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Thursday, February 15, 2007

Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

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● (0905)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call this meeting of the Standing Committee on Justice and Human Rights to order.

As noted on the agenda and the order of reference for Wednesday, October 4, we have Bill C-18, an act to amend certain acts in relation to DNA identification.

Before we get into this specific discussion, though, there is some other committee business we need to attend to. It's a notice of motion from Monsieur Ménard.

I think everyone has a copy of that motion.

Go ahead, Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chair, the motion I've introduced is further to the testimony we heard — as you'll remember — at the time of the summary of Bills C-95 and C-24, and to the consultations I've had with Montreal police representatives. It has four objectives. And I'll be introducing a minor amendment that I'm going to explain to you.

First, I was very surprised to learn that the existing definition of criminal organization — that is to say a group that is not randomly formed, of three persons or more, one of the members of which commits serious offences, punishable by a prison term of more than five years, resulting in a material benefit, especially a financial benefit — does not cover the phenomenon of drive-by shootings.

This morning, for example, the Montreal police will be holding a press conference. Six crimes like the one I've just described to you have been committed since the start of the year. I don't need to tell you that that's also true in Toronto and Vancouver. I think we have to amend the definition of criminal organization to include acts by members of street gangs and that we wouldn't be able to rely directly on material benefit.

That's why it is not my intention to reduce the scope of the definition of criminal organization. However, I believe we should include drive-by shootings in it. For example, there have been 120 victims of street gang confrontations in Montreal in the past 10 years. That was the first aspect.

The second aspect relates to Mr. Bélanger's remarks, that the warrants that police officers obtain for GPS systems, which are a device used to follow a car, must be harmonized. This isn't wire-tapping; you can't intercept communications. However, it makes it possible to follow a car's movements and to link individuals to each other. It's very useful for making demonstrations in court.

By way of a third point, I'd like to introduce a minor amendment. The idea is that there obviously are more specialized prosecutors. We're winning the battle against organized crime because Crown attorneys have agreed to specialize. That takes two, three or four years of work; you have to be aware of that.

I think there'd have to be specialized attorneys in connection with street gangs. They have to know their modus operandi, how the individuals who belong to street gangs operate. However, I won't be talking about money because I wouldn't want the government to feel bound. We could remove the reference to the $5 million fund. The government could just make a sufficient fund available to the attorneys general of the provinces, over five years, to help them train specialized Crown attorneys. I wouldn't refer to any amount in particular.

In addition, I've learned that the government made specific amounts of money available to the City of Toronto to train Crown attorneys. I wonder whether Montreal, Vancouver and other communities could benefit from that. It's not that we want to be “Montrealists”, but that's a reality.

For the rest, the fourth part of the motion is obviously that the government establish a data base, a Web site where all court decisions and evidence gathered in all street gang trials would be available to all stakeholders. I want to be clear on this, since I took the trouble to state it: all stakeholders, in my mind, are police officers, Crown attorneys and obviously the ministers concerned, but not necessarily defence counsel.

At the trial stage, the Stinchcombe decision will apply and everyone will obviously have access to the evidence. However, I think that the immediate stakeholders, that is to say the police, the public department and the Department of Justice should have access to a secure file.

That, Mr. Chair, is the gist of my motion, even though you're not listening to me, which obviously gives the impression that we're an old couple. I hope that the proposal to withdraw the $5 million fund will help make everyone more comfortable.

● (0910)

[*English*]

The Chair: Maybe it's needed.

Ms. Jennings.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): In view of the clarifications made by my colleague, would he agree to allow paragraph 4 of his motion to read as follows:

> That the federal government implement a highly secure Web site accessible exclusively by police officers; federal, provincial and territorial justice ministers; and Crown attorneys, with links to the following:

Mr. Réal Ménard: That would be perfect. That's excellent.

Hon. Marlene Jennings: It would have to be really clear that the Web site is highly secure and accessible exclusively...

Mr. Réal Ménard: Excellent. I accept the friendly amendment.

And in paragraph 3, we delete the words "$5 million" and replace them with the words "a fund sufficient to assist them in training Crown attorneys [...]".

[*English*]

The Chair: Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I spoke just briefly to Mr. Ménard before the meeting started. I have concerns. I spoke to Mr. Bartlett, from the department, about this on Tuesday. His impression was the same as mine with regard to the first paragraph and the first suggestion.

I know this is not Mr. Ménard's intention, but it might again be one of those unintended consequences in terms of limiting the scope of section 467.1. I support the intent behind making drive-by shootings a specific target of that section, but not limiting the rest of the section.

We just have to be careful about the wording. I'm not sure if it's necessary that we actually change this. I assume that for the department, in drafting an amendment to the code, it would be clear that we're not limiting the scope of that section. That's my concern, and it's Mr. Bartlett's as well.

I'm just putting this on the record because I think it's a valid concern. The department should watch for it when they're drafting this, in order to carry out the intent of this paragraph.

The Chair: Mr. Moore.

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

Looking at the suggestions made by Mr. Ménard, it seems, number one, that he has put a lot of thought into this. However, there are sometimes unintended consequences.

I don't know if I'm totally clear yet on all the amendments. You mentioned changing the $5 million over three years to an appropriate amount. Is that what you said, Mr. Ménard?

[*Translation*]

Mr. Réal Ménard: As you wish: the word could be "sufficient" or "appropriate".

[*English*]

Mr. Rob Moore: And then Mr. Ménard has accepted Ms. Jennings' amendment. That raised the same concern with me. On the idea of a website that gathers evidence, as a kind of clearinghouse or a deposit for all of this evidence, could it somehow be breached, or could that create more unintended consequences, such as the one Mr. Comartin pointed out?

From my perspective, there are a lot of new ideas here, and a lot of things that we should discuss. I don't outright have any problem with anything Mr. Ménard has put forward for discussion, but I would be hesitant to adopt a motion like this without having heard evidence specific to the motion.

In my view, it would be responsible for the committee to hear some evidence regarding the motion before we make a recommendation to the government. I know Mr. Ménard may have had discussions with Montreal police or some other groups, and that those discussions may have led him to come up with these five recommendations, but I certainly haven't heard that evidence in a committee setting. I'm wondering what his thoughts are on that.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: My purpose is to give police officers tools. I don't understand Mr. Comartin's reluctance. Is it because he has the impression that that would change sections 467.11 and 467.13? In any case, under section 467.12, it's not necessary to derive a financial benefit. That only appears in sections 467.11 and 467.13.

But how would we be committing an imprudent act by saying that criminal organizations, the characteristics of which we know — it doesn't have to be a randomly formed group; it has to consist of three persons who have committed offences punishable by a prison term of more than five years, and the group or one of its members has to derive a financial benefit — that have also committed offences without deriving a financial benefit are also included. How are we taking a risk if we say that, in addition to all the foregoing, people who, in addition to meeting these criteria, but who also commit offences without deriving a financial benefit, are included? I don't see how that limits the scope of the definition.

I remind you that drive-by shootings are the main way in which street gangs operate. I admit I don't understand the hesitation, but I'm ready to receive an amendment. If Mr. Comartin wants us to amend that, that's no problem for me.

Second, from what Sergeant Ouellette and the witnesses have told us, the judgments rendered in all Canadian jurisdictions don't circulate readily. It would be interesting to see to what extent the Bonin judgment rendered by the Court of Quebec, Criminal Division, is known to the attorneys of Saskatchewan, Alberta and Manitoba. The evidence used in the judgment, and everything that was filed, would be entered in a secure central registry, as Ms. Jennings said, for justice stakeholders. I don't see how that isn't an area that isn't solid.

Now if it is not the wish of committee members to vote on the motion, I am prepared to move it, and we can hear witnesses on the subject. That's not a problem for me, but I admit that I personally didn't think it was something that required us to hear witnesses. However, if that's the committee's wish, I'm prepared to move it and for us to send for witnesses.

● (0915)

[*English*]

The Chair: Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Given how this committee usually operates, it's not really our style to just adopt something as potentially complex as this.

I realize these things are not off-the-wall suggestions; they come from real situations, and I know Monsieur Ménard himself has done plenty of consultation in generating these.

With a view to avoiding unintended consequences, where our recommendations might seem peculiar in the new light of day and in different circumstances, I'm wondering whether we could alter the wording to read—and it happens often in Parliament, where this wording is inserted, where we urge the government to consider the advisability of (a), (b), (c), and (d), rather than our concluding now that these suggestions, as drafted, are exactly what is needed.

That allows the government to consider the advisability, to consider them in a proper context, and then respond to the committee, provide a reply in the appropriate time in responding to our report.

I'd be very happy to support that kind of an approach, where we altered the wording to say, "the committee urges the government to consider the advisability of...".

The Chair: I would make it clear that I think most of the sections, with the exception of the electronic surveillance that Mr. Ménard is bringing up, deal with the definition of "criminal organization". It deals with "participation in activities of criminal organization", including numerous sections on prostitution and "commission of an offence for criminal organization", as well as "instructing commission of an offence for criminal organization".

Most are very complicated, and I would have to suggest that those who drafted these particular sections went through a substantial amount of research and discussion to put them together.

Mr. Moore.

Mr. Rob Moore: Following what Mr. Lee was saying, is he suggesting an amendment that would read, "Pursuant to Standing Order 108.(2), the Standing Committee on Justice and Human Rights recommends...", and then following that, "...the government consider the advisability of..."?

As I said before, without the benefit of my hearing substantive testimony on each one of these four things, I'd be more comfortable with the wording that Mr. Lee is proposing.

● (0920)

The Chair: Monsieur Ménard will be next; then I think we'll conclude this particular discussion, given the fact that the minister will be appearing at 9:30.

[*Translation*]

Mr. Réal Ménard: Mr. Chair, if it is the wish of committee members to agree to the motion with Mr. Lee's amendment, I'll be very pleased.

[*English*]

Mr. Derek Lee: I'll move it.

The Chair: Okay. Then we're all clear on the motion as amended.

[*Translation*]

Mr. Réal Ménard: Yes.

[*English*]

The Chair: What is it?

Mr. Derek Lee: I'm happy to move it in the wording proposed by Mr. Moore. It's on the record. It is that the human rights committee:

> recommends that the government consider the advisability of:

In each of the clauses, you would have to remove the redundant reference to the government. The top of the motion already says, "that the government consider the advisability...". Simply remove....

The Clerk of the Committee (Ms. Diane Diotte): That will be in the amendments of Mrs. Jennings and Monsieur Ménard?

[*Translation*]

Mr. Réal Ménard: With the two amendments: deleting the words "$5 million" and adding the words "highly secure".

The Clerk: I thought that was "exclusively"?

Mr. Réal Ménard: Yes, excellent. That's fine with me.

[*English*]

The Chair: That would include, then, point 5 on your list of points?

[*Translation*]

Mr. Réal Ménard: Yes.

[*English*]

The Chair: All right.

Go ahead, Mr. Comartin.

Mr. Joe Comartin: Tell the people who are coming back to give us a response just to read today's exchange. I'll be satisfied with that.

The Chair: Go ahead, Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): I'd like to raise the following problem with regard to the motion introduced by Mr. Ménard. I had occasion to read it because we had it before. Paragraph 3 states: "[...] train Crown prosecutors specializing in combating street gangs."

We heard two specialist witnesses who were not Crown attorneys. One was a representative of Sûreté du Québec, whose name I don't remember, and the other was a representative of the Vancouver police.

We don't need attorneys to specialize. We need specialists who come from the inside and who are police officers. Attorneys are something else. They may specialize thanks to the government, which sends them to take special courses for that purpose. However, the important thing, and what I understood, is that the gentleman whose name I don't remember, the Francophone who spoke...

Mr. Réal Ménard: Mr. Ouellette.

Mr. Daniel Petit: Mr. Ouellette and the other gentleman, from the Vancouver police, were police officers. They are experts; they're the ones who put the cases together.

So I think it's a bit limiting and that we wouldn't be doing an ideal job of achieving Mr. Ménard's goal, which is the protection of... I think we're limiting the problem too much. Personally, I would move an amendment to cover more than what's currently being provided.

Mr. Réal Ménard: Mr. Chair, we mustn't confuse two things. These are Crown attorneys who are responsible for trials and who lay the charges. Mr. Ouellette was an expert witness because he was at Sûreté du Québec, but it's not him I'm talking about; he can have the information.

We won the battle against organized crime because attorneys general specialized. It's false to say that there are a lot of them right now. It's a problem.

It's one thing to have expert witnesses in the judicial system, but my motion concerns players in the judicial system such as Crown attorneys, those who lay the charges, build the cases and wind up in the courts.

I ask Mr. Petit not to confuse expert witnesses and Crown attorneys. Here we're talking about Crown attorneys.

[*English*]

The Chair: Thank you, Mr. Ménard. There's no question that we would have to consider both.

Mr. Moore is next.

Mr. Rob Moore: We started down this road, and I don't know if it reached any conclusion. Mr. Lee mentioned changing the wording. Rather than "...that the government amend", it would be "amending"; "...that the government amend..." in number 2 would be "amending"; number 3 would be "making available".

Do we have to go through word by word...? I support the two changes that were made. Ms. Jennings and Mr. Ménard suggested the one from $5 million, but now we've got quite a few amendments in here.

● (0925)

The Chair: Let's get this matter cleared up within the next five minutes.

On the amendment to this particular motion from Monsieur Ménard, let's get down to the bottom line. What is it going to be?

Mr. Derek Lee: Mr. Chairman, the clerk can note what those changes are. I'm sure Monsieur Ménard won't mind.

The Chair: Mr. Moore has a question about that.

Mr. Derek Lee: Yes, but I believe the clerk will bring back a motion. That's a procedure we could follow: she could bring back a motion to our next meeting. We could be through this in two minutes. Then we don't have to—

The Chair: Yes, that's fair enough. We could vote on it at the next meeting.

Mr. Derek Lee: Okay, thank you.

The Chair: Following up on Mr. Comartin's suggestion, it might not hurt to have the criminal law policy section at the table when the motion comes forward.

So we'll look at this at our next meeting. We'll table this particular motion.

Mr. Derek Lee: Peremptory.

The Chair: Toss it?

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Just to show that this is the will of the committee and to give it a little more teeth, I wouldn't mind if.... I would advise the committee that the department look at it, whatever the words are, and report back to the committee within... give a limit that Mr. Moore thinks is reasonable. I don't want to hold them to any constraints, but they should just report back to the committee within a particular timeframe.

Mr. Derek Lee: That's a routine part of the Standing Orders. We just have to request it when we introduce our report.

The Chair: Okay. I think that's been looked after—I guess until Tuesday of next week.

[*Translation*]

Mr. Daniel Petit: Could we have a copy of the amendment, Mr. Chair?

[*English*]

The Chair: The motion is on the—

The Clerk: I'll check the transcript to make sure I have it all and I'll send it to all of you. At the next meeting I'll bring copies, so that if there is something, you'll be able to vote on it. Is that okay?

The Chair: All right. Good.

I'm going to suspend for five minutes.

[*Translation*]

Mr. Daniel Petit: Mr. Chair, first I would like to ensure that the amendment that will be made will cover paragraphs 1, 2 and 3. That's what Mr. Lee said.

Have I correctly understood what Mr. Lee said?

[*English*]

The Chair: That's my understanding, yes.

Mr. Daniel Petit: Okay.

The Chair: I'm going to suspend now until the appearance of the minister.

● _____ (Pause) _____ ●

● (0930)

The Chair: I would like to call the Standing Committee on Justice and Human Rights back to order.

To continue with our business of the day, we have the Honourable Rob Nicholson, Minister of Justice, to testify before the committee, as well as Department of Justice counsel, Greg Yost, and Royal Canadian Mounted Police senior legal counsel, Mr. David Bird.

Welcome, gentlemen.

I would like at this point to turn the floor over to Minister Nicholson on his discussion regarding DNA identification.

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

I apologize if there was a bit of a mix-up. I had this on my schedule for 10 o'clock; this actually works out better. I'm now subject to House duty. This is a function that I didn't have as House leader or whip. I was always impressing upon others the importance of House duty, and now I have it myself. So this will work out very well.

I'm glad to be joined here by two colleagues who are experts on this particular piece of legislation, and I'm glad to have them at the table with me.

It's a pleasure for me, Mr. Chairman, to appear before you today to discuss a bill that addresses concerns that we all share about how to make better use of DNA to assist law enforcement, a bill that has been supported at second reading, I'm pleased to say, by all parties within the House.

As members are aware, the last Parliament passed Bill C-13, An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act. As introduced, Bill C-13 included an expansion of the retroactive scheme to include persons convicted of a single murder and also of a single sexual offence committed at different times. There were some additions to the list of primary offences, including robbery and break and enter of a dwelling, and some additions to the secondary offence list, including criminal harassment and uttering threats.

Bill C-13 was the first opportunity Parliament had to consider the DNA scheme since it had come into force in June 2000. It was always recognized that the DNA legislation, which was pioneering, would have to be revisited in light of experience with its provisions, judicial considerations of the legislation, and developments in the rapidly developing DNA science and technology. Indeed, the legislation itself required a parliamentary review within five years, and I will come back to that point in a minute.

Even though Bill C-13 was never intended to replace the review, the hearings were quite extensive. Major amendments were made to the bill in committee that greatly extended the reach of the DNA databank provisions, including creating a new category of offences where judges would have no discretion and including all offences that are prosecuted by indictment and are punishable by five years under the Criminal Code as secondary designated offences.

The fact is, Mr. Chairman, most of Bill C-13 is not in force. There are technical glitches that must be addressed before it comes into force to make its provisions more effective in carrying out Parliament's intention.

The previous government recognized the need to make changes and introduced Bill C-72 in November 2005. Bill C-72 died on the order paper, and we have now introduced Bill C-18 to make the changes proposed in Bill C-72, along with other technical improvements in the legislation that were identified by federal and provincial officials after Bill C-72 was introduced into the House.

Bill C-18 is complicated in its drafting because some sections amend the former Bill C-13, so that when Bill C-13 is proclaimed, the new provisions will work better. I'm pleased to have the officials here with me who will be able to answer any questions you may have on how these two bills will work together.

To assist the committee, my department has prepared an unofficial consolidation to show how the Criminal Code DNA provisions will read if Bill C-18 is passed and then Bill C-13 is proclaimed, and I have provided copies to the clerk. There's also an excellent summary of the bill, including its background, which has been prepared, I understand, by the parliamentary information and research service.

Colleagues, as members know, DNA has had an immense impact on our criminal justice system. It has exonerated many people who were innocent but were convicted on the basis of witness testimony and circumstantial evidence. It has led to thousands of convictions where accused, who might have been able to go undetected in the past, are identified through DNA matches to known persons, thereby giving police the lead they need.

Moreover, cases in the past that might have gone to trial with the defence casting doubt on the accuracy of the victims' and other witnesses' recollections of events now are resolved by a guilty plea because the defence knows it cannot explain away the DNA evidence or cast doubt on the reliability of the science.

● (0935)

In the late eighties and early nineties, prosecutors began to use DNA, but it was only in 1995 that the Criminal Code first allowed for a judge to compel a person to provide a sample for DNA analysis, a provision that was unanimously upheld as constitutional by the Supreme Court of Canada.

It was in 1998 that Parliament passed the legislation necessary to take DNA samples from convicted offenders and to create the national DNA data bank to compare those samples with DNA samples found at crime scenes. I understand that members of the committee were able to tour the national DNA data bank yesterday. I'm sure you were impressed by the facility, and especially by the dedication and professionalism of the staff. It is certainly a most cost-effective institution, of which all Canadians can justly be proud.

The effectiveness of the data bank depends on the number of profiles in the convicted offenders index and the number in the crime scene index. The passage of this bill, and the subsequent proclamation of Bill C-13, will increase the number of samples in the convicted offenders index in a number of ways.

Firstly, it will create a new category of 16 extremely serious offences for which a judge will have no discretion not to make the data bank order. There are cases where persons convicted of these offences have not been required to provide a DNA sample for analysis.

Secondly, this bill will move some offences—most importantly, break and enter into a dwelling place and all child pornography offences—from the secondary designated offence list to the primary designated offence list, so that there will be a far greater likelihood that an order will be made.

Thirdly, this bill will add many more offences to the secondary designated offence list, including offences under the Criminal Code and under the Controlled Drugs and Substances Act that are prosecuted by indictment and that have a maximum sentence of five years or more.

Fourthly, it will provide many procedural changes to make it more likely that an order will be executed, for example, by allowing a judge to set a time and place for a person to appear to provide a DNA sample rather than having to do it at the time of sentencing, and providing for a warrant to be issued for the person's arrest if the person fails to show.

Fifthly, persons who are found not criminally responsible on account of mental disorder will be brought within the scheme.

Sixthly, a new procedure will allow a judge to set a date for a hearing to consider whether to make a DNA order within 90 days of imposing a sentence. This is intended for the situations that inevitably occur in our busy courts, where a trial is concluded and a sentence is imposed but nobody remembered that a DNA order could be made in the particular case.

We cannot be certain how many more samples from convicted offenders will be submitted to the data bank for analysis and for uploading to the convicted offenders lists as a result of these changes. Much depends on the courts, prosecutors, and police. We trust they will use the new provisions to the fullest extent.

It seems certain, however, that these changes will at least double, and could triple, the number of samples coming in. I believe this legislation will have a similar effect on the number of samples being uploaded to the crime scene index. Certainly, the changes to the definitions of primary and secondary designated offences mean that samples from many more crimes could be uploaded, because the DNA data bank only uploads samples from those crime scenes involving a designated offence. For example, it will be possible, when the legislation comes into force, to upload samples from drug offences.

However, as I believe members are aware, the forensic DNA laboratories across Canada are struggling to meet the workload they now have. The advances in DNA technology mean that scientists can now extract DNA from small samples, such as the saliva that moistened glue on an envelope. Since police do not know which items found at a crime scene may have DNA, they may want dozens of items analyzed—chewing gum, beer cans, cigarette butts, clothing and sheets—in the hope of finding the one that has the offender's DNA.

● (0940)

Crime scene analysis is a labour-intensive process. Every step of the process has to be meticulously documented because the successful prosecution of an offence based on DNA evidence will require the police and the lab to show they did not mix up the samples or allow contamination of the sample. This is not work that can be done by untrained personnel or that lends itself to robotics. Accordingly, there is an almost insatiable demand by the police for DNA analysis and there is a limited supply of persons competent to do the crime scene analysis.

In conclusion, Mr. Chair, I would make two observations.

First, I believe it is urgent that Parliament pass Bill C-18 so that we can begin to feel its benefits. Certainly it may be possible that more extensive changes, then, are proposed in either Bill C-13 or Bill C-18 and can be made, particularly in light of the endorsement of the DNA legislation by the Supreme Court of Canada in the Rodgers case last April. However, such changes should be made after a full hearing of all the stakeholders and should not be grafted onto Bill C-18.

My second observation, Mr. Chairman, deals with how we might consider major changes to the DNA system. As members know, Parliament was supposed to have begun the parliamentary review no later than June 30, 2005. We are now more than 18 months past that date. Bill C-13 was intended to address the problems in the system identified in the first two years of the operation of the DNA data bank. It followed consultations undertaken in 2002, and at that time the consultation paper specifically stated that the consultations led by the Department of Justice in cooperation with the Department of the Solicitor General of Canada are part of the government's ongoing commitment to review and refine existing laws in response to evolving experience and stakeholder feedback. They are intended to support a parliamentary review scheduled for June 2005.

Many respondents to that consultation made it clear they wanted the whole system rethought and looked forward to the parliamentary review. The Canadian Association of Police Boards, for example, before answering the 12 questions in the consultation paper, stated:

> The CAPB believes that at this juncture, the core issue is whether the incremental approach, such as is signalled in the consultation paper, remains appropriate, or whether legislators should instead be considering a much more comprehensive and wide scale use of DNA testing and collection.

How can we best advance the consideration of a comprehensive review that the CAPB and many others have been waiting for? Officials of the Department of Justice, the Department of Public Safety, the RCMP, and the national DNA data bank have all been ready for the beginning of the hearings since 2005. I understand they had prepared a discussion paper on the issues and a series of questions. Of course, Parliament was dissolved before the committee was able to conduct the review and the paper prepared by the officials has languished ever since. The paper could be quickly updated and form the basis of a consultation by the Department of Justice and the Department of Public Safety. The consultation could probably be completed by September, and the results of the consultation would form the basis for recommendations by government on how to change the legislation. Hearings on those recommendations would allow for a focused review on the use of DNA in the criminal justice system to begin late this year or early in 2008.

As always, I would appreciate the views of the committee on whether this would be an appropriate way to proceed.

Mr. Chairman, thank you very much for the opportunity to appear again before this committee.

● (0945)

The Chair: Thank you very much, Minister.

Ms. Jennings.

Hon. Marlene Jennings: Thank you very much, Minister, for appearing. A slight confusion over times happens to everyone. We're pleased you're here, and in fact we're going to have half an hour more than you had originally thought you were going to be giving us, so thank you.

Hon. Rob Nicholson: I had a duty, Madam Jennings. You know that.

Hon. Marlene Jennings: As do I.

Hon. Rob Nicholson: If you don't tell your whip, I won't tell mine. Is that it?

Hon. Marlene Jennings: I have two areas where I have some concerns. I do understand that Bill C-18 is largely a reproduction of the previous Bill C-72, which had been presented by the previous Liberal government.

As you can understand, Liberals, in general, were supportive of this bill.

Hon. Rob Nicholson: Good. I'm delighted to hear that.

Hon. Marlene Jennings: Now, there are two areas. One is the issue of the scope of judicial discretion with respect to making an order, and the second is the issue of international sharing.

If I look at the issue of international sharing, we would like to know what would actually be shared internationally and with which countries. Is there a limit to the countries with which Canada would share information from the DNA bank? Is there an actual signed agreement or covenant, or what have you, with countries with whom we would share DNA information?

And if there's a violation...? For instance, we have our scope, so that if this bill goes through—amended or not amended—there will be a clear framework or clear conditions under which DNA can be collected, under which the information can be used, and under which the information would be destroyed, for instance. First, would any international sharing be subject to exactly the same conditions under which DNA in Canada can be used or must be destroyed, etc.? If so, and there are violations of Canadian law the other country agreed to respect, what recourse would Canada have?

That's one series of questions, and you may have to use other time to respond.

On the question of judicial discretion, we already know that visible minorities and aboriginals are disproportionately represented in our correctional system. Longitudinal studies have shown very clearly that there's an element of racial profiling. I can remember very clearly a study done in Quebec regarding a certain number of offences—assault, assault causing bodily harm, etc.—in which researchers used actual police files. They were able to determine that, all factors being equal, if you were black and male and between the ages of 18 to 35, your chances of being charged were twice to three times—depending on the so-called infraction—those of a white with the same circumstances, or with everything else being the same. Therefore, we know from studies that visible minorities and aboriginals are disproportionately represented, and it's not because they're more criminalized, but because there is a certain amount of systemic discrimination that exists. The police admit it themselves—the Montreal police do—and they've instituted programs to try to deal with it.

So by removing judicial discretion, are you not worried that the data bank will then reflect the same kind of systemic discrimination?

● (0950)

Hon. Rob Nicholson: Actually, you've raised a very good point about racial profiling. I'm glad that one of the points you made is there are programs within the Montreal police department dealing with this. The question is not confined to Montreal; it's a problem that I think we as a society have become much more aware of in the last number of years, and I'm encouraged when police departments and others working with our judicial system are aware of it and take steps to do this.

It seems to me that we are relying on the judges. And we're talking about people who have been convicted after all protections within Canadian law have been exercised. Again, where there is judicial discretion, I'm sure it'll be exercised in a proper manner. For the most part, when we're talking about individuals who are submitting their DNA, it's after they have received the benefits of the Canadian judicial system and have been convicted.

Now with respect to the middle part of your question, I'm going to ask Mr. Bird if he could please address some of those comments and concerns.

Mr. David Bird (Senior Legal Counsel, Royal Canadian Mounted Police): Thank you.

It may be useful to simply go back to the fact that the power to share DNA profiles internationally, through the national DNA data bank, is now in the legislation of the DNA Identification Act. It provides that the data bank can, on receiving a request from a foreign country, search the national DNA data bank for any profile that's submitted to it and then report on whether or not there is a match in the DNA data bank, and any other information, except the profile itself.

One of the amendments that we're hoping Bill C-18 will improve is the ability to actually share DNA profiles, where we're not certain that we have an exact match or not. All that would be shared would be a similar or close match, and that would mean that after discussion between the national DNA data bank and the foreign country officials...whether or not they agree that they do have a match. After that, the new amendments would then permit, as we do now, the sharing of the personal information, the identification information.

Yesterday, during your tour, you may have noted that the personal information is separated from the DNA information at receipt of the DNA kits into the national DNA data bank, which ensures that the people at the national DNA data bank do not know the personal information that relates to any profile they have. So this discussion would take place anonymously between the national DNA data bank people and the officials in a foreign country as to whether or not they have a match. Once they conclude they have a match, then the information would be sent to the criminal history people, who would not get the DNA profile but who could then say, yes, we have a match with this person in a foreign country, and then decide how much information they would share internationally with the foreign country about the identity of that person, without sending any further DNA information. The safeguard is that there would be no ability for a random assortment of DNA profiles and personal information to be kept abroad. There would be that separation taking place.

The protection is also statutorily imposed that we have to have an international agreement that meets paragraph 8(2)(f) of the Privacy Act. These international agreements are all done through an Interpol-covering agreement—where all our DNA information is sent through Interpol—that the receiving country would agree to abide by the conditions we impose. The conditions we impose are that this personal information they receive would only be used for the prosecution or investigation of a criminal offence in that country. This would be a requirement bound through their charter agreements through Interpol that they would only use it for that purpose. These would be the caveats and conditions imposed on all exchanges of DNA information now and in the future, unless we amend our legislation.

● (0955)

The Chair: Thank you, Mr. Bird.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Thank you, Mr. Chair.

I would like to welcome the minister. I find you quite a bit more appealing when you talk about DNA than when you talk about judges. Please be assured, I'll be asking you no questions about judges today.

My first question is this: how is the rationale concerning the distinction between primary and secondary offences shared?

In the first place, we get the impression that primary offences are slightly more serious than secondary offences. Similarly, when you go over the list that was submitted to us, you realize that Internet luring, for example, is a primary offence, but that assault, which, in certain respects, is an act that may seem to have more serious consequences, is a secondary offence.

So my first question concerns the rationale and how many offences would now be considered primary offences in the bill.

Second, did the minister say that drug offences were primary offences? In the document I read, I got the impression that they were still secondary offences.

As legislators, it is important that we understand the sequence of events once this order goes into effect. I'd like you to tell us about that as well.

I'm in favour of short questions and intense answers.

[*English*]

Hon. Rob Nicholson: That's good to know.

I think you started off, and I may have missed the translation, by asking what is the rush for moving forward on this. It's not so much a rush as it is basically to get a piece of legislation in place that will help us to proclaim the previous legislation that was passed. As you know, because you were in Parliament, a bill was introduced to try to correct and bring into line some of the provisions from the old Bill C-13, but because of the election, we lost that.

In any case, it seems to me this is a well-thought-out bill. I think it has to be taken in the context of the technology and science in this area moving very quickly. I think most people would recognize this is a very important tool for our law enforcement community to have, and I think it works out well for the individuals who might be wrongly charged or wrongly convicted, so to that extent it has....

Now, in terms of the designations between primary and secondary offences, first of all, I can tell you that 172 new offences have been added. It's an attempt—and it's never a perfect attempt—to separate out the crimes or offences in terms of seriousness. It's never a perfect match, as I know from having tried to work with amendments to the Criminal Code over the years. Obviously within the primary designated offence list you have some of the most serious crimes in the Criminal Code, and there are two categories within that.

But again, it was an attempt basically to get a new law on the books without precluding a review. You'll notice in my later comments that I said, please, if you want to take this up and have a look at it, I would certainly welcome any improvements, because this is not the last word on DNA, I can tell you that. In coming forward with these amendments when the technology and science are changing so rapidly, we can appreciate that times change and that the bills have to change—just as when Bill C-13 originally came in, we knew it had to be changed.

So I certainly look forward to any input—

● (1000)

[*Translation*]

Mr. Réal Ménard: That's not your last...

[*English*]

Hon. Rob Nicholson: I'm going to give Mr. Yost a bit of an opportunity to respond, if he wants to make any further comments with respect to that, to make sure the answer is complete for you.

[*Translation*]

Mr. Réal Ménard: Do you mean that isn't your last justice measure?

Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice): I'd simply like to clarify one point. The minister said that we were adding 172 offences; that's true, but they were added in the old bill, C-13. The present bill, C-18, adds no offences to the list that was previously adopted in Bill C-13.

Mr. Réal Ménard: All right.

Mr. Greg Yost: Most of the 172 offences are punishable by indictment and carry prison terms of five years or more, like drug offences and so on.

So these offences would be added in Bill C-13, as amended by Bill C-18.

Mr. Réal Ménard: Why is Internet luring a primary offence, whereas assault is a secondary offence?

Mr. Greg Yost: I admit it's a bit difficult to get a definitive answer. There are always problems when you have a list. This list was first prepared in 1995, when we had DNA warrants. It was a list of offences for which a warrant could be sought. The same list was then adopted, but it was divided in two. At the time, the thought was to put more serious offences on it, followed by the others. Every time the Criminal Code is amended, offences are added, but sometimes people completely forget to put them on the list, and so on.

Bill C-13 made it possible to clean things up. I could obviously talk at length to determine whether we should add them to this list or not.

Mr. Réal Ménard: Do I still have some time? No.

[*English*]

The Chair: Mr. Comartin.

Mr. Joe Comartin: Sorry, Mr. Chair, I was just responding to an e-mail. One of the three hunger strikers has been released from custody and I just wanted to respond to that.

Mr. Minister, thank you for being here, as well as your assistants. I just want to get on the record my frustration at having to deal with DNA in the system this way. I think it was a gross error on the part of the former government to bring Bill C-13 forward, rather than bringing forward the review, because we ended up doing almost half the review, and practically every witness who came in front of us on Bill C-13 said we had to look at it more closely. Whether they were the chiefs of police, the police associations, the bar associations, the Privacy Commissioner—who has substantive concerns rather than process concerns—the witnesses at that time, without exception, were generally supportive of the system while expressing concerns about it, in terms of it not being broad enough, and in some cases in regard to some aspects of it being overreaching.

I wasn't quite clear, frankly, about your concluding comments and whether you were suggesting we send the review to the public safety committee. That doesn't help me a lot, because I'm on that committee too.

Have you considered the other possibility of having the justice committee set up a separate subcommittee just to do this? I'm not sure about the corporate history on this and whether it makes sense to send it to another committee. Perhaps they could look back on the evidence that was taken and the witnesses who testified.

But what I want to say to you clearly, and maybe to the committee as a whole, is that we have to get that review under way. And I have to say that if you stopped sending us so many crime bills, we might be able to do it. That was partisan on my part, Mr. Minister, so I don't expect you to respond to that.

Do you have a concrete proposal as to how we can get the full review done as quickly as possible—and thoroughly?

● (1005)

Hon. Rob Nicholson: I guess you've raised a couple of points. You've asked me about the rationale for Bill C-13 and the way it was introduced, and I'm obviously not in a position to comment on that, and I suppose anything I had to say on it would be somewhat suspect since I wasn't a part of that particular government. But I will say, and I think it's fair to say, there was a belief that the technology and science were developing so quickly that the previous government wanted to have something that would update the provisions with respect to DNA. I believe that was the rationale. Again, I'm not here as, and I guess you're not expecting me to be, a spokesperson for how it was done.

But we do have it now, and there were some technical problems with it that the previous Parliament attempted to address. Of course, it died on the order paper, which also killed the opportunity, quite frankly, for the review you just mentioned.

Mr. Joe Comartin: Mr. Minister, may I just interrupt?

Pardon my frustration, but maybe my fear is that we are just repeating the same thing again. Six months from now, after having passed Bill C-18, are you going to back here and say, sorry, we have all sorts of technical problems because the technology is evolving and we have all these additional amendments to tidy it up, and we're going to have to do that. I have to tell you, I don't have any strong assurances up to this point that that is not going to be the scenario.

Hon. Rob Nicholson: All I can tell you is this, Mr. Comartin. I think this is a good piece of legislation that helps repair some of the technical glitches in the old Bill C-13, so I think it's an improvement to the system. But in answer to Mr. Ménard's question, I believe, this is not the last word on this subject, and I don't think anybody should be under any illusions about that. Just as we revised a number of times the wiretap provisions in the Criminal Code in the late eighties and early nineties when we had to respond to changes both in technology and court decisions and had to move on them, I don't think this is the last word on the subject.

Now, whether I will be back here in another six months asking you for other technical amendments, it certainly is not my intention today and not what I would propose and not what I would want to do, quite frankly.

With respect to the last half of your comments and your question with respect to a review, I'm open to suggestions from you. I see the rationale and the importance of a review, and I would be pleased to respond to any thoughts you might have in that regard. As you pointed out, whether this went to the public safety committee or to a subcommittee of the justice committee, you'll probably end up on the committee one way or the other. So your workload isn't going to be lightened either way, but that being said, I'm open to suggestions on that, and I would be pleased to have any comments from this committee, or from any other member, for that matter.

Mr. Joe Comartin: Mr. Minister, you raised the issue of cost and the overload that not only the national lab is facing but also I think more specifically that the provincial labs are facing. Are there any plans by the government to provide additional resources?

I'm looking at that from three perspectives: funds directly to those labs; additional training for the police, because we know we may need that for the judiciary as well; and then, in the education field, actually training more forensic technicians who can do the work in the labs.

Hon. Rob Nicholson: I think it was reasonable and appropriate, Mr. Chairman, for me to raise that particular issue. Without trying to evade your question, it actually comes within the purview of my colleague, the Minister of Public Safety. I'm sure he is aware of the concerns that you or perhaps other committee members have in that regard.

● (1010)

The Chair: Thank you, Mr. Comartin.

Mr. Brown.

Mr. Patrick Brown (Barrie, CPC): Thank you, Mr. Hanger.

Thank you, Minister, for coming to our committee again. You've certainly been generous with your time and your frequent visits.

I agree with your assessment that this is good legislation. I think any time we have justice legislation we look at how it makes law enforcement and crown attorneys more efficient and effective.

There are two areas you mentioned that perhaps you could expand upon. One is on DNA orders that were made to a particular geographic office or department. How has that been expanded? How was it before? How is that going to change? How is that going to make law enforcement more efficient?

For example, and I'm not sure how it was before, but would they have given a DNA order simply to the Peel region, and then other regions could have accessed it, or was it on a provincial basis?

Mr. Greg Yost: I'll take a shot at answering that. The original legislation required that the DNA be taken as soon as a sentence was pronounced, which rapidly turned out to be inefficient, ineffective, with police having to be around at all times. It simply could not be done.

Bill C-13 contains in it a provision to allow the judge to set a time and place for the hearing. One of the improvements that the committee of officials suggested, and which is now to be found in this bill—it was actually in Bill C-72 as well—is a right to issue a warrant for a person's arrest. We also have introduced a new provision in this Bill C-72, which will allow the police department that is authorized to do it to authorize any other police department to do it on their behalf. So if the Toronto police were authorized and the person was picked up in Vancouver, we don't have to bring him back to Ontario; they can authorize him over there. This, we think, will make it a lot easier to collect the DNA.

Normally the orders are made to peace officers of a province because that's where the provincial court judge has authority. Some have apparently been making it through just a specific police department, but this amendment will cover all of those problems.

Mr. Patrick Brown: Minister, perhaps you could also let us know a bit about the new offences that were added to trigger retroactive orders, in terms of attempted murder and conspiracy to attempt murder, and how that will help the administration of justice to be more efficient?

Hon. Rob Nicholson: Again, thank you for the question.

There is a limited expansion of the retroactive scheme, as you mentioned, to include persons convicted of a single murder and also of a single sexual offence committed at different times. Additions to the list of primary offences include robbery, break and enter of a dwelling. We're trying to expand the regime that's in place.

There was probably a consensus that, as originally proposed and introduced, it was fairly narrow grounds upon which you would be able to obtain a DNA sample for a smaller range of offences. Mr. Yost just pointed out one of the other difficulties, that if you didn't get the DNA sample right there, you were out of luck.

I think there's a recognition, and I think this bill encapsulates that, as did indeed the bill that died on the order paper, quite frankly. There's a need to get more samples and expand them to a wider range of crimes, because this is an important crime-fighting tool. This is not something from *Star Wars* or something in the future; this works now for police officers and it's something they have to have. What we are doing basically in expanding the scope of this bill is responding to the advances in technology and to the recognized value of this particular process. Basically we're trying to keep up to date.

That is one of the challenges you have as a member of this committee, and quite frankly, that we have, that I have as a minister of Justice, to stay up to date on the technology. It changes all the time, and this is why I would expect this committee will always be a busy committee. It always has been a busy committee.

I will go back to my comments to Mr. Comartin. This won't be the last word on this. I'm quite sure that science, technology, and experience.... If we conduct a review, I would expect to get good input on that because that's what we're looking for. Anytime you move into a new area of science, and this is relatively new, and it's changing, we have to stay ahead of the curve, and this is what Canadians count on us to do.

● (1015)

Mr. Patrick Brown: Thank you, Minister.

The Chair: Thank you, Mr. Brown.

Mr. Bagnell.

Hon. Larry Bagnell: Thank you for coming, Minister. I'm a big supporter of this legislation. I agree with Mr. Ménard that you're much more reasonable on this than on judges, but to your credit, you're much more reasonable on judges than the Prime Minister.

My question is related to resourcing. We had an exchange in the House the other day on the same topic with another bill. You indicated there had been no study, analysis, or provision for the resources required to carry out that bill. I was happy in your speech today that you made a suggestion as to how much. You made an estimate, and that's fair enough. No one is going to know exactly, but you made a good estimate as to what effect this might have on the DNA data bank.

My understanding is that the bank is already in a backlog. To start out, could you confirm the situation for the cases they're handling now? Is justice being denied because they can't keep up with the cases in a timely fashion, or is it working well?

Hon. Rob Nicholson: Mr. Yost said he has some information on that for you.

Mr. Greg Yost: If you're referring to the national DNA data bank, they receive the blood samples on those nice clean cards and they put them to the robotics, and they usually have them uploaded within a week. They have no backlog. Their capacity was originally set for 30,000 and they're receiving about 18,000, so they have excess capacity at the national DNA data bank. Clearly, if we begin to get more samples coming in, there will be some extra costs, but they have the equipment, etc., so that's not a problem.

The issue, and I'm certainly not the expert, and I'd certainly want to defer to Public Safety on this one, is at the forensic labs where they're doing the crime scene work. When Bill C-13 as amended by Bill C-18 comes into force, we hope the scope of things that are considered as designated offences will be greatly expanded, because all of those offences punishable by five years become designated offences. They're secondary, but that's still sufficient.

The police could, if they had the resources, go out and get many more samples and submit them to the labs. If the labs had more resources, they could analyse them and produce more leads. You heard yesterday of the efforts being made by the RCMP to reorganize, etc. There is definitely a seemingly insatiable demand for more DNA analysis to be done, but there is a very limited supply of people who are capable, who have the training, and who are able to do that.

On the convicted offender side, we're quite confident that Bill C-13 will be handled within the resources of the national DNA data bank. It will present challenges to the forensic labs.

Hon. Larry Bagnell: So are there plans of the government to deal with that problem?

Hon. Rob Nicholson: If you're talking about resources, Mr. Bagnell—

Hon. Larry Bagnell: For the forensic labs.

Hon. Rob Nicholson: Again, I'm not doing this to avoid your question, but because it would come within the purview of my colleague, the Minister of Public Safety, it actually would be inappropriate for me to comment on that.

I hear what you're saying, and I'm sure my colleague, the Minister of Public Safety, is aware of your concerns as well.

Hon. Larry Bagnell: Everyone wants to make sure, if it's good legislation, that we can carry it out without causing a backlog in the justice—

Hon. Rob Nicholson: I think it's going to work. It has to work.

I don't appreciate all of your comments, but I certainly appreciate the comments you made with respect to this piece of legislation, that this is something you support. It really builds on legislation that has been in the works for quite some time, and it actually mirrors, with some technical improvements, bills that died on the order paper about a year and a half ago.

Hon. Larry Bagnell: Thank you.

The Chair: Thank you, Mr. Bagnell.

I have a question, Minister. Am I to assume that the additional offences are all designed as secondary?

● (1020)

Mr. Greg Yost: Almost all of them are. I'd have to check my notes. We added a couple. We transferred some from the secondary to the primary, and I believe we added one or two new ones. The overwhelming majority are the secondaries and the generic ones, in fact.

The Chair: So would some of them be dual procedure?

Mr. Greg Yost: A very large number of them would be dual procedure, yes.

The Chair: So if the Crown proceeds by indictment, they would be logged into the data bank. If they proceed by summary, would they still be logged, or could you still collect?

Mr. Greg Yost: No, the definition says that for the purposes of making a DNA data bank order, you must proceed by indictment. So they're within the definition, which allows the police to go and seek the warrant, but you cannot get a DNA data bank order unless the Crown has proceeded by indictment.

The Chair: Okay. My second question is in reference to those Canadian citizens convicted outside Canada for a designated offence. Can DNA samples be collected from them, as it sits?

On this prisoner exchange program that we have now with....

Mr. Greg Yost: The answer is no, it cannot be. There is no provision in the legislation allowing that to be done.

The Chair: Should there be?

Mr. Greg Yost: That's a policy question.

The Chair: That's a policy question.

Hon. Rob Nicholson: Mr. Chairman, I'd invite you to look into that matter, and if that matter comes before the committee, I would certainly have a look at that.

I don't think we're talking about a lot of people. I think we're talking about perhaps 80 people or so. That is just to give you a bit of an idea of the scope.

The Chair: Thank you, Mr. Minister.

Ms. Freeman.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Good morning, minister and gentlemen. Thank you for being here to answer our questions.

Mr. Bird, earlier we talked about information that can be disclosed to other countries. I know there is some information that you can transmit to other countries; you talked about that earlier.

Could you tell me exactly which information and clarify how far you want to extend the exchange of information? That troubles me somewhat. It's also creating some concerns at the Barreau du Québec, which sums up that apprehension as follows, and I quote:

> Our apprehension over the danger that the technique might be used for other purposes, that the information could potentially reveal other secrets, that we are gradually witnessing a vast free trade in highly personal information [...]

These are the concerns of the Barreau du Québec.

It's been said that we need treaties. However, we've just learned about the Maher Arar case, in which we saw that, in some cases, disclosed information no longer belongs to us once it has reached another country. We no longer have much control over the use of that information.

I'd like to hear your comments on the subject.

[*English*]

Hon. Rob Nicholson: First of all, Madame Freeman, I guess the Arar case underlines how challenging the whole question of exchange of information can be, and that one indicated where and how mistakes could be made.

Mr. Bird said with respect to the provisions of this bill, in terms of DNA, that there are a host of protocols and safeguards in place.

Again, Mr. Bird, would you expand on that for the benefit of the committee?

Mr. David Bird: Thank you, Minister.

I should clarify that there are two aspects to international DNA exchanges. One is at the request of Canadian law enforcement agencies, who would ask that the crime scene DNA profile they've derived, and for which they have no suspect or answer, would be sent abroad for comparison with international profiles. This would be sent through Interpol to any country the investigating law enforcement agencies had asked or requested the RCMP to send it to —subject to the conditions we explained. They would only be permitted to use that profile for the investigation or prosecution of a criminal offence. They'd have to agree to that particular condition.

At this time, internationally, this is the only way to send a DNA profile—and only the DNA profile, not the sample or the stain that could be analyzed for all the other genetic propensities. These are the 13 loci that were derived, or nine, in some cases, with the RCMP labs, that are sent abroad for comparison. All they would have would be those double numbers that you saw on your tour yesterday. It would be the two, or sometimes only one, at each of those sites they send, those alleles. The foreign country to which it was sent by the RCMP through Interpol would then be able to respond back as to whether or not they have a match with their database for their investigative procedures. This would then be referred to the law enforcement agency, which would use the normal means of communication to identify what information in their investigation matched the foreign information. This would not be done through the national DNA data bank, but directly between the two law enforcements agencies involved—the one in the foreign country and the RCMP.

With respect to foreign requests, when they send a DNA profile here for a search, only now are we able to tell them whether or not we have a match, as a result of the changes in Bill C-13 . We could not tell them and give them a copy of our DNA profile at all. It would simply say, yes, we have a match, are you interested in the personal information? Then they would have to agree to accept the personal information we have through the criminal records section of the RCMP that identified the person. That information would then be subject to the same international Interpol agreement, and we would insist that the information only be used for the investigation or prosecution of a criminal offence.

The problem in many cases is that we don't know whether we have a match, because different systems are used abroad to analyze DNA. They use what we call different analysis kits. Kits are, as I understand them, and I'm not a technical expert, designed so that certain enzymes in those kits produce the DNA profiles from specific engineered zones in the DNA. Certain countries use different zones than we do. In many respects, all we can do is find out that we have a match at three, four, five, or six of the zones of our normal 13, and we don't know whether they match the rest. So in regard to our international exchanges, there is a great propensity for us not to be in a position to tell them definitively whether we have a match, unless we send them the other profiles so they can potentially re-analyze them or examine their information to determine whether we in fact have a match.

So what we're proposing in Bill C-18 is to allow us to do what we can now do domestically in Canada under Bill C-13 , which is to actually send them a profile and ask them if it really matches theirs, or if the profiles are potentially the same because they're close. We'd ask, did you make a mistake in your analysis, or did you report a number inversely and get them mixed up? Then we could say, there was a clerical, technical, or scientific error, and would you re-analyze them? They might be dealing with a mixture of samples. Which profile were they reporting on in their crime scene? Was it correct in their crime scene? There may be a number of reasons, such as a degraded sample that didn't amplify as strongly as it might have. It's for that kind of reason we want to be able to send a profile abroad. We can now do that domestically under Bill C-13 , and we're simply asking for the same power to do it internationally, to ensure that in the many cases that might arise internationally, we can be certain we have a match. Once we know there's a match, we would then go to the normal rules we have in place.

● (1025)

That's all the information that would be sent; it wouldn't be any other genetic information. The sample wouldn't be sent. They wouldn't be able to do a separate analysis, other than what they have on their own files and in their own labs. They would only have this information saying there's the potential of a probable match, and we want to show you our profile to see whether or not it matches yours. The people doing this comparison would not know the personal information; they would not decide to send any personal information about the individuals that we have until they've concluded there is in fact a match that could be sent abroad.

The Chair: Thank you, Ms. Freeman.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Thank you.

Good morning, minister. First of all, I want to congratulate you on your appointment. I haven't previously had the opportunity to do so.

I'd like to ask a question, mainly of Greg Yost or Mr. Bird.

As we know, the Canadian Criminal Code was introduced in order to protect Canadian citizens within their country. Naturally, under the bill that we have considered, we know that we have to communicate with foreign countries. At the risk of repeating myself in my question, you currently seem to have — at least I saw yesterday — "very nice and very efficient" laboratories. I think we can congratulate you on that. However, something intrigues me.

We know that we can send samples to one or more countries for comparison purposes. You said that the reverse was also done, but in accordance with very strict criteria. When a person, a refugee for example, enters Canadian territory, the country where he comes from has, in many cases, been completely destroyed. We don't know what's previously happened to him. Was he a drug dealer? Did he kill someone in his country? As a result of a change of government, did he switch from being an oppressor to being oppressed from one day to the next?

So this person enters our country, and we have extremely generous immigration laws. It would naturally be interesting to know whether he has committed an indictable offence in his country, if only to be able perhaps to monitor that person, without necessarily denying him entry.

I'd like to ask the question, but I don't know which of the two could answer it. Do you have a way of determining this problem? We're in an extremely welcoming country for refugees. These are all good people, but people who may have committed crimes are part of these groups of people. If their country had not been destroyed, and if we had had agreements, perhaps it would be possible to trace them. Do you have something so that we can have what we can call a firewall?

● (1030)

[*English*]

Hon. Rob Nicholson: First of all, Monsieur Petit, this particular bill doesn't apply to refugees. This is strictly with respect to people caught up in the criminal justice system.

I don't know if I can enlarge much more on what Mr. Bird had to say in terms of the safeguards that are in place through Interpol, but you're quite correct with respect to your comments about Canada being a welcoming place. A bill like this is not intended, nor do I think it should be, to get into other realms of identification. It's confined to what I think most people understand DNA can and should be used for, and that is for the detection of crime and the solving of crime, and that's basically what it does.

As I say, Mr. Bird can add anything he likes in terms of what we do in the international sphere, but there are the usual protocols and safeguards in place. But as one of our colleagues here said, no matter what safeguards are in place, we must continue to be very, very careful to protect people's civil rights and to be fair to those individuals who are counting on Canada. Sometimes the system doesn't always work, as you know we have experienced. Nonetheless, we must strive to do better.

I don't know if you had any further comment on that, Mr. Bird, or not.

Mr. David Bird: My only comment would be that it would be illegal under the DNA Identification Act for the officials in the DNA data bank to send or communicate information from the data bank except as permitted by the DNA Identification Act, and those cases are very restricted, so that the only thing they could unilaterally send abroad as a profile for comparison would be from a crime scene. So unless the refugee left their DNA at the crime scene of a designated offence in Canada, that would be the only profile that could be sent abroad. And it would normally be anonymous, because they would not know who it was.

So it's really unlikely that your scenario could take place.

[*Translation*]

Mr. Greg Yost: I'll take the liberty of adding a comment.

It is extremely important that you know that we never send samples; we send profiles. I know that really troubles my colleagues who work at Canada's National DNA Data Bank. They set bodily substances aside; we don't touch them. We do nothing with those substances, because we'd be breaking the law if we analyzed them for any other reason. We analyze them only to determine a profile.

As Mr. Bird said earlier, we really send them 26 figures by computer. We never send the bodily substances outside or even within the country.

● (1035)

[*English*]

The Chair: Thank you, Mr. Petit.

Mr. Lee.

Mr. Derek Lee: Thank you.

I have two questions and a comment to the minister.

As I see it, this bill is simply remedial and technical. We ought to try to get it through committee here as quickly as we can and get it back to the House for a disposition there.

Ms. Freeman raised the issue of exchange of information from the DNA data bank with countries outside of Canada. As my first question, I want to clarify that what we're sending is a DNA identification profile only. It allows someone to make an identification of a person, but it doesn't provide other genetic indicators that might convey personal information related to the person's genetics. Or that's how you were able to describe that to me yesterday; I'd just like confirmation on that, for the record.

Secondly, our research shows that the data bank, not the forensic labs but the data bank itself, is operating well within capacity, as you've said, but that the frequency of the taking of DNA samples for the data bank is operating at about one-half. In other words, in terms of the primary offences that would allow the taking of DNA for the bank, we're only getting to about one-half of those.

I'm inquiring of the Department of Justice, what, if anything, would you be doing to enhance the proportion of cases, primary offences, where the sampling was taken to beef up the data bank, as is intended in the public interest?

Hon. Rob Nicholson: You've covered a good bit of ground here, Mr. Lee. The first part was very good news to my ears, that you want to get this bill through as quickly as possible, that it's remedial, and that generally you're favourably disposed to that. I'm very pleased.

As well, you were asking for confirmation about the information being delivered outside of the country. In terms of its scope, I thought Mr. Yost indicated the very narrow grounds or the narrow band of information that's being transferred.

Perhaps I'll let Mr. Bird speak on what we provide. I think it'll give you some comfort on that one.

Mr. David Bird: I can confirm that all they are permitted to send abroad is the DNA profile, not the sample. The sample is separated and kept and stored, and can only be reused under very exceptional circumstances, where new technology is required to analyze those profiles under a new system.

So they're kept there really for two reasons. One is to ensure quality assurance of the sample they have. If they have a failure, they can go back and re-sample that. Two, if there's a change in technology and another band or something is required to be re-analyzed in the data bank, then they would have to use those for that purpose.

The DNA profiles that are sent abroad are right now, as I said, only for crime scenes. These would be anonymous profiles that relate to what we call junk DNA, non-identifying or non-discriminating for any known traits that we know of—except for the sex of the person, the X or Y chromosome, the only identifying feature in the DNA profiles sent abroad.

The rest of it, we have no idea what it codes for. It can't tell you any distinguishing features such as race, eye colour, hair. That's the international standard that has been adopted through a scientific working group. Almost all international DNA data banks use similar profiles, although we don't use the same. It's designed to ensure that the only information is identification. It's really a series of numbers that identify people differently but tell them nothing other than the fact that this person's DNA belongs to that person and not someone else.

● (1040)

Mr. Greg Yost: If I may address the second part of your question, which is what we are doing to try to get a higher percentage of orders, if I can put it that way, the bill will have more samples coming in simply by expanding the number.

With respect to getting more orders where a primary designated offence has been committed, or a secondary for that matter, there are maybe three things.

First, there is this new category, where it's mandatory for the judge to eliminate any discretion in those 16 very serious offences. There will be some transfers into the primary, so we should get some more opportunities there.

Secondly, though—and I think this is perhaps more important—the bill in front of you has a new provision that will allow the judge to set a hearing up to 90 days after imposing sentence. We've been told by prosecutors, "We missed it. We're sorry. We can't go back to the judge; he's *functus*." We're willing to give this 90-day window. It's our hope that prosecutors across the country will develop a system to look at their files and make an application when they have missed that so we'll get many more orders.

There is a third way we will get more into the data bank. There is slippage between the number of orders made and the number of orders executed. That has to do with people who don't show up. The judge makes an order—even these days they're making it a condition of probation or whatever—but they seem to disappear into the system and finding them gets to be difficult. That process we talked about earlier, where one police force can authorize another police force, should simplify the way...so when we find these people, we will get more of them in.

Those are the ways we believe this will increase the percentage of orders that are made.

The Chair: Thank you, Mr. Lee.

Minister, I believe you're still under a time constraint.

Hon. Rob Nicholson: Well, I have to get in there to challenge Ms. Jennings on our duty day motion.

Did you have another question, Mr. Chairman?

The Chair: Can you handle one more question?

Hon. Rob Nicholson: By all means, yes.

The Chair: We will have one more questioner.

Mr. Thompson is next on our list.

I might ask, Minister, if you have to leave, could the department officials stay behind?

Hon. Rob Nicholson: Well, they might be a little less comfortable being here without—

The Chair: Understood.

Hon. Rob Nicholson: Let's take whatever questions you have and then I'll be on my way.

The Chair: Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Okay, I'll be brief.

Congratulations, Mr. Minister, on your appointment. We appreciate having you here today.

I probably should direct my question to Mr. Comartin, because he made a comment to me a while back about the Criminal Code and the need to revamp that entire package.

When I see what we're trying to do with the DNA bank, and then I look at the definitions throughout.... You see, I'm not a lawyer. I don't have a legal mind. I'm just an old school teacher who likes to clearly understand things. I see a whole lot of confusion when we get into definitions and other things pertaining to DNA.

My main question is whether I can be absolutely certain that an individual who committed a crime, say, 20 years ago, and that crime doesn't exist in the Criminal Code today—I'm thinking specifically of rape. Rape was referred to in the Criminal Code once upon a time; it no longer is. I'm thinking of statutory rape. Once upon a time it was in the Criminal Code; it no longer is. Those are just a couple of examples of what I'm driving at. How confusing is it for people who work in the DNA system to operate under a Criminal Code that, for whatever reason...?

I still don't know the reason that rape and statutory rape were taken out. I don't even remember when that happened. It used to be quite clear in the minds of people what that meant. Today it's all encompassed in "sexual assault". Everybody wanted to know what "sexual assault" meant, so they came up with a list of definitions—everything from sexual interference, sexual touching, to rape. With regard to having sex with somebody under the age of 14, that person is guilty of having sex with someone who is 13 years old and 11 months, but if they are 14 years old and one month, they're not guilty.

It's difficult to explain myself. You talk about being confused. As an ordinary person who's trying to get into the Criminal Code from time to time and not understanding three-quarters of the stuff, is this a hindrance to the department, particularly the DNA people, in any way, or am I living in an imaginary world?

● (1045)

Hon. Rob Nicholson: Mr. Chairman, many times with the changes named to some of these offences—and there have been some alterations and modifications over the years—there are provisions within the Criminal Code that include those previous offences, so somebody's not getting off.

With respect to your comments about changes to the Criminal Code, and that it sometimes seems complicated, I can tell you that from time to time proposals have been made to completely revamp it. I'm sure Mr. Lee was around when people were saying we should just take the whole Criminal Code and start all over again.

Basically, what we have here is an adaptation of the English Criminal Code from the 19th century, and it must be continuously updated. The bill you have before you is one of the updates.

On the subject of changing public attitudes, you mentioned the age of protection. If you go back to the 1870s, it was very common and accepted that people at age 14 got married, and they were adults. Today we look at that and say, just because the law in the 1870s had prohibitions with respect to 14-year-olds doesn't mean the law shouldn't be changed to 16. And that's the challenge you have.

We find this all time. Twenty years ago in this country, if you or somebody set fire to your car, that was not arson, but if somebody set fire to a stack of vegetables, that was arson. You say, how could that possibly be? Well, it's because the arson provisions of the Criminal Code 20 years ago in this country were written before there were cars, and the included property offences didn't include somebody setting fire to a vehicle.

So it seems to me that's the challenge we have. We must be continuously looking at these things.

With respect to this legislation, you raise an interesting point. It is somewhat complicated by reason of the fact that the bill you have before you is a stand-alone bill, but there are provisions so that under Bill C-13, which was passed in a previous Parliament, those could be enacted. So it's very challenging, I'm sure, even for lawyers to try to follow this, and you indicate you're not a lawyer. Nonetheless, it's the results that we want, that we're looking for, and certainly this is a step forward in the right direction.

With respect to your other comments, I hear what you're saying, but again, the Criminal Code has to be continuously updated on a regular basis.

The Chair: Thank you, Mr. Thompson.

Mr. Murphy, I think you have a question you want to put to the minister quickly.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Yes, and I will be quick.

Thank you, Mr. Minister, for appearing again.

I'd like to ask a question. I, too, am in support of this bill. Our mantra over here is that we want to make sure we have legislation that will work. This may be more of a question for the legal people here, but, Mr. Minister, you glossed over R. v. Rodgers, the decision of the Supreme Court of Canada, as being supportive. On the face of it, it is. I actually took the time to read it and then became a little more uncertain about how helpful it will be.

Here's my brief question. That decision came out in April of last year, 2006. Bill C-13, presumably, was drafted and tabled and commenced. I wasn't here, but the train started for Bill C-13 in advance of that. Bill C-18 ratchets up Bill C-13 in a number of areas we've talked about.

Let's review Rodgers for a moment: the person in question was convicted and sentenced to four years for sexual assault, and he committed that offence while he was on probation for a conviction of sexual interference. I know this case happened before the act, and there were a lot of complications, but the bottom line is if anybody should have been subject to a DNA identification order, it was this individual. Yet, it was a four to three decision at the Supreme Court of Canada. It was tight, and that was before Bill C-13 hit the road, because it actually never got passed. And it was before Bill C-18, which ratchets this up a little bit, and which is presumably going to sail through the committee.

I don't want to segue into picking the proclivities of your judges on the Supreme Court, because we're not going to talk about judicial nominations and what they think, but when you have Chief Justice McLachlin, who has been critical of the government, in support of this legislation—by reference to Rodgers, I suggest—as well as having Justices Bastarache, Abella, and Charron—not exactly the right wing of the Supreme Court— support it, I guess my question is how secure you feel, if the only case you have is Rodgers, that Bill C-18 will pass muster with respect to the discussion of *ex parte* hearings, and the presumptions, the taking away of judicial discretion implied in all of these issues, and section 8 of the charter? There's a mouthful for you to answer.

● (1050)

Hon. Rob Nicholson: First of all, there was no attempt to gloss over the Rodgers decision by the Supreme Court of Canada, but we believe the rationale in that particular case is consistent with the legislation you have before you. In any case, our analysis of this doesn't rest on one particular case. It's an overall analysis of this particular area of the law and what we believe, in our analysis, is going to withstand any particular challenge.

So I am quite confident that the bill you have before you is constitutional and will stand scrutiny, and quite frankly is an improvement that I think most people will agree with. It does two things: as you indicated, it clears up the Bill C-13 provisions that weren't or couldn't be enacted for a number of reasons, and I think it brings some other technical clarity to this bill that will withstand a challenge.

Mr. Yost has indicated to me that he would like to add some comments.

Mr. Greg Yost: You can well imagine that we went over that decision with great interest.

First of all, it was a four to three decision, but that was on the *ex parte* procedural issues. The majority ringingly endorsed the constitutionality of the DNA retroactive scheme and made very fine comments about the protections of privacy and all the other things that were in place.

Interestingly, the minority never disagreed with any of that. They just said the issue was the *ex parte* on the retroactive, and that's where they split four to three. We have yet to see a judge at any appellate level, I believe even at trial level, who has found anything unconstitutional in what we have done. There have been some issues about *ex parte* procedures, etc., but the constitutionality of this bill here, because it's building on what we have already, I would suspect is unchallengeable. Certainly we're highly confident that it isn't going to cause any difficulties.

The issue of Rodgers is coming up in April. If we ever get around to the parliamentary review, I'm sure it will be commented on by just about everybody who will come before whatever committee it is on the implications they see it has for the evolution of the system.

The Chair: Thank you, Mr. Murphy.

As a point of clarification, Minister, in reference to Mr. Thompson's question, I believe he was looking for assurances that an offence that may have occurred some years back, prior to any alteration in the Criminal Code, would still be put forward as an opportunity for data bank entry if there's such a situation.

Hon. Rob Nicholson: Mr. Bird, on this one.

Mr. David Bird: Thank you, Mr. Hanger.

I would agree with the assertion that Mr. Thompson put forward, that it is a complicated process to determine what is or is not a designated offence. The courts have a problem determining that, because we do have a number of what we call non-designated offences issued for orders with which we have a problem. A number of historical offences, such as rape, are listed in the definition of primary and secondary designated offences, going back to the old sections of the Criminal Code. These are specifically listed in the definition.

Another principle is that where offences that existed in the Criminal Code historically have been renumbered due to a statute revision act, those references to the present law go back and apply to those old offences. So where we have those cases coming before us, we have to get out and do some research to determine whether or not those are non-designated offences or actually qualify under that provision.

So it is not an easy step, and the courts are grappling with it. We also have provisions in Bill C-18 , started in Bill C-13, to deal with this issue of how we handle these orders that we cannot justify in terms of that kind of rationale. That's one of the reasons for Bill C-18, to help us resolve those kinds of cases.

But it's not an easy situation for the courts to determine in all cases whether an offence on its face, where it's historical, qualifies for a DNA data bank order. There will probably be a discussion between the Crown and the defence and the court as to whether or not an order should be issued at that time.

● (1055)

The Chair: Thank you very much, Mr. Bird.

Thank you, Minister, for appearing. It's very much appreciated.

Gentlemen, your appearance here and your testimony have been valuable. Thank you.

Hon. Rob Nicholson: My pleasure, Mr. Chair. I have just enough time to make it to the House for 11, so thank you. I'm going to run.

The Chair: The meeting is adjourned.

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