe, if we pass this amendment here and in the House, we will have dramatically reduced the exposure to the provinces of these added costs. I haven't done an analysis, Mr. Chair, but it will be substantially less than what would have occurred under the government's amendment.

Mr. Chair, let me make one final point. I looked at some of the specific offences, and I actually had the House do some statistics on it, and four or five of the charges would fall under the serious injury offences that draw most attention and make up most of those 1,500 incidents or charges that I mentioned earlier. There were two that in particular bothered me, and we were going to exclude them completely. One of them was the charge of causing bodily harm. In that regard, in the last year that we had statistics, there were 850-odd conditional sentences given for that offence. A number of those offences I'd have to assume, Mr. Chair, given the quality of the judiciary in this country, were appropriate conditional sentences, where the bodily harm was not of such a serious nature that it called for imprisonment. So in a number of cases, 850 of them, our judges found that. There are similar provisions under some of the driving offences.

What we're doing by passing this amendment, again, assuming it goes through, is allowing the courts, the judges, to make this determination, that even though they are convicted of assault causing bodily harm, the consequences of that assault—that is, the injury to the individual victim—is not so severe that it precludes the use of conditional sentences.

● (1615)

In that regard, I did do some research on cases under existing section 752, and a number of the cases say that this section can be invoked in these circumstances. Conditional sentence is granted even when they meet the legislative test but they don't in effect meet the circumstantial test. So if the assault causing bodily harm is of a more minor nature, they would still be eligible.

Having determined that, Mr. Chair, I'm quite satisfied that the number of offences that ultimately are going to be precluded are going to be the ones that society wants precluded, and that the judges have enough direction under this amendment that they will know which ones are to be precluded, those being the ones causing the most serious injury and crying out for a more severe penalty.

Those are my comments. Thank you, Mr. Chair.

**The Chair:** Mr. Lemay.

[*Translation*]

**Mr. Marc Lemay (Abitibi—Témiscamingue):** I will say at the outset that if it had been my decision alone, I would have voted against the bill without hesitation and strongly recommended that my colleagues in my party oppose the bill outright.

But I have come around to Ms. Barnes' opinion, and to the opinion of my colleague, the learned and extraordinary Réal Ménard.

**Mr. Réal Ménard:** Not that learned or extraordinary, Mr. Chairman.

**Mr. Marc Lemay:** I will stop there, Mr. Chairman. He has succeeded in persuading me that this amendment is fair, and that it will guide courts satisfactorily in the future. I will therefore accept his view.

Nonetheless, I do have a comment for my colleagues across the way. I would reiterate the words of Giuseppe Battista, who is probably one of the best criminal lawyers in Quebec. He's very highly respected by the Superior Courts, the Court of Appeal and the Supreme Court of Canada in particular. He has told Parliament that if Bill C-9 were passed in its current form, crimes, not individuals, would be judged. This runs counter to all practices established by the courts, and counter to the principles of rehabilitation and punishment.

I have argued cases in court and in criminal court for 25 years, and always found it important to remind the judge that he or she was to judge the accused, not the crime. Committing a crime is a reprehensible act, regardless of the crime involved. As the saying goes, he who will steal a penny will steal a pound. It is unfortunate that our colleague is not here today, because I would tell him that when the issue is rehabilitation and punishment, we need to think about the person in the prisoner's box, not the crime.

Of course, we do have to take into account the crime itself, and the denunciation it calls for. That is exactly what conditional sentencing does. I repeat—I have read all 94 pages of the Proulx decision. I have cited them and filed them in court at least 20 times since 1996, and I can say that—for once—the Proulx decision is clear. The Supreme Court ruled that conditional sentencing was indeed a sentence of imprisonment. I have had clients to whom I strongly recommended that they do not agree to a conditional sentence, because they would not be able to comply with the extremely stringent conditions that courts frequently impose with conditional sentencing.

That is why I am ready to explain to any victims' group to which my colleagues—Mr. Petit or other colleagues—would care to invite me, the position that I advocate and will continue to advocate. We will take steps to ensure that the Criminal Code is adapted to a variety of situations, and to ensure that repeat offenders do not end up on our streets day after day.

However, though there are indeed victims' associations to argue one side of the case—and I do respect victims' associations—there are also other means to make one's case in Parliament. Forgive me for calling to your attention something that seems quite obvious, but we are here to discuss the Criminal Code, and the Criminal Code deals with crimes. Unfortunately, crimes are committed by individuals, and that is why we are here—to ensure that the Criminal Code is brought into line to reflect 20th-century aspirations more effectively.

● (1620)

I will conclude by saying that I will vote for the amendment, because in my opinion it establishes satisfactory limits. We should bear in mind that we will guide the courts and explain to them that for certain crimes, such as the crimes provided for in Ms. Barnes' amendment, they will have to make limited use of conditional sentencing. Thus, we will do nothing to hinder the work of the sentencing judge or to influence the decision on what sentence to impose.

I hope that my colleagues will understand this argument and allow us to vote on this amendment as quickly as possible.

Thank you.

[*English*]

**The Chair:** Mr. Bagnell.

**Hon. Larry Bagnell (Yukon, Lib.):** Thank you.

I want to give a brief summary of my view on the amendment. It's also a summary of all the hearings.

Basically, I think we're coming into a system in which prison doesn't work. For centuries we've had it, and crime just keeps going on. It's mostly recidivism and it obviously doesn't work, so something new was put in: conditional sentencing. A vast majority of the witnesses and evidence suggested that either there was improvement or that it was not any worse than the prison option. In fact even the minister, when he appeared before us, had a chance to bring forward a few cases—perhaps eight or half a dozen out of tens of thousands of the worst ones—and even in those eight, he couldn't answer whether or not conditional sentencing had worked. It could have worked in all of them.

The downside of removing the option is that when the courts still try to come up with a fair outcome, an unintended consequence that will make things more dangerous will be that some people won't be convicted because the sentences available won't be reasonable. Some will proceed by summary conviction, and therefore won't get as long a period of treatment as they should otherwise get, or could otherwise get, and as the NDP's Mr. Comartin said, some will be given probation who otherwise wouldn't have been given probation—a less effective treatment than conditional sentencing, because it does not have all the options of various treatments and conditions.

One thing that was disappointing in the hearings, something that wasn't emphasized enough and that we didn't get enough evidence on, was the detailed types of conditions and treatments that go along with conditional sentencing, and why that option is so universally accepted by the academics and practitioners in the field. Although it appears counterintuitive at the beginning, to me all this evidence suggests that we're making a safer society for women and children and victims, because offenders will be a lot less likely to reoffend. Remember, every single person who is going to be dealt with in this law is going to be out on the streets again, or has the potential to be out on the streets again, so if they're all going to be out there, and you have two options, and one of the options is less likely to reoffend, then that's the one you would choose to make victims and people and society safer.

Finally, as the representative for the north for the opposition, let me say that we have some unique conditions that would even exacerbate the potential of a person to be more dangerous. When they have to go to jails that are hundreds or even thousands of miles away, they're away from the family supports that everyone needs in rehabilitation. You could exacerbate the damage that a prison does to a prisoner even more than in the case of someone from the south.

All that leads to not supporting the bill at all, but we have all heard evidence that some Canadians are worried about the serious cases if the amendment is brought forward, and they don't want this option for those people. I can go along with that sentiment.

The second point is again related to the uniqueness of the north. In some of these serious sexual offences, for instance, you'd like to put conditions on the conditional sentence, but because we have tiny, remote communities, it would be almost impossible to keep the offender away from the victim, often a female, because those communities are so small and isolated. In that respect, the amendment would deal with those situations.

Finally, I will address the two objections. The first one was by Mr. Moore. It was that serious offences would not be captured. Remember that all the maximums that are available to capture those offences are still there, so if judges make the appropriate decisions, all those serious offences will still be captured. The ability of the courts to capture them is still there.

The only other objection so far in the discussions was I think from Mr. Petit. It was that we don't want to fail to protect women and children. As I've already said, the evidence suggests they'll be more protected.

● (1625)

What was really compelling and surprising for me was the astounding statistic that a conditional sentence with probation was an average of 700 days in treatment, trying to stop the recidivism that we've never been successful in achieving in society...and conditions, etc., to rehabilitate a person, whereas for prison alone the average is 47 days. So if you have 700 days, with a lot of options, to try to solve a problem we've never solved versus 47 days, it was convincing to me that society would be safer with the 700 days.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Bagnell.

Mr. Murphy, what say you?

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

Very briefly, I won't rehash many points. Kudos to Sue Barnes for working with the other parties and getting some amendments that make some real sense.

I think what I objected to most of all about this bill from the outset, as a new member of Parliament and as a lawyer, which I don't feel I should apologize for—the member of Parliament, I don't know, but being a lawyer I don't apologize for—is that the judiciary appeared to be under attack in this bill. There was an animus that the system isn't working, they're too lenient, and therefore we're going to fix it with this bill. I found that offensive.

But I think what's important is that the government did not set out to completely eradicate conditional sentences, even though it may have led the public to believe that's what it was about to do. So if the goal was not to completely eradicate but only to tighten, I think these amendments do that.

Secondly, the overwhelming evidence of the witnesses here was that conditional sentences do work. They are appropriate in many instances. By limiting them, or refusing to allow them in the three instances in this amendment, the government has in fact set out and succeeded in its job of tightening the use of conditional sentences for serious offences, I'll call them. “Mission accomplished”, they might say, but it's also to keep in mind that this is a process. The application of conditional sentencing is something relatively new to the Criminal Code and the criminal justice system, and there is in this amendment and in the bill that was presented by the government, I think, an implicit bowing to public perception that they weren't working.

I might blame the media and I might blame the government for creating and heightening those perceptions, but the perception is there. As Myron Thompson would say if he were here, the people are always right, and the people feel that something needs to be done with respect to some conditional sentencing applications. This amendment does that.

We also have to remember, as responsible committee members, that several AGs in several provinces have been calling for the curtailing of conditional sentences in some applications, which is exactly what this amendment does.

Finally, it is about the victims. It is important to remember that a person given a conditional sentence is monitored, as the cold eye of society and the justice system is over him or her for a longer period of time than somebody who's merely thrown in prison.

I think Larry touched on it with respect to the north, but it can't be said enough that any sentencing regimes affect our aboriginal population disproportionately, so we must, as responsible members of Parliament, tread very carefully when we tighten and strengthen penalities that we know statistically affect deleteriously the aboriginal community.

So I am all for this amendment. Of course, Sue Barnes would kill me if I wasn't, but I'm also for it in my own heart.

Thank you.

● (1630)

**The Chair:** Thank you, Mr. Murphy.

**Hon. Sue Barnes:** On a point of order, I'm not capable of killing even a fly.

**The Chair:** Mr. Moore, would you like to speak about the cold eye of society?

**Mr. Rob Moore:** Thanks. There has been a lot of discussion. I've had time to look at the amendment further and consider it, and I would suggest to opposition members that we can't have it both ways. On one hand, conditional sentences—I've listened to what everyone said—are seen as being some sort of be-all and end-all: it's a much better system than prison; it solves all our problems; judges always, always apply conditional sentences appropriately. That's what I'm hearing. Yet here's an amendment that does limit conditional sentencing.

The government was listening to Canadians, and we've said that we do need to limit conditional sentences. We've said that when someone is a victim of Internet luring, arson for fraudulent purposes, or break and enter, when we have a situation like that, who are we to sit here and discount that as being somehow not serious?

I heard it from some of the witnesses. I might as well say that we had some academics here who may never have had to deal with a victim in their life. We also heard, from victims groups and police officers who are on the front line dealing with victims every day, their sense of justice, their sense that justice has been served, that their government has protected them, that the justice system has protected them; their sense of security when, if someone has committed an act against them, whether that be physical or whether that be a property crime, they think there may be justice served. They hold out some faith in our system, and down the road when they find out that the person is right back into the community, their sense is that there has been no justice served whatsoever.

Again, I do not favour the amendment, just for those reasons. I did want to respond after having time to analyze it a little further, because this was the first that I had seen it. But I think it's too narrow. I think it's narrowing it too much. There does seem to be some admission on the part of the opposition that there are cases where the conditional sentence shouldn't be used. I would argue that it's in the cases that we set out in the bill, and this narrows the bill too far, I would suggest, because it leaves out some very serious offences where Canadians are left as victims and where their offender could be right next door after going through the justice system. The victim is still there, has to live with this the rest of his or her life, but the offender gets to serve time under house arrest.

And we've all heard about the amount of supervision that goes into these conditional sentences. I know it sounds fine to say there were so many days of supervision, but what was the evidence on the supervision? I heard evidence that there wasn't effective supervision on conditional sentences. So there is a reason there is an impression out there from the Canadian public that people who commit crimes are getting away scot-free when they get a conditional sentence.

And there's an admission in this amendment that this is the case, but I just feel that the amendment doesn't go far enough. Those are my thoughts on the amendment, and I guess that's all I have to say about it.

● (1635)

**The Chair:** Mr. Lee.

**Mr. Derek Lee:** Thank you, Mr. Chairman. I suppose there's not a whole lot more to be said.

To respond to Mr. Moore, he's suggesting—I just use his words—that there are some serious offences that won't be caught by this restricting section. But in fact almost all the offences he might be concerned about are caught by the Criminal Code section itself, because conditional sentencing, under the existing Criminal Code provisions, can only be used if the proposed sentence is less than two years. If a judge reaches a conclusion that a crime is serious enough for a penitentiary sentence, there cannot be, under the existing provisions, access to the conditional sentencing provisions.

The Criminal Code does not impose conditional sentencing on anyone; it is only a sentencing option. I heard evidence here that the government bill in its current form could or would seriously impair sentencing procedures currently being used in aboriginal sentencing both in the north and in urban areas, and in some specialized courts —there are three or four drug courts now specializing in that area that make use of conditional sentencing.

I practised in the Toronto area. I know there are some courts that, while not formally specialized courts, focus on either women's matters—a criminal court for women—or family. These are courts that would, to a greater or lesser degree, from time to time want to rely on conditional sentencing, so I have been cautious about unduly restricting it.

For a reasoned restriction to address the hypothetical glaring example of a poor decision by a judge in sentencing, you have my attention.

My colleague says “appeal”. The way to solve the 2% so-called error rate among judges is probably an appeal. I admit that they are expensive, that we don't want to bog our crown attorneys down in too many appeals, but that is a possible solution.

The bill, the way it was drafted, used a measuring tool that I believe everybody around here sees as a very rough instrument: the 10-year maximum sentence. For all the reasons that were mentioned by our witnesses, including our experts, it just wasn't a good instrument as the measuring tool to restrict conditional sentencing.

So we looked for another one. I looked for another one. The best one we could come up with, within the scope of the bill, is the one we have here today.

For the record, I just want to reintroduce my concern. Because the bill makes a distinction between indictable and summary procedures when it comes to the availability of conditional sentencing, I viewed this as a pushing down onto the crown attorneys and police of discretion and decision-making early on in the process, which would not affect the weight of the criminal procedure to be used but would actually affect the availability of this type of sentencing to an accused. That's an additional level of decision-making on the part of a crown attorney, and it just didn't look right to me to have crown attorneys making those types of decisions that early in the process.

As it stands now, crowns will be making some of those, but because of the design of the amendment, which I intend to support, the ambit of their decision-making will involve a smaller basket of Criminal Code charges, and I regard that as a good thing.

● (1640)

Is the current amendment as effective as a specific listing would be? No, it probably isn't, but if we were to use a list, we would probably argue indefinitely about what would and wouldn't be on the list. But I am prepared to have confidence in the judiciary that when a serious matter warrants a sentence greater than two years, we don't have to be concerned about conditional sentencing, because it simply isn't available under the current regime.

Thank you, Mr. Chairman.

[*Translation*]

**Mr. Marc Lemay:** The parliamentary secretary mentioned witnesses who appeared before us. I'm sure it was unintentional, but he left out that the Canadian Bar Association, the Barreau du Québec, and basically everyone who deals with inmates told us the bill went too far. I would remind the parliamentary secretary that the judge's work ends once the sentence has been handed down. If the parliamentary secretary, and I say this with all due respect, does not agree with the way in which sentences are handed down—in other words that parole is granted too quickly, that conditional sentences are imposed too readily, that probation officers do not have the resources they need to effectively supervise the sentences imposed, then the parliamentary secretary should tell the Minister of Justice to ask the Minister of Public Safety to provide funding for these purposes. Our job is not to determine whether sentences are properly enforced; our role happens before the sentence is handed down, and involves mainly determining that the courts hand down sentences in keeping with the law, in keeping with the Criminal Code. So judicial discretion exists, and under this amendment, it will continue to exist. Tailoring sentences to individual crimes, which is so important in our Criminal Code, will therefore continue to exist and to ensure that Canadian courts are respected, not just in North America, but throughout the world, for the type of sentence they impose. That is why I and my colleague will be voting for the amendment.

[*English*]

**The Chair:** Thank you, Mr. Lemay.

Ms. Barnes.

**Hon. Sue Barnes:** Thank you very much, Mr. Chair.

Because my colleague was talking about lists, and for those who don't know, I'll put on the record part of the advice received from the legislative clerk to the senior levels, and verified by me personally, that it would have been an illegal amendment to this bill to have done an exemption list, because that would have been ruled out of order. Well, I know she gave me that advice, so I'll simply state it here.

The other point I want to make is that I think there are some lessons learned here. The Minister of Justice came before us in the first bill meeting saying he was prepared to say that if we came up with another way of dealing with this as opposed to the arbitrary way of simply going the 10 years, he was open to that. So we have done something that is inside of those concepts. We had to work inside of those concepts. As I said, there were only two legal ways to amend this bill.

The other thing that might be a lesson from this activity comes, again, from that first meeting when I asked the Minister of Justice for access to the bureaucrats inside the Department of Justice to help work on some amendments. There was a reason for that. It was about going through these offences having their expertise. That was refused to me. Thankfully, we have a very good researcher here in Robin, and I went to him to put together an idea of the starting lists that would have been included in this amendment.

In case anybody on the opposition benches feels this is a short list, there are three pages of serious offences that would have been captured here. There would be subjectivity. I mean, it will always be up to the judge to determine terrorist activity, or criminal organization activity, or what a serious personal injury activity is, but the bottom line is that this is not an irrational amendment, this is a factual amendment.

I think for the working of the committee, when there are bona fide approaches to working with a bill to create good policy and asking for access to complete briefings or access to people who have the best knowledge, those people should be made available to us. We got to the same result probably, but at the same time, it could have been done in a better manner and making it a situation where the committee could work more collegially, at least from the government to the opposition.

With that, I'm very happy that my colleagues from the other two parties are prepared to join in this amendment, because I think it is appropriate. My personal preference would have been that discretion be there, but that was not available to us. Because we believed that the public was concerned and wanting some tightening, I made it very clear from the first speech last spring and my first meeting with the government representatives that we would be working toward some movement to tighten the range of conditional sentencing.

Thank you very much.

● (1645)

**The Chair:** That's the end of my speaking list. I trust the committee will vote on the amendment now.

**Mr. Patrick Brown (Barrie, CPC):** Mr. Chair, may I ask for a recorded vote?

**The Chair:** You may.

(Amendment agreed to: yeas 7 ; nays 4)

**The Chair:** Is there any further debate on the clause before we go to the vote?

Mr. Moore.

**Mr. Rob Moore:** I'm sure you're doing it right, but we had a government amendment also. Will that be dealt with in the next clause?

**The Chair:** It's the next amendment.

Shall clause 1 carry as amended? A recorded vote? No one asked.

(Clause 1 as amended agreed to)

[*Translation*]

**Mr. Daniel Petit:** Could you wait a moment please, Mr. Chairman? Could you please repeat what you said? I was looking at my other papers. When you ask whether clause 1 shall carry, are we to understand that you are referring to clause 1 as amended?

● (1650)

[*English*]

**The Chair:** Clause 1 is carried as amended.

[*Translation*]

**Mr. Daniel Petit:** All right. I would ask for a recorded vote, because this is important. This was done for the amendment, but not for the clause itself. I believe I am entitled to ask for a recorded vote.

[*English*]

**The Chair:** We went through that, and I did call on the members to respond accordingly. No one did. The clause was carried as amended.

Mr. Moore, please.

[*Translation*]

**Mr. Daniel Petit:** That is all right.

[*English*]

**Mr. Rob Moore:** Amendment G-1 would simply delay the coming into force of the bill by six months, and that came out of meetings we had with the federal, provincial, and territorial levels. It gives some more time to get ready for the implementation of the bill.

**Hon. Sue Barnes:** First of all, can I ask whether this amendment is in order?

**The Chair:** Yes, this amendment is in order. It changes no scope of the bill.

**Hon. Sue Barnes:** That is your ruling?

**The Chair:** That is my ruling.

**Mr. Derek Lee:** I'd like to speak to that Mr. Chairman, if I may.

Colleagues, you'll recall that one of the reasons the chairman felt the first amendment that was moved here today was out of order was that there was an element of discretion added to the bill. So I'd like to argue slightly tongue-in-cheek that this amendment also invokes discretion, the discretion being that of royal assent and the timing of the royal assent.

In fact, one wonders these days whether or not the government will enact and give royal assent. There's been a question raised about that too. I'm wondering whether, with that element of discretion now being shoehorned into the bill, this amendment might be out of order.

Okay, I'm going to withdraw that. I think I don't want to give the chair a hard time here, so I'll stand down on that issue.

**Hon. Sue Barnes:** I'm not going to challenge your ruling, Mr. Chair. I'll put that on the record. But I would like to hear from the legislative clerk how this amendment is in order—other than the chair's ruling.

**The Chair:** The clerk will speak on the record.

**Ms. Joanne Garbig (Procedural Clerk):** Every amendment is in order unless there is a procedural reason to suggest that it is not in order. We do see amendments to coming into force provisions of bills. These, in most cases, we don't see as harming the principle of the bill, as going outside the scope of the bill, as implying expenditures that might require a royal recommendation. The amendment appears to be complete, coherent. I don't see any procedural reason to suggest that the amendment is not admissible.

**Hon. Sue Barnes:** I have a follow-up question, Mr. Chair, to the clerk.

You stand by your prior advice to me that the only way to amend the substance of the bill was either raising the years or doing the categories, is that correct? All I'm trying to get on the record is that I've said that—

**The Chair:** What is your reference to, Ms. Barnes?

**Hon. Sue Barnes:** I've said a couple of times that I was told there were two ways to amend the substance of the bill and that were in order. This is in a whole different area. I just want to make sure that the advice has not changed in the last couple of minutes.

**Mr. Rob Moore:** I have a point of order.

**The Chair:** Mr. Moore.

**Hon. Sue Barnes:** I'm trying to clarify something.

**Mr. Rob Moore:** I know, but you've asked probably four times the same question, whether the advice is correct.

**Hon. Sue Barnes:** That's not a point of order.

**Mr. Rob Moore:** Sure it is. It's a point of order because there's already been a ruling on that. We've already heard evidence, and I can't believe that anyone would draw an analogy between an amendment to the substance of the bill and the coming into force. The coming into force provisions of the bill are amended all the time.

**Hon. Sue Barnes:** I know that. Thank you, Mr. Moore.

**Mr. Rob Moore:** I know you know that, so let's move on.

**The Chair:** I'm going to listen to Mr. Murphy now, and if somebody wants to challenge this particular ruling, they may do so.

● (1655)

**Hon. Sue Barnes:** No, I'm not. I do have a question, though—

**The Chair:** Okay. Mr. Murphy.

**Mr. Brian Murphy:** I would like to ask about the six-month thing—specifically, why it is required. I'll tell you why I'm asking. Every committee that Mr. Petit and I get appointed to has extended hours, and we spend a lot of time together because there's a big workload. This has been no exception. There has been a lot of work in justice.

I'm a little ticked off, frankly, that senior members of the government, including the Prime Minister, would make public statements that if they can get the committee working and get the opposition members to put these bills into power, then everybody will be safe in their beds at night. That ticked me off, frankly, because I didn't think we were slacking off here.

The point is, if the Prime Minister is in a hurry, if your party is in a hurry, why is it absolutely necessary for the six months? Do you not have the tenders ready for the new prisons you need for your justice program, or what?

I'm just suggesting an answer. What is the answer?

**Mr. Rob Moore:** The reason is that we had a very productive federal, provincial, and territorial meeting in Newfoundland, and we're bringing in this legislation. It's going to have an impact. We're giving six months. We could have said five and a half months, or we could have said 4.2 months, but it's six months. It's fairly standard for the coming into force of the legislation. It gives crown attorneys and provincial officials time to study the impact of the bill on their own particular jurisdiction and to get ready to implement the bill.

**The Chair:** If I may, as chair, make a comment in reference to that, I know of other legislation that has come down and hit jurisdictions and it has created chaos for a period of time. So it gives them a little leeway to plan. I think that's the basis behind the amendment.

Mr. Petit.

[*Translation*]

**Mr. Daniel Petit:** I would like to point out that Mr. Murphy is quite right with respect to the amendment on the issue of the six months. We sit on committees all the time, including the one that reviewed Bill C-2, and I can tell you that to all intents and purposes, the six-month period is theoretical, because until the Senate sends back the bill to us, it means nothing.

At the moment, the Senate is controlling Parliament. So even if we were to pass the bill today and call for immediate enforcement, since the Senate has all the power, it makes the decision. So, to all intents and purposes, the six-month period is theoretical. So I would ask you to accept this, because at the moment, the Senate is controlling everything.

[*English*]

**The Chair:** Thank you, Mr. Petit.

Is there any further debate? Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** Mr. Chairman, I would like to make a clarification. First, the Bloc Québécois will be supporting the government's motion, but I would ask that Mr. Petit make an important distinction. If I understand correctly—and someone will correct me if I am wrong—this applies after the date of royal assent. So the six-month period will come into play once our Parliament, which has two chambers, has finished its work in both places. So this has nothing to do with the time the Senate may take, since the bill will come into effect six months after royal assent.

I would ask our colleague not to confuse the role of the Senate and royal assent; they are two different things. That does not mean that we cannot rail against the Senate. I certainly understand that. Ideally, we need an elected Senate—that is another debate— but we should not confuse the two concepts.

I know it is very rare for you to confuse the two concepts, but since you just did so, I wanted to make that clarification. But it is really not like you to do this.

**Mr. Daniel Petit:** If I may, Mr. Chairman, I did not confuse the two concepts. All I am saying is that to all intents and purposes the six months will be meaningless. We do not even know how long the Senate will take to send the bill back. Bill C-2 has been stuck there for over six months. That is all I was saying. I am not confusing anything.

[*English*]

**The Chair:** Let's deal with the amendment now.

(Amendment agreed to)

● (1700)

**Mr. Réal Ménard:** You have one victory today.

**The Chair:** Shall the title of the bill carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill as amended carry?

**Some hon. members:** Agreed.

**The Chair:** Shall I report the bill as amended to the House?

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

**The Chair:** That's the end of the debate and the clause-by-clause. Thank you.

Mr. Ménard.

[*Translation*]

**Mr. Réal Ménard:** I would like to ask a question, if I could. Is it your impression, Mr. Chairman, after checking, that the government intends to bring the amended bill back to the House? Perhaps my question is more to the parliamentary secretary. Do you think that the government will be reintroducing the bill in the House as amended?

[*English*]

**Mr. Rob Moore:** Well, we just voted to report it back to the House as amended. That's the job of the committee.

[*Translation*]

**Mr. Réal Ménard:** Reporting the bill back is one thing, but reintroducing the bill as amended is the government's prerogative. Would you check with your leader to find out whether he intends to reintroduce the amended bill? The report is a different matter.

[*English*]

**Mr. Rob Moore:** Sure, but appreciate that we saw the amendments for the first time an hour ago.

**Hon. Sue Barnes:** No, you knew about them last spring.

**Mr. Rob Moore:** No, an hour ago.

**The Chair:** The meeting is suspended for five minutes.

● _____ (Pause) _____ ●

● (1705)

**The Chair:** We'll continue with committee business.

I believe there's a notice of motion from Réal Ménard before every member here.

[*Translation*]

**Mr. Réal Ménard:** My motion contains three points, Mr. Chairman.

First, I would like to point out that my whip instructed me that the Bloc Québécois does not want committees to meet more than twice a week, generally speaking, because the workload has been shared among all our members. This instruction does not apply specifically to the Standing Committee on Justice and Human Rights, but rather to all committees. In fact, I'm told that this principle was adopted by all the whips, including the government whip. We agreed with respect to our study of the bill to amend the Judges Act. I think we must continue with that, but once the study of Bill C-17 is completed, I do not think our whips will authorize us to sit on the same committee more than twice a week. I am bound by this decision. If your whip wants to raise this matter at the meeting of all the whips, that is his prerogative.

Mr. Chairman, do you want to study my motion point by point, or shall I explain all three points at once?

[*English*]

**The Chair:** Go through each one individually.

[*Translation*]

**Mr. Réal Ménard:** Very well.

[*English*]

**The Chair:** Mr. Moore.

**Mr. Rob Moore:** On the issue, then, of meeting three times a week, one thing that concerns me a bit is that we have the subcommittee meetings, they come back with a recommendation, the committee adopts the recommendation.... We have a large workload. It's the same workload as we had last week. The bills are there; there are even more bills now. Why we would back down, when three...?

I haven't been around forever, but I've been around two years. I know that three days is not uncommon or unreasonable when you have a heavy workload. We still have the same workload. I don't see why we would back down from three days to two, because we have a lot of bills on the agenda, a lot of studying to do as a committee. Committee members have said we need to take appropriate time to deal with witnesses, and so on. If we're going to do justice to some of these bills, we need to meet three times a week; otherwise we're not going to be able, in my opinion, to do them justice.

On my first point, Mr. Chair, I think as members we come out of these meetings and we vote.... I have it right in front of me: it was agreed that we would meet Monday, Tuesday, and Wednesday, from 3:30 to 5:30, so we all schedule accordingly. Then we have members saying we need to meet less often.

Why would we change these things midstream? What has changed?

● (1710)

**Mr. Réal Ménard:** I'm going to explain.

[*Translation*]

I can answer.

[*English*]

**The Chair:** I'm going to just change a few points that I agreed to at the beginning. I think we should discuss points one and two on this motion.

**Mr. Derek Lee:** Mr. Chairman, I have a point of order.

As I understand it, at this point we are in public session. The question is whether we want to deal with the subject of future business in public session. We normally don't; we usually go in camera. I don't think the public record has to be burdened by all this back-and-forthing on the subject of our intricate schedules.

[*Translation*]

**Mr. Daniel Petit:** On a point of order.

[*English*]

**Mr. Derek Lee:** Excuse me, I am making a point of order...unless you have a very, very important point of order.

**The Chair:** Order, Mr. Petit.

Mr. Lee, go ahead.

**Mr. Derek Lee:** Can I ask you, Mr. Chairman, and the committee to address whether or not we could move in camera, as we normally do for this type of discussion?

I suppose it's a motion, but....

[*Translation*]

**Mr. Daniel Petit:** May I at least respond to Mr. Lee, please?

[*English*]

**The Chair:** Mr. Petit, is it on the issue of meeting in camera?

[*Translation*]

**Mr. Daniel Petit:** Yes. I would like the discussion to be held in public. There has been a request to reduce our hours of work. When I sat on the legislative committee on Bill C-2 with Mr. Murphy and Mr. Moore, the same request to reduce the hours of work was made by Benoit Sauvageau. The Liberal Party and the Conservative Party agreed to keep up the pace of our work, because we had to be accountable to our constituents. So I would like this request today to reduce our workload to be made publicly. He is entitled to his own opinion. This is my request to you.

**Mr. Réal Ménard:** Mr. Chairman, first of all, we are not asking for a decreased workload; we are asking to meet according to our schedule. If the Conservative Party whip wanted three meetings, that's what he should have asked for when the decision was made as to the workload of committees.

Why the request? Because when the matter was discussed, we had four bills to consider. Now there are 12. We are not responsible for the fact that the government has failed to properly manage its agenda. Stop tabling bills. There's nothing forcing us to move along at your pace. Three out of ten Canadians supported your bills; in other words, 7 out of 10 did not.

If the Conservative Party whip wants to discuss this matter with my whip, and the Liberal and NDP whips, he can go right ahead. But for the time being, the rule is two meetings per week per committee. I want to be clear on this point, especially for Mr. Petit's benefit. All the members of this committee are here to work. The government simply has to stop doing such a poor job of introducing bills, as is currently the case. That is the problem.

**Mr. Daniel Petit:** The issue we're debating is whether or not to go in camera. I'd asked for us not to.

You may well be right, but at least this way everyone knows about it. Our constituents have a right to know whether we will be sitting two, three or four times.

**Mr. Réal Ménard:** I'm not asking to go in camera, I have nothing to hide.

[*English*]

**Hon. Larry Bagnell:** On a point of order, can we vote on this, whether to go in camera or not? Is that the feeling of the committee? Let's just take a quick vote, no debate.

● (1715)

**The Chair:** Are the committee members willing to bring the discussion in camera?

**Some hon. members:** No.

[*Translation*]

**Mr. Réal Ménard:** No, I don't want to sit in camera.

[*English*]

**The Chair:** The consensus appears to be that we stay on the public record.

Let's deal with the first two points of this motion, because I think they are interrelated. The motion that Mr. Ménard has put forward is to meet twice a week after one more bill—that is, Bill C-17—is dealt with by the committee. The legislative calendar tells us we have somewhere in the neighbourhood of twelve bills—I believe it is closer to eight or nine—that are out of the House, or at least eight that are before the committee.

Part of your motion, Mr. Ménard, is exactly what we're talking about, to get the job done on the legislation that we have on hand, and meeting twice a week will not suffice. So please go to point two.

[*Translation*]

**Mr. Réal Ménard:** The rule is that all committees meet twice a week. The government can introduce fewer justice bills, fewer other bills, but we are not responsible for the fact that the government is not managing its agenda properly. Twice a week, that's the rule. Before we move on to the second point, get your whip to discuss the matter with mine; they can look into it. As far as we're concerned, the rule is two meetings per week.

Mr. Chairman, with all due respect for you and for all parliamentarians, I feel that if we do not set out some ground rules, we're going to be—and I mean this—bulldozing our way through legislation. That's not how we want to operate. I'd kindly like to point out, Mr. Chairman, that last time, you came to the steering committee and said there would be two meetings for the bill, despite the fact that we hadn't discussed the matter at all. I do not want the number of meetings to be pre-determined; I want us to see what type of information we need, which witnesses we want to hear from, and consider all the information the committee will need in order to adopt a bill based on accurate and compelling information. If it takes eight committee meetings, so be it; if it takes two, there will be two, but I do not want us to establish ahead of time that there should be two meetings for such and such a committee. That, Mr. Chairman, is unacceptable. Some bills we agree on and others not, but we should always ask ourselves what type of information we require.

Mr. Chairman, the government has to quit thinking it can force us into an inordinate amount of work just because it has a law and order agenda. That is not the committee's responsibility. The government is free to introduce any bill it chooses, but the committee is free to decide how it operates. I think that has to be the basic ground rule.

And in closing, Mr. Chairman, I should add I do not want to engage in a partisan debate on the issue, but that's democracy. Seven out of ten Canadians did not support your platform. We're not simply going to shove the legal system over to the right for Stephen Harper's sake. You can count on our cooperation to ensure the committee runs smoothly, but you are now looking at 12 bills out of 29. That is not a speed at which we are willing to work.

[*English*]

**The Chair:** Mr. Ménard, obviously you're adding this point to the discussion, that this government in your opinion doesn't have the broad support of the people in the nation. And is this why there's going to be a limit on the time of discussion of the legislation that's coming before us?

[*Translation*]

**Mr. Réal Ménard:** No.

[*English*]

**The Chair:** Well, you brought the topic up.

[*Translation*]

**Mr. Réal Ménard:** Mr. Chairman, I am saying that the government is free to table bills in the House. Our leader has reminded us that of the 29 bills tabled since the beginning of the 39th Parliament, 12 deal with justice. The government will have to do a better job of distributing the workload.

You want us to meet four times a week, ostensibly because the government has tabled many bills. That is its prerogative, but ours is to set the pace of our work.

[*English*]

**The Chair:** Does this mean, Mr. Ménard, that this committee cannot resolve a matter on meeting to deal with the legislative material that's coming before it unless we run to the whips to get their permission to do it? Is that what you're saying?

[*Translation*]

**Mr. Réal Ménard:** No.

[*English*]

**The Chair:** But this is what you're saying here.

● (1720)

[*Translation*]

**Mr. Réal Ménard:** The whips established a schedule, and your whip agreed to it.

[*English*]

**The Chair:** You cannot solve this problem?

[*Translation*]

**Mr. Réal Ménard:** Yes, we will solve it by meeting twice. That will be the solution.

[*English*]

**The Chair:** Ms. Barnes.

**Hon. Sue Barnes:** Thank you very much, Mr. Chair.

I don't want to put words into Mr. Ménard's mouth, but I am sympathetic to the critics on justice. It's not just the work in this committee; it's the work you have with bills in the House that you're often—because the government does media and talks about their legislation before it's tabled in the House—getting media requests to deal with. It's the same people who deal with it.

The concern Mr. Ménard raised with me was that he's hearing now that we're going to have legislative committees, and it's the same people who have to go and be the critics on those legislative committees on bills. You can't be physically in two places at once.

It seems that we gave some undertaking here saying we would up it to three. We were not aware at the time that legislative committees may be utilized to deal with more pieces of legislation, using the same people. This is the point he raised with me, and I think it's a valid point.

The point that I think he's making with respect to number two, and I'm sure he will correct me if I'm wrong, is that the way of going about figuring out how many meetings to allocate to a specific bill, and coming to us, as happened the last time on judges, when we haven't even determined—and a call hasn't even gone out from the clerk—what witnesses we would like to input into the system, has it a little bit backwards.

**The Chair:** The steering committee dealt with that, Ms. Barnes. In fact, the steering committee has dealt with a number of things, but unfortunately even the steering committee members suddenly want to change their minds on how the matter is to be handled. We can't get any business done in that fashion.

**Hon. Sue Barnes:** We're getting business done, actually. We're doing quite well. We've had a lot of stuff through the House.

**The Chair:** I would like to remind the committee that even in the previous government, the justice committee has always been one of the busiest committees, if not the busiest. Nothing has changed. The members are still under a substantial demand to get the job done, and this is not getting the job done. We can't even decide, as Mr. Ménard points out here, to deal with the legislative information that's coming at us, but want to go back to two meetings instead of the usual three that we're dealing with right now. You can't get the job done doing that.

**Mr. Réal Ménard:** The government has to control its own agenda. We're not responsible for that. You could table nine bills; we're not responsible for that.

**The Chair:** I hear where you're coming from, Mr. Ménard. I can read between the lines.

**Mr. Réal Ménard:** You are smart. You are not progressive, but you are smart.

**The Chair:** Is there any other discussion on this matter? We're still dealing with points one and two.

Mr. Moore.

[*Translation*]

**Mr. Daniel Petit:** I am still addressing the first point. In fact, the second and third points, in my opinion, are somewhat less important. The first point is of great interest to me. I think the issue is the work that will have to carry out over the course of the mandate that we have been given.

I understand that Mr. Ménard has decided to go back to two meetings, but I would like to point out to him that we have three days. If he cannot come on a given day, we could pass an amendment stipulating that there will no votes on that day. He would not have to be there and we could get on with our work. I am attempting, in fact, to bridge our positions. You want to stop completely, whereas I want to continue.

**Mr. Réal Ménard:** The government really has control its own agenda.

**Mr. Daniel Petit:** I am not indispensable; neither are you. If we have quorum, we can continue to sit for three days. How often are you away? How many times have I been away? There is no problem. We can still meet three times a week and keep things moving forward, in order to achieve results.

I am worried, but not about our agenda. We belong to one of the most important committees. We were not obliged to stand, neither you nor I. We accepted. If we increase the pace to three meetings of approximately three hours in length, between you and I, it will not kill us. You have worked much harder before. Perhaps you have personal activities; so do I. We have to forget about them, because we are at the service of the people. I believe that three days will be adequate. If you cannot come, Mr.Lemay will be present. Someone will replace you and will let you know what happened, as is sometimes the case for me. That is all.

● (1725)

[*English*]

**Mr. Réal Ménard:** You are a substitute for this committee.

**The Chair:** Do you want to get something on the record?

**Mr. Rob Moore:** I do have a concern. Are we going to be revisiting this type of thing weekly? I'm wondering why we even have a steering committee, if every time.... It is our job as a committee to come up with our terms and agenda; we set that. The steering committee sets how long we're going to study a particular bill. We agree on witnesses, and then week by week, we have to revisit it all. If that's going to be a recurring theme, I think it's a problem.

It concerns me that we've already agreed to meet three days a week, which in my opinion is very reasonable.

**The Chair:** With the calendar...and I know the previous parties had the same consideration, as to the legislative level that the justice committee ends up with. You cannot work without steering committee direction. That's Mr. Moore's point; I can understand it.

Points have been brought before the broad committee that the steering committee already established. They didn't seem to be good enough. That's not to say that they should be ratified totally, but it does speed things up and helps get the job done.

Mr. Bagnell.

**Hon. Larry Bagnell:** On number two, I have no problem. It's motherhood, and that's the way we operate.

Related to number one, this may be a question for Mr. Ménard. If this is your party policy for all committees now, I agree with whoever said that this has to go back to a discussion among the whips and House leaders, because we can't decide for all the committees. If this is going to be your stance towards all the committees, it has to be decided higher up than in just one committee.

**Mr. Joe Comartin:** I'm in favour of the change, Mr. Chair, because of the indication we now have that Bill C-27—and I have to assume that the government will be using this tactic on an ongoing basis—will be sent to a special legislative committee. This will make it impossible for me to maintain any kind of schedule to sit on that committee as well as on this one and public safety. Mr. Ménard is going to get caught in a somewhat similar situation.

It is important that the people sitting on justice continue to deal with all of these bills, if they come. Certainly the dangerous offender provisions have some overlay with a number of other bills—with Bill C-10 in particular, which is coming next—and to have different members of whatever caucus sitting on these different committees just begs for inconsistencies to crop up.

If, as the government has already signalled, it is going ahead with putting Bill C-27 into a legislative committee, it's logical that we make it possible for Mr. Ménard and me to be on both that legislative committee and this one, on an ongoing basis.

As I said, I will support this motion.

**The Chair:** Mr. Lemay.

[*Translation*]

**Mr. Marc Lemay:** Mr. Chairman, I am respectful of Mr. Petit and of the team sitting across from me. I do not know how they work, but personally, I have to prepare for the meetings.

Take for example, Bill C-10, because we just finished our study of Bill C-9. Many people have sent us briefs on Bill C-10; we have a lot of documents to read. Moreover, some of us do not only sit on the Standing Committee on Justice and Human Rights. I also sit on the Standing Committee on Aboriginal Affairs and Northern Development, and I replace Mrs. Freeman, who is ill.

I felt that three meetings per week to study Bill C-9 was acceptable, but if we went back to two meetings per week that would suit me, because it would give me the time to prepare and to study the documents. I do not know what you think of this, Mr. Chairman, but there is a great deal of material. Also, the Standing Committee on Justice and Human Rights is overwhelming us; they sent us pile of papers for Bill C-27 alone. We have to read everything we are sent, just to prepare ourselves. We just received the list of witnesses we want to hear on Bill C-10. Looking at the list of witnesses, I thought to myself it would be nice to have the time to make enquiries, to find out what this or that person has to do with this file.

It is not that we want to work less, it is that we would like to be able to work properly. If we meet on Monday afternoon, Tuesday afternoon and Wednesday afternoon, we will not have the time to prepare. That is why I agree with the motion. It is not that we do not want to work, because reading does not bother me, but it is getting difficult.

● (1730)

[*English*]

**The Chair:** Mr. Murphy.

**Mr. Brian Murphy:** Yes, very briefly. The government's driving the ship here, and if their interest was really getting this legislation through, they could have done a lot of things more efficiently. The bills could have been drafted a little tighter and they could have been drafted in the same bill.

I really deeply suspect that the politicization of the justice issues lies at their feet, particularly when you have a press conference every week on a new justice initiative. So this is more about politics than a good working committee. We're going to have almost all the same witnesses for Bill C-10 as we had for Bill C-9. We're going to hear almost the same people all over again. Why couldn't it have been one bill? I know why, because there are another two months' or three months' news stories on a different bill in a different area.

You're hoisted by your own petard here, folks. I'm going to support the Bloc.

**The Chair:** Such a suspicious mind, Mr. Murphy.

Mr. Petit.

[*Translation*]

**Mr. Daniel Petit:** I would like to add something. When I worked with Mr. Murphy, on the legislative committee on charge of Bill C-2, we sometimes worked, he and I, until 11:30. at night or midnight for almost three months in order to study Bill C-2. We had time to read the documents, to prepare ourselves and to ask questions of the various witnesses.

Today, we are trying to organize a mere three extra hours, on top of the six we already have, in order to work. I have seen Mr. Murphy work as hard as me. I can tell you he is a hard worker, like myself and like Mr. Moore. I think we have to recognize that our committee is not an easy one. I sit on two or even three committees, in some cases. I sit on the committee full time. I am able to take my time, to work and to read, but I understand Mr. Lemay's difficulties.

On the other hand, I would like to draw your attention to the fact that the Standing Committee on Justice and Human Rights deals with justice, and so of course there are several bills. People can criticize us much as they want for not combining them all in one bill. However, it is extremely important for the Standing Committee on Justice and Human Rights, given what we now know, to be able to meet three times a week. As I was saying a little earlier, if some of you cannot always be present for personal reasons—and I understand that—they can be replaced by someone else on occasion. Furthermore, that is useful to us because we hear other points of view. That is all I have to say.

That is why Mr. Ménard's amendment bothers me. Contrary to what I had hoped, this would create a slowdown. This tendency to always reduce the amount of work I find worrisome. Benoît Sauvageau had tabled the same kind of motion; Mr. Murphy was present and he remembers it. I am not aware of the story involving the whips. Perhaps they had their reasons, but I would like to emphasize that six hours is not very much.

[*English*]

**The Chair:** Ms. Barnes.

**Hon. Sue Barnes:** I'm just going to take two seconds.

This is the operation of the government and how they do their bills. When all the critics came here, and people on this justice committee, to prepare for today, it was amendments on one bill; it was two bills listed on the order paper, one of which was introduced just a week ago, and everybody who has to talk on those bills has to understand them. Maybe some other people, when you're sitting in government.... I've been on that other side, where you don't have to understand the depth to be able to lead your caucus through them. So to suggest that we're not working is wrong. We're working flat out. Most of us are here seven days a week doing this work.

So I think we should take that into consideration. If you put bills up on the order paper with just the minimal amount of notice on complex bills, this is what you're going to get, because we do need time to do our work and prepare.

[*Translation*]

**Mr. Réal Ménard:** Is the vote on points one and two, or on the entire motion?

[*English*]

**The Chair:** We just basically both debated one and two.

● (1735)

[*Translation*]

**Mr. Réal Ménard:** We will deal with the third afterwards. That is fine. We can vote. I will come back to the third point.

[*English*]

**The Chair:** Is there any further discussion? Mr. Moore.

**Mr. Rob Moore:** Are we going to leave discussion of number three? Because our time has expired.

**The Chair:** We have not debated number three.

**Mr. Rob Moore:** So we'll debate that at a later time? Okay. Let's vote on one and two then.

**The Chair:** All those in favour of points one and two of Mr. Ménard's motion?

(Motion agreed to)

**The Chair:** Points one and two are carried.

The meeting is adjourned.

**Published under the authority of the Speaker of the House of Commons**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

**Also available on the Parliament of Canada Web Site at the following address:**
**Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :**
**http://www.parl.gc.ca**

---