House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 052 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, February 27, 2007

Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

Tuesday, February 27, 2007

● (0900)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call to order the Standing Committee on Justice and Human Rights. Our agenda, of course, is before you. Our order of reference of Wednesday, October 4, 2006, is to examine Bill C-18, An Act to amend certain Acts in relation to DNA identification.

As witnesses before the committee, we have members of the RCMP: Mr. David Bird, senior legal counsel; Mr. J. Bowen, acting director, biology project; and Mr. Joe Buckle, director general, Forensic Science and Identification Services; and I understand that Ms. Anne-Elizabeth Charland, officer in charge of management services, is also here, but not at the table.

Thank you all for being here.

Mr. Buckle, I would ask that you begin. I understand you're making the presentation today.

A/Commr Joe Buckle (Director General, Forensic Science and Identification Services, Royal Canadian Mounted Police): Thank you very much, Mr. Chair.

Ladies and gentlemen, thank you for this opportunity to appear before you today. I have a brief statement prepared that I will present to you at this time. I brought copies of the statement in this morning for your perusal.

In 1892 an Argentinian police official used for the first time a small data bank of fingerprints that he had amassed from the local population to solve the murder of two children. The use of fingerprints was the gold standard of forensic identification technologies for over 100 years around the world.

The reign of fingerprinting as the pinnacle of human identification tools came to an end in the late 1980s when a British scientist, Dr. Alex Jeffries, who was conducting evolution research using DNA technology, applied his research to a couple of murders under investigation by British police. Not only did this application lead to the conviction of a suspect, but it was also used to exonerate another individual.

In 1989 the RCMP first used the new DNA technology in the investigation of a sexual assault. The victim identified her assailant, and a DNA analysis later confirmed him as the perpetrator. This was the first time in which DNA evidence led to a conviction in Canada and the first time in which a law enforcement laboratory developed its own DNA evidence and presented the findings in a Canadian court.

Not since the first use of fingerprints in 1892 has a forensic application witnessed such proliferation of usage and acceptance within the scientific community and, more importantly, in the courts. The use of DNA has become an important and powerful tool in combatting crime. Canada signaled its intention to make broader use of the power of DNA with the passage of the DNA Identification Act, which was proclaimed in force on June 30, 2000.

The act created the National DNA Data Bank, which began operations upon proclamation and is responsible for two indices: the convicted offender index, which contains the DNA profiles of offenders convicted of designated offences as identified in section 487.04 of the Criminal Code; and the crime scene index, which contains DNA profiles of bodily substances recovered from crime scenes of designated offences.

The data bank assists law enforcement agencies in solving crimes by linking crimes together where there are no suspects, helping to identify suspects, eliminating suspects where there is no match between crime scene DNA and a DNA profile already in the data bank, and determining whether a serial offender is involved.

Physically the National DNA Data Bank, with its laboratories, sophisticated analytical equipment, computing facilities, and team of scientists and technicians, is located in Ottawa at the RCMP Headquarters. The data bank is part of the RCMP National Police Services.

Due to privacy and contamination concerns, and by virtue of the DNA Identification Act, the data bank is a self-contained unit. The data bank is a success in every sense and has fully met the expectations and spirit of the legislation. It has never experienced a capacity problem and continues to grow each year. It is, however, engaged only with the analysis of convicted offender samples.

The data bank employs 30 scientists and technicians and receives between 350 and 450 convicted offender samples each week. As of February 19, 2007, the data bank had 6,522 matches between the convicted offender index and the crime scene index.

It is important to draw a distinction between the activities and environment of the National DNA Data Bank and the Forensic Laboratory Services. The forensic services are also a part of the RCMP National Police Services. The FLS provides forensic services to the provinces and territories that contract with the federal government for provincial and territorial policing services. Ontario and Quebec have their own provincial police departments, as well as their own forensic laboratory systems. The forensic laboratories are key partners of the data bank, as they analyze crime scene evidence in support of criminal investigations and supply DNA profiles to the crime scene index.

While DNA analysis has become a large part of the work of the forensic laboratories, these labs also undertake ballistics analysis, paint typing, chemical and drug analysis, and other forms of forensic services.

The RCMP Forensic Laboratory Services has 120 DNA scientists and technologists and produces DNA case reports from five locations across Canada: in Vancouver, Edmonton, Regina, Ottawa, and Halifax.

● (0905)

The impact of DNA technology on law enforcement and judicial systems has resulted in an enhanced desire to use DNA technology to resolve criminal investigations and an exponential increase in the number of cases submitted to forensic laboratories.

The number of new cases received by FLS in 2005-06 was 23% higher than the number of new cases received in 2001-02. The FLS has responded to this by redeploying resources from other forensic areas into the DNA area, developing new DNA technologies, and enhancing processes. As well, the FLS uses individual and unit performance measures to ensure maximum performance, and a priority rating system to ensure that the most serious cases are handled first.

During the past two years, the FLS has in fact exceeded the casework quotas specified in the federal-provincial-territorial biology casework analysis agreements, BCAAs, for each province and territory. As well, it should be noted that due to reorganization and process enhancements, the Forensic Laboratory Services was capable of meeting these quotas while engaged with the Pickton murder investigation in British Columbia, to which the FLS contributed significantly.

There is, however, a greater demand for DNA casework than the Forensic Laboratory Services has the present capacity to handle. To respond to this capacity issue, in part, the RCMP will increase funding to the FLS at the beginning of the 2007-08 fiscal year. This will assist the FLS to reduce DNA casework response times within the existing demand, but will not be sufficient to handle increased casework demands imposed by legislative changes resulting from Bill C-18. An enhancement of the DNA Identification Act via Bill C-18 will have an impact on the FLS.

An analysis of conviction rates for primary and secondary designated cases showed that changes to the legislation will increase the FLS caseload by approximately 42% annually. This is a conservative calculation dependent upon the present rates of conviction and does not reflect the number of investigations undertaken. A change in federal or provincial government priorities or a shift in judicial priorities would see an increase in this number. As well, the number of convicted offender samples submitted to the National DNA Data Bank will increase by at least one third, again based upon conviction rates.

The FLS will have to increase its human and scientific resources to meet this enhanced demand. It has estimated that acquisition of staff and equipment will require approximately $15 million just for the Forensic Laboratory Services—$15 million in the first year, with an ongoing budget of about $7 million. It must be recognized, however, that it will require between 18 and 24 months from time of funding before operational benefits are realized. Activities pertaining to hiring staff, training, equipment acquisition, set-up and validation, and accreditation are protracted and must be undertaken in a manner that assures quality and effectiveness.

The RCMP is committed to the provision of safe homes and safe communities and is eager to work with the government to enhance this very important forensic and law enforcement tool.

Thank you very much.

● (0910)

The Chair: Thank you, Mr. Buckle.

Was there any other presentation from the RCMP at this point, or can we go to questions?

A/Commr Joe Buckle: I think we can go to questions, Mr. Chair.

The Chair: Then we shall.

Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you very much for your presentation.

You talked about the increased costs should Bill C-18 be adopted as it now is, where you have primary and secondary infractions that become reason for the collection of DNA that is added to the National DNA Data Bank. When you say you would need approximately $15 million, is that $15 million in addition to your current operating budget in the first year?

A/Commr Joe Buckle: That's correct.

Hon. Marlene Jennings: When you say ongoing operations will require $7 million, is that $7 million in addition to your current operating budget?

A/Commr Joe Buckle: That's correct.

Hon. Marlene Jennings: In the first year of operation, given the conservative estimates and calculations you've made, what would be the total operating budget?

A/Commr Joe Buckle: In the first year, with the $15 million for the set-up, the total operating budget would be about $25 million.

Hon. Marlene Jennings: Okay, and then $25 million. So that means right now your operating budget is approximately $10 million.

A/Commr Joe Buckle: That's correct.

Hon. Marlene Jennings: That means in subsequent years, and that's if Bill C-18 is adopted as is and your conservative calculations prove to be right on the money, your operating budget, not accounting for inflation, etc., would be $17 million.

A/Commr Joe Buckle: That's correct.

Hon. Marlene Jennings: You might not be the right person to be asking this, but another question I have is about subclause 31(1) of Bill C-C-18, which would authorize the communication of the DNA profile not only for the reasons of an investigation on a designated offence but for all investigations related to any criminal infraction. Have you taken that into account in terms of increased demands for crime scene investigation DNA analysis?

A/Commr Joe Buckle: Mr. Chair, I'd like to refer to our analyst, Ms. Charland. She actually did the work-up on the business case that we submitted.

The Chair: Please take a place at the table, please.

Ms. Anne-Elizabeth Charland (Officer in Charge, Management Services, Royal Canadian Mounted Police): Good morning.

The question was whether we had taken into account the new part of the legislation that would increase the sharing of information. We did not take that into account when we made our calculations.

Hon. Marlene Jennings: Did you take into account the fact that in Bill C-13's proposed subsection 487.051(2), which removes the judicial discretion to determine whether or not on conviction a DNA sample should actually be removed, would increase, obviously, the number? Had that been taken into account in your business case?

Ms. Anne-Elizabeth Charland: In the original business case that we prepared, there was a calculation for the increased submission to the National DNA Data Bank for convicted offenders, and part of that calculation was to take into account how many more samples would be submitted. That was part of the original business case. That is correct.

● (0915)

Hon. Marlene Jennings: If I understand correctly, right now judges have discretion in whether to make an order that a DNA sample must be provided upon conviction. Under the proposed legislation, that discretion would be removed and it would automatically be taken for a series of offences that an accused has been convicted for. You have taken into account the current conviction rates and then applied your business sample to that.

Am I making sense?

A/Commr Joe Buckle: Yes.

Hon. Marlene Jennings: I want to make sure that the business case you have provided is based on actual evidence and facts that have been proven.

A/Commr Joe Buckle: Yes, we did calculate the number of samples that would be increased for the convicted offenders. I believe the number is around 4,400 additional samples.

Ms. Anne-Elizabeth Charland: It would be 40,000 samples in addition. This is based on what we expect to receive.

Hon. Marlene Jennings: Would you be the competent witnesses to ask about the provisions that would allow for DNA sampling for any investigation related to a suspected criminal offence, the communication of DNA information to any foreign entity or agency of a foreign entity, and on the controls that are put into place with the legislation or lack thereof with regard to that communication? Are you the witnesses I should be asking these questions to, or should there be other witnesses?

A/Commr Joe Buckle: Mr. Chair, I'll ask Mr. Bird to respond.

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

The answer is that the RCMP commissioner will be responsible for the transmission of the information that it has in the DNA data bank that it is allowed to transmit, so that the commissioner's delegates are the appropriate people to answer those questions, in my opinion. I tried—

Hon. Marlene Jennings: So you're not in a position to comment on the wisdom of the provision in Bill C-18 that would allow the RCMP commissioner and his or her delegate to communicate information contained in the national DNA bank to any foreign entity or agency thereof.

Mr. David Bird: I would think that the witnesses here are capable of doing that.

Hon. Marlene Jennings: They are capable—

Mr. David Bird: Yes.

Hon. Marlene Jennings: —of discussing the actual wisdom of having that kind of provision and, if the provision is in fact there, what kind of controls should be put in place to ensure that the information is used in accordance with Canadian law—Canadian Constitution and charter—and should there be breaches, that there are also provisions that would allow the Canadian government to put into place sanctions or whatever remedial action.

These witnesses are competent to answer those questions.

Mr. David Bird: I think I would probably be the person you would address those questions to.

Hon. Marlene Jennings: Then would you answer them?

Mr. David Bird: I'll try my best.

Your first question is about the wisdom of allowing this to take place. In essence what happened in Bill C-25—or it's Bill C-13 now—chapter 25 of the Statutes of Canada 2005, was to permit the domestic sharing of information concerning what we call a moderate match.

I don't know if you recall the last testimony that we had—I think you had to leave when I tried to respond to your previous question on this—but it should be on the record.

Moderate matches are cases where we don't understand whether or not we have a clear match, given the scientific problems of analysis. I understand there are cases where you have mixtures of DNA from victims and perpetrators. You have cases where DNA evidence is degraded due to age. It's an old crime scene, or bodies are found and it's difficult to be absolutely certain what those amplified DNA profiles are.

So in the convicted offender index you have what we call, or at least what the scientists inform me is, a gold standard. These are samples, body substances, taken from people at the time—usually blood in clean circumstances—from which they are able to derive very good profiles. In most cases the amount of scientific failure to derive a profile is statistically very small in the number of rejected cases. I can't tell you what exactly that is, but it's very small. So we have a high reliance on the convicted offender index profiles. The crime scene profiles can be mixtures, degraded profiles, so it may be difficult to tell whether or not there is exactly the same profile from the crime scene.

So the ability was put into Bill C-13 to allow moderate match profiles to be exchanged. There's no personal information. It's simply a matter of putting to the people in the crime scene labs: here's the profile we have; is it possible that the profile you have is the same but you just misread it, or you weren't able to derive it properly? Then they can reanalyze and say yes, this is a match, or no, it's not. The personal information would then be requested separately for further investigation. It may be linked to another crime scene; it may be linked to the convicted offender index. That's the reason we have this provision in Bill C-13.

What we're asking for in Bill C-18 is the ability to do exactly the same thing with national comparisons.

As I tried to explain before, there is a great chance that international comparisons will be using parts of the DNA profile that we don't necessarily analyze in our system, but they do. So there may be only a limited number of matches between the same loci, and that leads to a higher incidence of probability of moderate match requirements to determine whether we have an exact match.

If this work isn't done at one level, in other words, as much as possible to reduce the potential matches.... It speeds up the investigations internally. It could be in the interests of our police forces to know whether we have an international offender, and it's certainly of interest to the foreign countries, for the same reason, to link crime scenes or offenders who are operating internationally together. Hence speed is of the essence in many of these investigations.

The result would be a speedier resolution of whether or not we have a match. If that information can't be sent abroad, then chances are it would be simply said that we don't have enough information to tell you whether or not you have a match. Then the information may be stalled, even though that could result in information of use to the police as an investigative lead in resolving an international serial offender, a terrorist, or some other event that is going on.

So the impetus for this international sharing is to simply ensure that the correct information about matches can be resolved scientifically between the analysts. There will be no sharing of personal information or even the resolution of a potential crime scene until it's resolved between the scientists whether or not they have a match, or a close enough match, that they'd want the information about the offenders or the other crime scene that it would link to.

● (0920)

So it's really to allow internationally the same thing we've been allowed to do domestically, and no more information will be shared internationally than would be allowed domestically for the same purposes. It's subject to our international agreement through INTERPOL, which limits the use of all of this information for the investigation and prosecution of a criminal offence. That's required now of the commissioner by the legislation and the DNA Identification Act, and it's been done through an INTERPOL master agreement. Each exchange of information is subject to a reiteration of the conditions that apply to the transfer of that DNA profile.

The Chair: Thank you, Ms. Jennings.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Thank you.

Welcome.

We are obviously in favour of the spirit of the bill, but the issue at hand is how far should we go. We agree that the taking of DNA samples and the subsequent analysis of these samples may assist with investigations and even, in some cases, protect the wrongfully accused.

Representatives from the Canadian Bar Association will not be testifying, but they did submit a brief. The Bar is always very enlightening to parliamentarians sitting on this committee. This brief cautions us against adding conspiracy, found in paragraph 8(5)(e) of the bill. Included in 30 or so offences that have been added, conspiracy can lead to the taking of DNA samples without an individual having perpetrated a planned act.

In some respects, are we going a bit too far by expanding the list of designated offences?

That is my first question; I will have two others. I would imagine that this question is more for Mr. Bird than the others.

● (0925)

[*English*]

Mr. David Bird: I may be able to help on this particular point.

My understanding is that the expansion is to allow, in the retroactive scheme, the addition of conspiracy to commit murder to the list, for the purposes of the DNA data banking regime and the warrant scheme. Expanding this beyond the persons involved in committing or attempting to commit the very serious offence of murder would also extend it to those who have the propensity to assist in that kind of crime. Even though they may not be leaving.... They could, I suppose, if they did this by leaving DNA on an envelope; if it's conspiracy, it's possible that you could have DNA evidence linking them directly. But it would also mean the police would be able to collect their DNA profile for data banking purposes in the future, allowing designated offences to be connected to them, should they commit those offences in the future.

[*Translation*]

Mr. Réal Ménard: I do not think that you understood my question.

I understand what it could mean, ultimately, to have DNA samples of people planning conspiracies. However, the Canadian Bar Association states that paragraph 8(5)(e) would add to the list conspiracy to commit and attempt to commit certain offences, although the actual result may be the planning rather than the carrying out of an act.

Is it wise on the part of the legislator to allow the taking of DNA samples considering the potentially intrusive nature of such a measure in identifying individuals for offences that have not been perpetrated but are at the planning stage? Of course, it is possible to lay charges of conspiracy. That exists under section 465 of the Criminal Code. Nevertheless, we are talking about samples here. I am wondering whether or not we've gone too far by expanding the list.

Perhaps you are not quite the right person to answer this question, but I did want to express this concern to you. Ultimately, we will have to invite the minister to reappear so that he can explain why conspiracy has been added.

Mr. Buckle, could you please clearly explain the difference between the work done by the National DNA Data Bank and the Forensic Laboratory Services, which are available in five provinces. I think that I grasped the difference, but it would be good to have it repeated. How do these two entities distribute the work? How are they complementary?

[*English*]

A/Commr Joe Buckle: There are three forensic lab systems within Canada. The RCMP has a lab system with forensic laboratories in British Columbia, Alberta, Saskatchewan, Ontario, and Nova Scotia. We provide DNA services from our Vancouver lab, our Edmonton lab, our Regina lab, the Ottawa lab, and the Halifax lab. In addition, the provinces of Ontario and Quebec have labs from which they provide DNA services as well.

Concerning the division of the work for types of Criminal Code offences, Consulting and Audit Canada has provided a report indicating that the RCMP forensic labs undertake somewhere between 45% and 50% of the Criminal Code work for primary and secondary designated offences, and the rest of the work is split between the other two labs.

Does that answer your question?

[*Translation*]

Mr. Réal Ménard: I really want to understand the division of work. When we visited your facilities, we were given an explanation of the process for analyzing samples.

What is the exact role of the laboratories with respect to that?

● (0930)

[*English*]

A/Commr Joe Buckle: I'll restrict my remarks to the RCMP because that's the system I understand the most.

Within the RCMP forensic labs, samples are collected within any of the jurisdictions in which the RCMP provides policing services, and in fact by other police departments within those areas as well. The analysis to determine the DNA profiles is undertaken in Vancouver and Ottawa. Within this fiscal year, we will be opening another DNA processing facility in Edmonton.

We have the ability to report on the DNA profiles. In other words, we look at a DNA profile from a scene and from a suspect and are able to determine if there is a match or not. We can make those reports from any one of our five facilities where we have DNA forensic scientists.

[*Translation*]

Mr. Réal Ménard: All right.

Do I still have some time left?

[*English*]

The Chair: No, Mr. Ménard, your time is up, actually.

Mr. Comartin.

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

Thank you, gentlemen and madam, for being here.

Mr. Bird, I'll go to you first, because we didn't get to ask this question at the last session when the minister was here. We're being told that Bill C-13, now chapter 25, has not been put to use because of technical purposes, and that Bill C-18 corrects those. I don't see that. I don't see where Bill C-18 does anything to advance Bill C-13, so could you point out to us where it does that?

Mr. David Bird: I'll do my best.

When Bill C-13 first arrived, its purpose was really to deal with the problem of what we call non-designated offences being sent in by courts. Those offences were kept in the data bank unanalyzed, but undestroyed, because we had a valid court order. But on the face of it, they looked defective to the Commissioner of the RCMP, and he didn't want to put offences into the data bank that didn't qualify, and he had no real way to deal with them. So a number of amendments were brought in to allow the commissioner to send those cases back to the attorney general of a province for review. Part of that was to allow the attorneys general to seek advice from the courts—in other words, to have the order quashed and dealt with.

After consultation with the attorneys general, they were of the view they could give advice to the RCMP commissioner without having to go back to a court to quash all of these orders. They said, in their opinion, if they confirmed the opinion of the commissioner this was a non-designated offence, the commissioner should be able to destroy it based on that advice.

So that change was put into the legislation.

The other issue was to deal with—

Mr. Joe Comartin: I'm sorry, but just before you go on from that, I'm not sure what we're doing at this point. All we're saying is that we'll accept the recommendation from the respective attorneys general, and the RCMP lab will follow that?

Mr. David Bird: That's one of the Bill C-18 changes, so it changes that.

Another change, which the RCMP asked for, was to deal with this issue of moderate match reporting, which it didn't have the authority to do under the DNA Identification Act as it was written prior to Bill C-13.

Mr. Joe Comartin: But Bill C-13 didn't address that issue.

Mr. David Bird: Yes, it did. It changed it for the domestic legislation, but then it tightened it up for the international. So it prohibited international sharing of that insofar as it specifically limited what could be sent to being strictly confirmation of whether we had a match, rather than the profile itself.

Mr. Joe Comartin: Okay, but Bill C-13could have been proceeded with for domestic purposes?

Mr. David Bird: That's right. And, in fact, it was.

Mr. Joe Comartin: All we're doing with Bill C-18 is expanding—

Mr. David Bird: —to allow the international—

Mr. Joe Comartin: But that doesn't correct anything in Bill C C-13. It simply expands the use of it.

Mr. David Bird: The problem with Bill C-13was that when we looked at it, we didn't have the drafting authority to go that much further before it got to you. The end result was that it mirrored the old regime for international but not for the current recognized need to do moderate matching internationally as well. Without that, we will not effectively be able to share information abroad. That's one of the reasons Bill C-18 was put in place.

A number of issues were found with respect to the changes to the retroactive scheme and the forum surrounding DNA orders because of the new changes to "not criminally responsible" and associated reasons for making such orders. You'll see that there are a number of changes to the forum. These are small technical changes that we saw as being required. Then there are a number of other.... As we look at this, as Mr. Thompson pointed out, it's not a simple series of understandings that you have to go through to interrelate the requirements of the Criminal Code, as to what's a designated offence, with all the qualifying offences that are now in place. A number of changes are being put in place to make it clear what a mandatory order is, what a discretionary order by the judge is, and which has to be done by the prosecutor.

We try to make it clear and make the forums clear so that we have a coordinated approach between the amendments proposed by the committee that expanded the scope of the DNA qualifying offences by virtue of the amendments the committee recommended. That happened at that time before the committee, so we had to go back and make consequential changes to make this flow clearer and take care of technical problems with respect to definitions.

● (0935)

Mr. Joe Comartin: Okay. But the additional offences that we're moving into primary and the new ones that we're moving into secondary don't do anything to correct the problems we had with Bill C-13. This is an increase in the mandate.

Let me make this statement to you so you can see the context I'm coming from. I see part of Bill C-18 as simply being mandate creep, that we're expanding the use of the DNA in certain offences.... I understand that's what we're doing. I don't see that this does anything to correct any of the problems we had in Bill C-13.

Mr. David Bird: I'm not sure that I can respond to that without knowing simply which of the—

Mr. Joe Comartin: How many have we moved into the primary, and how many new ones have we moved into secondary?

Mr. David Bird: You're talking about in Bill C-18?

Mr. Joe Comartin: I mean in Bill C-18.

Mr. David Bird: My understanding is that we should be reflecting the intent of the original Bill C-13. It's simply a matter of reformatting it to ensure that we've got the intent properly.

Mr. Joe Comartin: Let me use conspiracy. We've added conspiracy as a new one. What does that do to correct any problems we had with Bill C-13?

Mr. David Bird: In essence, my understanding of the conspiracy issue that Mr. Comartin raised is that there was an anomaly between what we could get a warrant for and what we could get a DNA data bank.... We had an exception. We couldn't have conspiracies. Conspiracies may be seen as a lesser offence than a—

Mr. Joe Comartin: Mr. Bird, again, address my question. Where does that prevent Bill C-13 from being used?

Mr. David Bird: It doesn't. The problem is that Bill C-13 has not been proclaimed with respect to the definitions of designated offences, which means that it can't be used until that is proclaimed. I understand the technical problems in the wording caused....

My justice department drafting colleagues have made attempts to make it clear so that we have a coordinated definition before we proclaim it in force, so the judges would not be confused as to what they had to proclaim and what they didn't proclaim, and so that there was a consistency between the intent of the motions made by committee to expand the definition, really to clarify, for the purposes of this Criminal Code, what in fact is a designated offence—given some technical problems in the motions to expand the definitions that came at committee.

Some of this is to make minor changes. I say “minor”; that's in my view. You may see conspiracy as a major change to the definition. But from my understanding of the police community and the international community, many minor offences are precursors to serious offences, and the experience in other countries, particularly Britain, is that offences like break and enter, robbery, and motor vehicle offences have all led to or been associated with more serious offences down the road. Conspiracy to participate in some offences—

● (0940)

Mr. Joe Comartin: But Mr. Bird, that—

The Chair: Mr. Comartin, you're well past your time. I'm sorry to cut you off there.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you to all the witnesses for being here. I had the opportunity to attend the DNA data bank in the last Parliament, and it was very informative.

There are a couple of things, before we get into questions specifically on the bill, just to refresh our memories. There are two things I recall from that visit. The DNA sample was described to be like a library, and what we're actually looking at, in doing the comparative analysis, is like taking one book out of that library. I think that's the way it was explained to me. I would like it if someone could comment a bit on that.

Also, I know the public might have a perception on this from watching TV or just with their thoughts on the whole science around DNA, but we've gone to great lengths to respect people's privacy when a sample is in the DNA data bank and , in fact, to separate the DNA sample from the personal information that would be attached to that sample.

I wonder if you could speak briefly on those two things.

A/Commr Joe Buckle: I'll take your second question first.

The data bank was set up to separate any personal information from the genetic information. In fact, the information resides in two separate indices. The genetic information resides within the National DNA Data Bank. A genetic profile is just a series of numbers, and attached to that is a bar code, and the people who work with that information have no other information on the individual from whom the DNA profile came. The fingerprints, address, and personal description are all contained within our criminal records area in another building within the RCMP complex. In fact, the staff from each area do not comingle. We have taken measures to ensure that the data bank, the unit that I described earlier, is actually removed in its governance structure from the governance structures of either of those other two entities, whether it be Forensic Laboratory Services or the criminal records area. Also, there is legislation that guides us in the retention of personal information and genetic information.

Your first question had to do with comparing DNA samples. Again, I'd like to draw the distinction between the DNA data bank and Forensic Laboratory Services. Forensic Laboratory Services are the people, if I can say, who are at the pointy end of the law enforcement stick. They work with the investigators to try to make matches at a crime scene, whether it be to match a crime scene to a crime scene or to match a crime scene to a suspect. Some of those samples end up in the National DNA Data Bank. For instance, if an offender is convicted, that sample could go into the National DNA Data Bank for designated offences. The non-suspect DNA from crime scenes would go into the crime scene index.

If there is going to be a match...I'll give you a scenario. There's an investigation. There's been bloodletting, and the investigators collect blood from a crime scene and bring it in to be analyzed by one of our forensic labs in the field, right across Canada, whether it be a provincial lab or the federal labs. That genetic profile is then searched against the convicted offender profiles within the data bank and also against the other non-suspect crime scene samples within the data bank to see if there's a hit with either one. That's a scenario that could be used to link the labs across Canada with the DNA data bank.

● (0945)

Mr. Rob Moore: There's been some talk about the conspiracy to attempt murder, and I understand that this bill adds that to the list of offences that could trigger a retroactive order. I have no trouble seeing why conspiracy to attempt murder should be treated in that manner.

Also, to make sure nothing slips through the cracks, for the subcategory of 16 of the most serious offences—some of them are murder, manslaughter, sexual assault with a weapon, and kidnapping—there would be an automatic DNA order when we had one of those most serious offences.

Could someone speak generally about that subcategory, now that it is created in the bill, of the 16 most serious primary offences and how making that an automatic DNA order would, in my view, prevent some sample from slipping through the cracks when it might otherwise help solve another crime or ensure a conviction?

Mr. David Bird: It seems to me—and this is my understanding—that these categories were really created by the committee itself when Bill C-13 was being debated.

The concern of the committee was that the data bank, the convicted offender index, was not receiving the volume of designated offences that we expected for primary designated offences. The committee, in its wisdom, chose to suggest that it would be useful to tell the courts that in certain cases they had no discretion.

Mr. Rob Moore: Can I interrupt you there? How does that happen, then? We know we have this tool—and I appreciate the comparison to fingerprinting—and that it has made a profound change in the way we investigate crimes.

Take, for example, a situation where someone has committed murder and been convicted of the offence, and yet no DNA sample is sent to the data bank. That was happening, and that is why the committee recommended that we ensure that those most serious ones do not fall through the cracks.

Can you take me through how it would happen that a sample doesn't end up in the data bank when clearly it should?

Mr. David Bird: Well, I can tell you that in order for a sample to be taken from a convicted offender, there had to be a valid court order. If you have a case where...and I think it's a human factor.

My explanation from talking to judges and prosecutors is that the system is complex. In other words, you have a long murder trial, complex evidence; at the end of it you have a number of determinations again on sentencing that a judge has to make with respect to these serious offences: he has to consider whether or not a prohibition order should be made, or whether an application may be made for a dangerous offender.... There are a number of things that may delay sentencing.

The simple explanation is that in the process, DNA orders were simply overlooked, and that no one considered making an order until it was recognized, perhaps, later. Then the court found itself to be functus—in other words, it had no jurisdiction to make such an order—and without an order, the police wouldn't execute it; therefore, no DNA sample was submitted to the bank for an entry in the convicted offender index. That's the general scenario to explain why only 50% or so of the expected primary offences were being received by the data bank.

This was an attempt to say that at least for these most serious offences the court would be required to make such an order.

We have to perhaps deal with the issue that, if that happened, they would have a 90-day extension to allow the court to go back to revisit it. There are some processes we'll have to look at in terms of that—what happens if a court still forgets—and how we're going to have to deal with that potential.

At the moment, that's the explanation I'd give you for why, in the 50% or so of the primary offences, we were not receiving samples.

● (0950)

The Chair: Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

Could you indicate, from your knowledge, the driving motivation for the business of potential sharing of the profile with foreign jurisdictions? Is it simply reciprocity with the other jurisdictions? Is it a real belief that information from them will help us? Or is it just a bit of brotherhood amongst friendly law enforcement agencies, that sharing might produce a benefit?

What's motivating this particular amendment to enable more sharing of the profiles? I see the end result. I just don't know what the motivator is, and perhaps you could help me there.

Secondly, something in our visit to the RCMP labs was very helpful to me, and I thank you for it. One of the questions that came up—and it doesn't have to do with the data bank, but with the Forensic Laboratory Services—I want to get on the record, because it came up during our visit.

What happens when Sergeant Jones from Upper River Junction shows up in his pickup truck, and he has 50 pieces of evidence in the back of the truck, and he says, “Mrs. Smith thinks her nephew stole her car keys. Can you just check all this stuff and see what you can find?”—as a fishing expedition? I'm wondering what protocols may exist to better ration, better utilize the Forensic Laboratory Services in the face of what appears to be an open door policy.

If a police force in a contract province—it doesn't necessarily have to be the Mounties, but it could be—just wants to get that stuff checked over for DNA, and it really doesn't fit within priorities....

Could you address that too, please?

A/Commr Joe Buckle: Thank you very much. Perhaps I'll address that one, and then I'll ask my colleague David Bird to address your international sharing question.

There's no doubt that we deal within a very broad jurisdiction within Canada. The priorities in one area may be different from the priorities in another area. Rapes and murders are quite uncommon in small towns across this country, but unfortunately some of our larger cities are seeing an increase in those kinds of activities. There's no doubt that for the people who live in those communities, it doesn't matter what the crime is. If they feel it's important, then there needs to be some attention paid to it.

However, within our Forensic Laboratory Services, and I think in forensic services in general in North America, there is a capacity issue. Shows like *CSI: Crime Scene Investigation*, which we see on TV, have made it more prominent in people's minds. DNA analysis is a very powerful tool. We see greater and greater demand for it all the time.

Therefore, we've had to ensure that we use our resources to try to resolve the most serious crimes first. In order to do that, we have a conversation with these investigators. So if Constable Jones showed up from Upper River Junction and wanted to resolve a case for a person in his community, we would have a conversation with him to determine exactly what type of crime he was looking at. Then we would try to portray the significance of priority and the fact that we would consider rapes, murders, and some of the other designated offences to be of a higher priority for the use of that service, given that we have a capacity issue, than the theft of an automobile. I believe there are other investigative techniques that could be used to try to resolve that crime before we invoked the use of expensive technologies.

Within the RCMP, there are two things we have undertaken to ensure that the resources are more for serious offences. We discuss with the investigator where the most probative value would be in the—you said, 50—exhibits from Constable Jones, who would ask him if he could pick his best six or eight exhibits that would most likely answer the question that he wants us to answer. If we were dealing with a murder, it would be to give us the best six or eight exhibits whereby we could potentially link the suspect to the murder. That doesn't mean that we're limiting it to six or eight in total. It just means that we want to try to get the biggest bang for the buck right up front.

The other thing we're doing is using a system called a priority rating of operational files whereby, through a series of questions with the investigator, we can rank the more serious cases. You can appreciate that we deal mostly with very serious cases—rapes, murders, and sexual assaults of various types. We want to ensure that when we have a case of murder or a rape, or both, and there's no suspect, that gets the highest priority.

Through a series of questions and some software that we've acquired, we can actually rank those cases. We will advise the investigator, "Listen, you brought a case in, we've ranked it, and it falls within our grid as being an A2, and we can respond to that case within this period of time. Is that of help to you, or do you want to discuss it some more?" Sometimes investigators will tell us, "No, that'll work. Our court date is down the road, and we'll get there." Other times they'll tell us, "No, we really want to get this done." We'll have that conversation with them to try to ensure that we're actually utilizing those resources in the most efficient manner possible.

Does that answer your question, sir?

● (0955)

Mr. Derek Lee: Yes, thank you. It does.

A/Commr Joe Buckle: Mr. Bird.

Mr. David Bird: In answer to the question of what the motivator is for the international sharing of DNA profiles, it's simply public safety. It's recognized that Canada has been one of the actual prime movers to encourage international sharing of DNA at the G8 level during sessions there, recognizing that the limited number of sharing that has gone on between Canada and the United States has been very useful in identifying international sexual predators who have committed sexual assaults in Canada and then travelled to the U.S. and Mexico, in various cases. Through sharing of DNA profiles from our crime scenes or foreign crime scenes among the three countries, we have identified international sexual offenders. And on Canadian tourists who have been assaulted abroad, through analysis in the Canadian national data bank or labs, we have been able to share that information internationally, which has allowed us to detect the perpetrators of these offences and bring them to justice in whatever system they were in at the time.

That has assisted dramatically. Those experiences convinced Canadian officials that we should do this on a broader basis internationally to ensure that international sexual predators, international organized crime figures, and potentially terrorists can be detected early in precursor offences, if that's what they're involved with, or in linking serious crimes that they're committing together, so that the nature and scope of these criminal organizations and predators can be assessed and quickly stopped.

Really the prime motivating reason we need to do this, or we feel we should be doing this, is to ensure that, as early as possible, we can connect these various criminal organizations and crime scenes together.

Mr. Derek Lee: Thank you.

The Chair: Thank you, Mr. Lee.

Ms. Freeman.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): I have a question with respect to the brief submitted by the Canadian Bar Association. On page 3, it reads as follows:

> The communication of such information was previously restricted to Canadian agencies only. Again, information could be communicated to foreign bodies in relationship to any criminal offences and not just designated offences.

Why should the exchange of information be expanded to include all criminal offences whereas the communication of information in Canada pertains to only designated offences? We are therefore expanding the transfer of information to foreign countries.

● (1000)

[*English*]

Mr. David Bird: The purpose of the amendments is to permit, both domestically and internationally, information that links potential crimes together to be used for that purpose. Bill C-18 amended the legislation and changed it to "designated" offences. Previously, it was "criminal" offences. It's really an issue that says, why should we, by legislation, force all law enforcement agencies... particularly in Canada, because we're dealing with that issue as opposed to internationally. They don't necessarily have a designated offence system, so they would use it in accordance with their criminal system that they could take DNA for, but they could only use it for the investigation and prosecution of a criminal offence internationally.

Domestically, if we have the restriction that it could only be used for a designated offence and the police had DNA from a non-designated offence, even though it didn't qualify for data banking, they would be prohibited from using that match for that purpose. It may be unlikely that they would do analysis for non-designated offences, but if they did so, the question is, why should we restrict their use of that DNA to match a convicted offender and get a conviction for that purpose of matching them together? Otherwise, they would not be able to use the DNA match between a crime scene, if they had one crime scene...and then they find it's a convicted offender and that convicted offender is identified; but if they had information in their system that linked DNA to a non-designated offence that they had, they would be prohibited from using it. So we saw no reason to restrict the local police or any other police from using information except for the purposes of prosecution of a criminal offence.

I don't know if you understood the answer. Otherwise, we would be limiting information they were given from the data bank for only designated offences, even though it may help them convict someone for a non-designated offence. We thought it would be wise to remove that restriction, which was putting it back to the original language in the DNA Identification Act.

[*Translation*]

Mrs. Carole Freeman: Thank you for this answer.

I know that we can provide foreign countries with information, but all that appears to be very hermetic. On the basis of the information that you have given to us, completely separate entities communicate nominal information through bar codes.

The problem that I have is that all of these totally separate entities always come under the umbrella of the RCMP. The RCMP is always responsible for these entities.

What type of parameters do we need to set in order to prevent the situation of getting out of hand? What guarantees do we have that the information forwarded to foreign countries not go beyond the established parameters?

[*English*]

Mr. David Bird: Again, Canada has—

● (1005)

[*Translation*]

Mrs. Carole Freeman: My question may resemble a question you have already answered several times, but in light of recent situations that have got out of hand, it is a very legitimate one. You have given answers that appear to be very clear, but in practice, things can get out of hand.

What guarantees can you give us?

[*English*]

Mr. David Bird: The only guarantees I could provide you with are those provided by the DNA Identification Act, which makes it a criminal offence for the commissioner or the commissioner's delegates to use DNA information that the agency has in the National DNA Data Bank for any other purpose than what's permitted by the DNA Identification Act. There are restrictions on the use, and there are restrictions on what can be communicated, and there are further restrictions domestically on further communication by those who receive that information from the RCMP.

So the current DNA Identification Act and the amendments in Bill C-13 are, in my view, very restrictive. The DNA information that the RCMP has can only be communicated as authorized by the DNA Identification Act, section 6, and any other communication is an offence. Similarly, any other research that could be done with the DNA profiles, except to derive a forensic DNA profile, for the purposes of DNA data banking would be an offence.

Those are fairly serious prohibitions, and that in itself should be sufficient, in my view, to satisfy Canadians' concerns that there may be unauthorized or illegal uses of DNA profiles in the National DNA Data Bank. We probably have the most robust genetic privacy regime in any DNA data bank where the people who are using the DNA do not know the personal identification of the person who has submitted it. So the data bank operates anonymously with respect to the personal information. All it has is genetic information, and it has a very restricted legal regime that allows it to communicate only for the purposes that the DNA identification allow it to, and that's to essentially compare the convicted offender index with the crime scene index and report a match, and the moderate matching provisions that allow it to ensure the question, do we have a match? That's the expansion of the regime.

Otherwise, that is essentially all the DNA data bank officials can do with the DNA they have in the National DNA Data Bank. They ask, do we have a match? And then if it does, it goes to another portion that doesn't have the genetic information. All they have is personal.

The Chair: Thank you, Ms. Freeman.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Good morning to all the witnesses.

My question is for Mr. Bird or Mr. Buckle. I will try to be as precise as possible.

Let's suppose that a 14-year old youth is convicted of murder. The offender will not necessarily be treated as an adult but he'll come under a particular piece of legislation. This young man or woman will have to remain in custody for approximately three years, at the most. I repeat: this youth will not be treated as an adult, but we are talking about a case of murder.

One detail seems to be missing. Perhaps the RCMP counsel, Mr. Bird, could answer me. This difficulty may occur in the other provinces. However, I'm not familiar with the legislation from the other provinces. In Quebec, this measure applies to young offenders under the age of 18 who are convicted of murder, except in cases where the young offenders are sent to an adult institution. I would emphasize this nuance.

I would like to know whether or not, in these circumstances, the DNA for this individual would be sent to you or whether or not the judge could ask that this be done.

[*English*]

Mr. David Bird: The answer is yes. Young offenders are treated, for the purposes of DNA data banking orders by courts, exactly as adults are, and they will be subject to the same designated offences if they're found guilty, as opposed to being convicted. You'll see the various language. But a younger person would be eligible for DNA data banking for exactly the same offences as an adult would be, under exactly the same circumstances, and would have his DNA collected in exactly the same way as an adult would.

There's a distinction in how long it can be retained in the National DNA Data Bank, because as soon as their young offender records are required to be destroyed or the youth criminal justice records are archived, then destruction requirements are separated. So they're not kept in the same system for as long as an adult record, which would be kept indefinitely. That's the only distinction.

[*Translation*]

Mr. Daniel Petit: My second question may be for Mr. Buckle.

We have DNA banks in Quebec that are not controlled by the RCMP, naturally. They come under the Civil Code and are used to determine paternity. We now have a Superior Court order. We used to do blood tests, but this is no longer done. We now do a DNA test.

The DNA test is always carried out by very specialized companies. They have numerous DNA samples which are used for comparison. These data banks have been around longer than yours and contain more DNA samples that you may have, even here, in Ottawa. In fact, paternity tests have been carried out for many years. Up to 3 000 to 4 000 are done per year.

Do you have any agreements with these laboratories, which are unique, whereby they forward the results of their research? Unless there is an identical system in the other provinces. I am not familiar with common law, which applies in these provinces.

● (1010)

[*English*]

A/Commr Joe Buckle: Without validating any of these data banks by my answer, the answer to your question directly is no, we do not have any agreements, nor would we undertake sharing of the data within those types of data banks with the genetic information within the National DNA Data Bank.

Perhaps Mr. Bird would have a comment on the other legalities of the other data banks within the DNA Identification Act.

Mr. David Bird: The DNA Identification Act does not prescribe where crime scene profiles will come from. It simply obliges the commissioner to deal with what he receives for entering into the convicted offender index, and as a matter of policy and as a matter of the amendments to Bill C-13, that analysis would need to be done by the commissioner himself or someone he would contract to. However, at this time my understanding is that it is done entirely by RCMP officials, and I understand there's no policy change to permit this information, for the convicted offender index, to be contracted out.

With respect to the crime scene profiles, the problems are really related to policy on the use of the CODIS system to transmit information to the National DNA Data Bank. The labs' use of the CODIS system—this is a combined DNA analysis system that the FBI have developed and allow the world to use—allows for a consistent transfer of information, at least domestically, and that's essentially the system we use for exchanging information with the 27 other countries—I believe—that use the FBI system.

It makes for an easier transfer of information internationally, but that's not the primary purpose of it. It's really to allow the internal domestic data bank to operate effectively from the network of labs in Canada. So you have labs in Quebec and Ontario, separate from the RCMP labs, all using the same system to transmit their profiles to the DNA data bank.

My understanding is that if a private lab were to do this work, it would require, under the CODIS rules, that one of the official provincial labs or the RCMP lab validate the results of the research that was done, but that research would not go the other way. You would not be seeing information in the DNA data bank being sent to private labs for their use.

All the information is sent to the National DNA Data Bank, and once it's there, it's under the restrictions that allow for the communication of profiles. The convicted offender index could not be used to transmit information out, except in the case of a moderate match when there's a discussion between perhaps contractors of the police to determine whether or not they have a convicted offender match, but it would be used only for that purpose.

The Chair: Thank you, Mr. Petit.

Mr. Murphy.

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

Thank you, witnesses.

I'm going to follow up on some of Mr. Moore's points. Help me understand something, please. If you have over 108,000 samples in the NDDB for the convicted offender index, what proportion of those are from primary designated offence convictions, roughly speaking? Is it the vast majority?

● (1015)

A/Commr Joe Buckle: According to our latest data, about 53% of those would be from primary designated offences, and about 46% from secondary designated offences.

Mr. Brian Murphy: But in either case, I guess there's a concern. Certainly we've been given some information that the way the system works—before the intended law and the intended amendments—at least for primary designated offences, is that there is a 50% rate of insertion into the bank. It's hoped, I guess, that Bill C-18 will cure that by making these mandatory orders.

I respect that. But if you have, between primary and secondary designated offence convictions—there are some 35,000, almost, CSI samples—about 142,000 samples now in the bank, according to your brief, it seems to me, speaking to capacity here, that if this law is changed, we know that there are going to be mandated insertions into the bank, so to speak. So that will increase the volume darn near 200,000 over time. That's not even accurate—forget what I said—but it will increase the insertions into the bank.

There is some history here with respect to a letter from this committee's predecessor to the Auditor General, in May 2005, about backlog. I guess I want some assurance that with the additional $14 million, and the continuing $7 million in funding expected.... There's some concern, as legislators, from a public point of view, as to whether you'll be able to keep up with the demands of this new law.

A follow-up to that would be whether the government has consulted with you with respect to your budgetary needs, and have you given the Department of Justice—keeping the Chinese wall between the RCMP and the Department of Justice—assurance, and vice versa, that the job can be done with that funding?

A/Commr Joe Buckle: Mr. Chair, I'd like to separate again, just so I can respond to the question, the convicted offender index and the crime scene index.

We estimated that changes to the legislation would increase the number of submissions to the convicted offender index by about 10,000 samples a year. The data bank was actually built back in 2000 for a much larger capacity than we're presently seeing. And our analysis indicated that within the data bank itself, we could certainly absorb those 10,000 extra samples without seeing any impact or any increase in the amount of time it would take to do the samples or any increase in the turnaround time. In other words, the data bank has sufficient capacity to handle the convicted offender samples.

The concern we had was with the crime scene index samples. Our conservative estimate is that the legislation will increase the potential sample intake by about 42%. We've built a business case, which we have presented to our colleagues in Public Safety and Emergency Preparedness Canada, PSEPC, that outlines our estimated needs of about $15 million for the first year, with an ongoing $7 million for the other years. That would take care of the sample increase coming in as a result of Bill C-18.

We recognize that there is a capacity gap that exists right now. I've discussed this with my colleagues within the RCMP, and the senior executive committee of the RCMP will release funding to Forensic Laboratory Services on April 1 this year so we can bridge that capacity gap in anticipation of further samples coming in because of Bill C-18.

● (1020)

Mr. Brian Murphy: I'm relatively new here, but the point is that there have been concerns. There's a letter—and maybe it was just politics, I don't know—about a backlog in 2005. So before there's going to be increased traffic to your facility, can you assure me, as a new person, that the issue, or the phantom of the backlog, has been completely addressed and settled, and can we assure the Canadian public that there's no backlog in DNA testing?

A/Commr Joe Buckle: Our estimate of what the impact of Bill C-18 will be on the labs is exactly that. It's an estimate based on past conviction rates. We feel that our estimate was fairly robust; however, it doesn't anticipate potential changes in municipal priorities or provincial priorities, or even a shift in federal priorities that could increase the types of cases we see coming in. For example, if Calgary PD decided they wanted to make break and enter a priority and they were going to try to resolve those crimes, we would likely see a spike in those types of cases coming in that we hadn't anticipated up front.

With regard to the idea of a backlog impacting the system, I explained previously that I think we will always have a capacity issue, because since 1989 when we introduced DNA we have seen steady increases all the time for demand for that particular technology. I believe it's prudent for us to ensure that the resources that we are spending on it are expended in the most efficient and effective manner possible. That's ensuring that we address the most serious cases first. Our goal is to ensure that we respond to the police in the most timely fashion possible on those serious cases.

Mr. Brian Murphy: I want to know if there's a backlog now. It seemed to me a relatively simple question.

But thank you anyway.

The Chair: So what you're saying is that it's an ongoing pressure on the system to expand, Mr. Buckle?

A/Commr Joe Buckle: Yes, that's it.

The Chair: Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): I think most of the things that I was going to talk about have already been discussed.

DNA is the greatest thing that's happened in terms of crime fighting in history. Is that correct?

A/Commr Joe Buckle: I think since the introduction of fingerprints, it probably has made the most significant impact in the forensic role, yes.

Mr. Myron Thompson: I'm just curious about the fingerprint index. Let's say Mr. Murphy is hard up for cash and he decides he's going to break into a place and steal some money, and they took his fingerprints. Are his fingerprints on file somewhere?

A/Commr Joe Buckle: If he was arrested and his fingerprints were taken, yes, they would be retained in the fingerprint database in the system.

Mr. Myron Thompson: A lot of us have fingerprints on file from identification when we were in high school and they had an identification program, and they go on file somewhere; or when you become a father, both you and the mother have fingerprints taken for identification purposes, and they're kept on file somewhere. What I'm driving at is that when you have something that is so effective in solving crime and exonerating innocent people, something that has become very important, it should be broadened as much as possible.

I'd like to hear Mr. Bird expand a little bit on one comment I heard that I certainly agree with. The precursor crimes that lead to worse crimes in the future seem to be the majority of crimes. They're not quite so serious at this point in time, but we know what they lead to in the future. I'm thinking of the recent law that we're discussing in regard to animal abuse. It's a well-known fact that if a person heinously attacks and kills an animal for the fun of it, eventually they end up in jail for committing the same kind of violence against humans.

Isn't there a real advantage to taking on some of these precursor crimes and saying we are going to start banking DNA, not only to get more arrests but as a preventative measure, a deterrent measure? We are actually here not only to legislate laws to take care of the guilty, but to do everything we can to prevent. Wouldn't that be effective? Or am I living in dreamland?

● (1025)

Mr. David Bird: Perhaps I can respond to that.

I think I would suggest to the committee that you look back at the testimony received from witnesses during the consideration of Bill C-13. I was here when you heard from Dr. Chris Maguire of forensic services in the U.K. system. He talked about their experience in concentrating their DNA data bank collection for crime scenes and offenders related to break and enters, robberies, and car thefts. Through their statistics they were able to show the progression from lesser offences to more serious offences. By concentrating resources on those types of offences, they were able to reduce crime rates in the municipalities or the regions where they were concentrating on those kinds of offences.

So they did a number of studies on the effectiveness of that kind of work. I understand the State of Florida DNA data bank did similar kinds of studies, and Dr. David Koffman, who you also heard from, I believe, was able to confirm the same kind of results. By concentrating on those lesser offences, they were able to solve the more serious cases—cases concerning the instances of sexual assaults particularly, but also other serious crimes that were linked to the lesser offences.

I understand the data bank itself has now been able to link and solve a number of very serious offences by doing work on break and enters particularly. There is a very high correlation here, with links between break and enters and more serious crimes, such as murders and rapes.

But they can give you those statistics directly, I think.

Mr. Myron Thompson: So based on that, based on the statistics we have before us and on the studies we've seen, it's safe for me to assume that if we opened up the door in a broader sense, we could reduce and prevent a lot of crime.

Am I wrong there?

Mr. David Bird: No, I don't disagree with that, sir.

Mr. Myron Thompson: Then I would suggest we don't balk at expanding this technology. We shouldn't hesitate. I think we should go at it. Let's do it. Isn't that what we're all about, fighting crime, preventing crime? Isn't that what we're all about?

I think the cost of crime is far greater than the cost of what we'll be spending on expanding technology that's the best you could ever imagine. I hope we move forward on this kind of thing. We're always so afraid that we're going to infringe on somebody's personal rights. And I don't want to do that either, but at the same time, we might be able to stop a lot of things from happening.

I can't help but believe in my own mind that if a person who has committed a crime is informed that he's now going to be entered into a DNA bank—unfortunately for him, but because of his actions, he's brought that on—then it will act as a deterrent. Jail evidently doesn't work. A lot of people don't think it works. I happen to think it does work to some extent, but I think that kind of possibility with the DNA bank is a deterrent.

So I applaud your work, gentlemen. I just hope that any government in power in this country has the wisdom to understand that what you're doing is for the good and the safety of all Canadians and doesn't hesitate to support it.

That's all I have to say.

● (1030)

The Chair: Thank you, Mr. Thompson.

I don't know if any of the witnesses wanted to comment on that. No?

Mr. Brown, you're the only one who has not asked a question. Do you have any questions to put to the witnesses?

Mr. Patrick Brown (Barrie, CPC): Yes, just a brief one.

I know that one of the concerns raised by the CBA had to do with clause 8 of Bill C-18, about expanding the list. I just wondered if you felt that the list was expanded adequately enough or if there was any value to their criticism.

I've noticed that the trend for the CBA is they seem to criticize any piece of justice legislation that tends to move toward curtailing the rights of criminals. I wanted to look at it from the converse perspective, from the other side, to see whether there's any reason to consider expanding this list further.

Does clause 8 encompass enough? Or what are your thoughts on their concerns about largely that clause?

Mr. David Bird: I think the Department of Justice could probably deal with this matter more directly in terms of their analysis of the justification of expanding the DNA regime. But my understanding is that it has been reviewed and that it would withstand scrutiny for charter analysis, that it's reasonable to expand the regime in the way that the committee has put forward, and that current case law that the Supreme Court of Canada has brought down suggests that the regime potentially may be changed in the future.

But again, that was not within the scope of the bill that you see before you. So it's a hypothetical issue, and I would assume that this would be addressed by Parliament during its five-year review, as to whether or not the regime should be changed through a major expansion. What offences and what kind of regime would be followed would be for that discussion. A full analysis should be done at that time of the potential charter and justifiable reasons, and perhaps the Canadian Bar Association may have further submissions to be made about the potential offences that would be considered at that time.

Before us today we have only this bill, and the considerations with regard to those impacts are all we have looked at. If we're going to look at a further expansion, then I think we'd have to take that, and look at it for those purposes at the time. But if the committee chooses to put those things forward, I guess we'd have to look at the benefits that would flow from it in terms of the potential for public safety.

The Chair: Thank you, Mr. Brown.

Mr. Derek Lee: Mr. Chairman, I have a point of order. And I do this in a constructive way.

Mr. Brown, in his opening remarks, purported to attribute to the Canadian Bar Association a particular position. He didn't quote them, but he attributed a position that may or may not be accurate.

Because we're all protected around here from libel and slander actions, just in case we make mistakes, I just wanted the record to be clear that it's possible that the Canadian Bar Association may be a witness here, but I think, for all of us, we should avoid attributing positions to persons and groups unless we're quoting directly from the record, and allow them the benefit of dealing with these issues straight up. I just feel that since the Canadian Bar Association is a frequent witness here, assisting Parliament in its work, we ought not to cavalierly label them as taking a position. Unless, of course, it is a quote and they've taken that position publicly.

● (1035)

The Chair: Mr. Brown, were you referring to the brief?

Mr. Patrick Brown: Yes, Mr. Hanger, and I'm not sure if Mr. Lee has had the occasion to read the letter from the CBA, but it was dated February 23 and sent to all members of the committee. What I attribute to them was on page 3 of the letter. So when you get a chance, I'm sure you can read it.

The Chair: Thank you for that clarification.

Mr. Moore.

Mr. Derek Lee: Mr. Brown may wish to read in that portion of the letter. But Mr. Brown's words clearly said that the Canadian Bar Association took a certain view with the respect to the rights of criminals, and I don't remember reading that in the document from the CBA.

The Chair: Thank you, Mr. Lee.

I recognize Mr. Moore first, then Mr. Ménard.

Mr. Rob Moore: I think Mr. Brown's assessment.... I don't have any reason to challenge it, unless Mr. Lee can cite one of the bills that we brought forward that would be tougher on crime, at the expense, presumably, of criminals, that the CBA has supported. So I think we've all been around long enough, certainly in this committee, to draw that conclusion. Unless he has some evidence to the contrary....

Mr. Derek Lee: I don't want to get into a debate here, Mr. Chairman.

I know that the Canadian Bar Association deals with this committee and provides advice with respect to the rights of citizens. I don't ever recall their dealing generally with the bundle of rights of criminals. They talk about the rights of citizens.

I'll stop there. This issue will come up again later, I'm sure.

The Chair: Thank you, Mr. Lee. I think it will be coming up for further discussion, probably in a steering committee.

I have a question. We have four witnesses sitting here yet, Mr. Ménard, and I know that your point of order may not be related, or your points might not be related, to these witnesses. I want to ask Mr. Bowen one question, but there may be some time to field a few more questions from the opposition.

[*Translation*]

Mr. Réal Ménard: Are we going to be hearing other witnesses or will we adjourn at 11 o'clock?

[*English*]

The Chair: No. We are finishing at 11 o'clock.

[*Translation*]

Mr. Réal Ménard: At 10:55 I would like to raise a point of order regarding the way that Bill C-18 will work. I will let you ask your questions.

[*English*]

The Chair: Yes. Thank you.

I note, just for your point of clarification, Mr. Ménard, and in reference to your motion that was submitted at the last meeting, that it's not going to be dealt with at this committee meeting. It was already designated to go before the steering committee for further discussion, which we will do.

Mr. Bowen.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I simply wanted to tell you that we are prepared to support my motion. We should be able to adopt this in two minutes. I am prepared to accept Ms. Jennings' amendments. I will not be debating the motion; I surrender. I want things to work well in the committee. I accept that there need to be additional meetings. I think that all colleagues are prepared to support my motion.

[*English*]

The Chair: I think that remains to be seen, Mr. Ménard. It was designated to go before the steering committee.

Mr. Bowen, you're noted here as the director of the biology project. What does that specifically relate to?

Mr. J. Bowen (Acting Director, Biology Project, Royal Canadian Mounted Police): The biology project is dealing with the expansion of the biology services. First of all, we're creating a separate directorate, known as biology services.

We're looking at creating a third site for analysis in Edmonton, as well as hiring a number of individuals—which would result from Bill C-18 and other initiatives—so that we can train them, bring them on site, and have them available to do case work within a reasonable amount of time.

The Chair: So does this also include, if you will, an education factor for other police departments—municipal, provincial—to deal with the information flow regarding DNA collection and instruction, besides the expansion?

● (1040)

Mr. J. Bowen: Yes, it does, because a large part of what we have to do is consult with the clients. We do that through various mechanisms, through client consultation committees, to inform them of the changes we're making and how properly to submit samples to the lab. We also ask their opinion on how we should provide that service.

The Chair: So a small department, such as in Camrose, Alberta—I believe they have their own municipal police department—doesn't have the necessary training facilities, for instance, to concentrate in certain areas when it comes to this kind of instruction. Is there's provision within the RCMP and under your directorate to pass that information on, the collection and the importance of how it's done?

Mr. J. Bowen: That is correct. It's not necessarily within the biology directorate; it's within the Forensic Science and Identification Services that we offer that service.

The Chair: There is one final question I want to ask.

In Alberta there is a new training centre set in place—it isn't constructed yet—which is not directly for provincial policing but for the sheriff's department that's been established. There will be some cross-over regarding any kind of policing or enforcement that would automatically happen. Could a service be provided from your directorate, or the RCMP in general, to assist the officers who are being trained there?

Mr. J. Bowen: Yes, there is. The training of those officers would be done through the National DNA Data Bank. They have a specific training group that handles those types of information and provides that information to the clients.

The Chair: Thank you. Those are my questions.

Mr. Comartin.

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

We had evidence of how many of the samples that had been sent in weren't appropriate—that is, they had been taken for charges that weren't subject to the legislation. That was about 18 months ago. Have they continued to come in during the last two years, and how many do we have now that, as far as we can see, should be destroyed?

A/Commr Joe Buckle: According to our latest data, as of February 19, 2007, there are about 1,752 rejected samples that have come in. That represents about 1.5% of the samples that are in there.

We undertake a training program, through this training group that Dr. Bowen was just speaking about, to try to educate the submitters —

Mr. Joe Comartin: Mr. Bowen, let me stop you. I understand that. Let me go to the next question.

Of the 1,700, how many are in the data bank, and how many were identified before they got into the data bank?

Mr. David Bird: None are in the data bank.

Mr. Joe Comartin: None of them are in the data bank?

Mr. David Bird: None.

Mr. Joe Comartin: Okay. It seemed to me, going back just on memory, that there was a problem in destroying them, destroying all records of them. There was a technical problem with it. Am I right, and does it still exist?

A/Commr Joe Buckle: I'll ask Mr. Bird, because it's a legal question.

Mr. David Bird: It was really a legal issue, not a technical problem. The destruction would just take place entirely, without their being analyzed. The package they received would be destroyed without analysis, and that would be the end of those particular kits.

Mr. Joe Comartin: Does that include any records—I'm talking about paper records—both at the lab and at the police services that sent them in?

Mr. David Bird: It would only deal with the records kept by the RCMP and the National DNA Data Bank.

Mr. Joe Comartin: Does this legislation do anything to require the police force that took the sample, or the people who took the sample, to destroy their records?

Mr. David Bird: No. The samples are sent entirely to the RCMP, so the bodily substance would be entirely within the control of the RCMP. The legislation requires that the entire sample be sent to the commissioner, and it would therefore be destroyed. So all they would have is a record of an order that they've executed, but that would also be following the criminal record information they may have. All they would keep is, potentially, the order directing them to collect the sample, and there would be no DNA information attached to that except the fact that an order had been issued. But it's not required for destruction.

The legislation really authorizes the commissioner to destroy, not direct other bodies to deal with the records. Why they would keep these records would be subject to their own record-keeping requirements.

● (1045)

Mr. Joe Comartin: Is there any requirement that the decision—having been, in effect, reversed—goes into the record back in the police services that took the sample originally?

Mr. David Bird: No, there's no requirement that the RCMP communicate what it does to the initial police force.

The policy, as I understand it—and perhaps other members of the RCMP can speak to it—is to communicate, immediately upon receipt of a DNA data bank order that, on its face, is defective, with the police force to clarify whether or not there might have been a technical issue that it could clarify, that there was a typo, that there was a problem that the court could correct directly without having to go through this process.

So the communication has been ongoing to try to rectify this immediately with the police force that submitted it, and these 1,725 are all cases where nothing further could be done to deal with it as a technical matter by the local police force.

Mr. Joe Comartin: I have one final question.

In terms of the sharing of this data with foreign governments and foreign jurisdictions, do we have any records of how many requests we get of that on an annual basis, or if we have a backlog, how many we have, to make some sense of what we're faced with here?

Mr. David Bird: International sharing, as I understand it, is quite small at the moment; it's a one-off. There are two aspects. Individual police forces in Canada can ask for the commissioner to send off specific crime scene stains that it has, and it's submitted to the data bank as a profile. Those profiles can be shared internationally at the request of a police force. For the foreign countries that want to send their profiles in for sharing, it is usually again a single event.

In the future it may become a much broader and more common process, but at the moment the international system to allow that to happen on a large scale that would conform with our legislation does not exist. It may be able to be implemented soon, but at the moment I think it's relatively rare. I don't have specific statistics on how many requests for comparison have been done from law enforcement agencies abroad sending their profiles in for our searching, or how many we've sent out.

Mr. Joe Comartin: Do we have any authority over the labs that the OPP and the Sûreté du Québec maintain in terms of requests from foreign jurisdictions?

Mr. David Bird: It's possible the law enforcement agencies outside the RCMP may have direct communications, as they may on any file, to ask for assistance internationally through the connections they have. There is no limit by the DNA data bank over what law enforcement agencies can do with information it has lawfully obtained.

Mr. Joe Comartin: And there is no tracking by any federal authority.

Mr. David Bird: Not that I'm aware of.

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

The Chair: Thank you, Mr. Comartin.

Are there any other questions to the witnesses?

[*Translation*]

Mr. Réal Ménard: No, I do not have any questions for the witnesses, but I would like to raise a point of order.

● (1050)

[*English*]

The Chair: Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I first of all want to make sure that we will get the binder for the clause-by-clause consideration of Bill C-18. Since we will be dealing with this on Thursday, I want to make sure that we will be receiving this binder by Wednesday at the latest, so that we can read it.

In addition, could we ask the research staff to draw up the list of current designated offences and a list of those that will be added to the bill? I'm referring to a table, a quick summary.

Mr. Chairman, my second point of order pertains to my motion. I don't want it to be sent to the steering committee. I want us to be able to debate it. Given that I gave the requisite advance notice, this is my prerogative under the standing orders. I would repeat to the government that I am prepared to accept Ms. Jennings' analysis calling for an additional meeting per week. The motion comes from the steering committee and it therefore was subject to debate.

In my opinion, we should vote on the matter now. I can accept the fact that the government may not be in favour of the idea; that is its prerogative. I am acting in good faith. The last time, Mr. Moore asked me whether I would agree to have another meeting added to discuss the judicial selection process. I wasn't entirely convinced that this was necessary, but I said to myself that, after all, it was important to work in a collegial atmosphere.

[*English*]

The Chair: Mr. Ménard, I'm going to interrupt you, if I may. We will deal with this momentarily.

We have four witnesses sitting at this table yet, and I'm going to thank them for appearing. We really appreciate the information they have passed on to us.

Mr. Bird.

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

I've just been advised by my colleague Mr. Yost, from the Department of Justice, that the clause-by-clause book is being printed as we speak here today. As soon as it's possible, I understand this will be presented to you. I hope that helps.

The Chair: Yes, it will, very much so.

Thank you all very much for appearing before our committee.

At this point in time I'm going to suspend for two minutes.

● _____ (Pause) _____ ●

● (1055)

The Chair: I'll call the meeting back to order.

Quickly, on the second point that Monsieur Ménard brought forward on his point of order in reference to the provisions in the Criminal Code that would be amended by Bill C-18, there is a list here already. I think it's been submitted to the entire committee, including the definitions.

Do you not have a copy of that?

[*Translation*]

Mr. Réal Ménard: I would like a table. What we have is a 25-page document. I would like a table that summarizes the new offences so we have them right before us and we can see them at a glance. I read this 20-page document. Before we vote, unless this is already included in the departmental documents—

[*English*]

The Chair: Okay, there will be additional information—

Mr. Joe Comartin: I do not have a copy of that, so I'd appreciate it if somebody would send one.

The Chair: We'll make sure you get one.

Now to the motion, Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I would tend to ask the previous question, considering that at the last meeting, we all gave our views on the matter. If the colleagues wish to vote now, we are prepared to do so and to support Ms. Jennings' amendment, in the spirit of cooperation. I am therefore asking the previous question, if that is in order.

[*English*]

The Chair: There's still room for debate, Mr. Ménard.

Mr. Moore.

Mr. Rob Moore: I have a couple of points, Mr. Chair.

One, during the course of the witness testimony, there was some discussion—off the record, I would call it—flying back and forth suggesting that we on this side would support Ms. Jennings' motion. That is certainly not the case, considering the preamble. If it was a sincere effort to have our support so that we could have the unanimous vote of committee....

Among other things, I was very clear last week that the government would not support a motion or an amendment to a motion that has such torqued language in the preamble. If anyone doesn't believe that, then they can just reference the discussion we had at the last committee: “Whereas this modified review procedure bears flagrant signs of partisanship and ideological influence”. Does that sound like something we would support? If there's a sincere effort to have us support it, we're not even getting past first base when that's the kind of preamble we have.

I'll give time to Mr. Petit, as I know he has brought some ideas forward.

I think this study is too narrow. We've had judicial appointments from the very beginning of time as a country, and why are we looking at judicial appointments from the last year? I can't help but think that this is a partisan attack, or almost mischief, on the part of others. There's this issue of judicial appointments, and there have been judicial advisory committees since 1988. Judicial appointments have been made by ministers of justice forever, yet we're so concerned about the judicial appointments process. But let's just look at the last year. Let's just look, since there was a change in government. Let's not look to the year before last. Let's not look to 1993 and forward, the last 13 years, when we had a different government. Mr. Ménard's motion is, let's just look at what's happened since we formed government. To me, that's insincere. If we want an honest look at judicial appointments, or if we want an honest look at the judicial advisory process, then we have to look past the last year.

That would be my position. It may not matter; you may have the numbers, but the government is not going to support a motion that has such a torqued preamble.

We discussed last time about two sessions rather than three. I made those presentations to Mr. Ménard and Ms. Jennings and others.

Also, on the issue of interfering with committee work, Ms. Jennings' motion does make it clear that we would proceed with regularly scheduled committee work, and we all agree we should get on with Bill C-22. This, I trust, would not interfere with that, but still it's too problematic for my support.

● (1100)

The Chair: Mr. Petit has some input here, but we have now run out of time on the clock.

Some hon. members: Call the question.

[*Translation*]

Mr. Réal Ménard: Do you wish to continue debating the matter?

[*English*]

The Chair: There'd have to be unanimous agreement to call the question.

[*Translation*]

Mr. Réal Ménard: If my colleagues wish to continue debating, we can do so at the next meeting. I do not want to take away anyone's right to speak.

[*English*]

The Chair: There's going to be—

[*Translation*]

Mr. Daniel Petit: It is 11 o'clock and I would ask that we adjourn. The last time that we wanted to discuss this, it was automatic. We are gathering our things together. I am entitled to request the adjournment.

An hon. member: Mr. Speaker, we need to vote.

Mr. Daniel Petit: All right. So, vote.

[*English*]

The Chair: There is no debate now.

We'll have a vote on whether to adjourn.

Hon. Marlene Jennings: Can we have a recorded vote, please?

The Chair: Okay, a recorded vote it shall be.

(Motion negatived: nays 7; yeas 4)

The Chair: You leave the chair no choice. We have to vacate this room. We will have to take up the discussion and debate at another time during this day, as soon as we can find a room. We will have to find another room.

Let's find another room; it doesn't matter where it is.

● (Pause)

●

● (1125)

The Chair: I call the meeting to order.

Mr. Brian Murphy: Until what time did you adjourn the meeting?

The Chair: We did not adjourn; we suspended.

Mr. Brian Murphy: What time was the resumption of the suspension? Was notice given of the suspension? What kind of notice did you give the members?

The Chair: All members were present at the committee when we suspended.

Mr. Brian Murphy: Did you suspend on the record?

The Chair: It's all on the record. It should be on the record.

Mr. Brian Murphy: I don't know about that, because not everybody is here. How do you know that everybody knows they were supposed to be in room 208? That's my point of order, I guess.

The Chair: They were all notified.

Mr. Brian Murphy: How were they notified, Mr. Chair? Maybe the clerk can assist.

Maybe we should just wait until everybody is here.

The Chair: A notice has been sent by the clerk to all the committee members.

Mr. Brian Murphy: When was that sent? Do we have proof of that?

The Chair: It was sent five minutes ago. The clerk can verify it. It was done electronically, I'm advised.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I tabled the motion, that you are all familiar with, with the firm conviction that the committee should take the time not to review what occurred in the past nor to examine what occurred 10 years ago. The action taken by the government will change the judicial selection process. As we know, this is an extremely sensitive process because it is a pillar of democracy.

Mr. Chairman, the motion seeks to ascertain whether the nomination of the members from police departments is very wise given the balance that we wish to preserve. My motion called for three meetings to hear from witnesses. Moreover, I have spoken to Mr. Antonio Lamer, and to Ms. L'Heureux-Dubé. Both would be prepared to meet with us. I know that many people would be prepared to appear before the committee. I am aware of the affection and respect that all members of this committee have for Mr. Antonio Lamer and Ms. L'Heureux-Dubé and I can assure you that they will both be prepared to share their 10 years of expertise with us.

Nor did I wish, Mr. Chairman, to take up too much committee time unduly. That is why I thought that we could have three meetings, plus one more to draft the report.

I would remind you, Mr. Chairman, that under our standing orders, we will be voting on the four motions; the preamble is never part of the vote. The preamble has interpretative, explanatory value but is never part of the vote. Obviously, I do not intend to withdraw it. I think that the government action falls in line with a very known ideological orientation. We accept that, but I think that that must be part of the terms of the debate. I don't understand why Mr. Moore is so sensitive, why he wants the preamble to be withdrawn. My objective was not to hurt the feelings of the government members, but I do think that we need to say things as they are.

And why, Mr. Chairman, appoint police officers? Why not nurses, professors, teachers or other people who, in society, also have things to say about the administration of justice? The government intentionally chose to appoint police officers because that falls in line with its ideological orientation. We respect that. We can understand that, in a democracy, but we are saying that this is the work of the opposition and the committee to debate the issue.

I would conclude, Mr. Chairman, by saying one thing. On several occasions, I have heard government members say that they had an agenda. Yes, and we respect the fact that the government is the government. This is a minority government—and God forbid that it should ever become a majority one—and we have reviewed five bills. We reviewed section 25 of the Criminal Code, conditional sentencing, Bill C-9, Bill C-10 and, on Thursday, we will be dealing with Bill C-18. Therefore, it cannot be said that the official opposition was choosing not to follow the government's agenda. It is normal that there be, within a committee, a balance between the work that the opposition would like to see done and the work that the government would like to do.

Why can't the government use 100% of its time to implement the government's agenda? Because it did not elect 100% of the members. The answer is as boring and as parliamentary as that.

Mr. Chairman, if the government wishes to support my amendment, I would be very happy. Moreover, I am going to support the amendments tabled by Ms. Jennings. It is not our policy in the Bloc Québécois, to sit in committee longer than planned. This is coming from our whip, because we are very, very busy. Basically, the opposition is working to make the government better. This is obviously full-time work, and there is not one day where we are not exhausted, Mr. Chairman. That is why our whip does not authorize us, generally speaking, to sit outside of normal committee hours. It is because our services are required elsewhere. However, in the spirit of good cooperation and cordiality, in the spirit of mutual respect and reciprocal affection, I will bow to Ms. Jennings' amendments which would authorize the chair to hold an additional meeting.

Mr. Chairman, I am hopeful that this amendment, along with the initial proposal, will garner the support of all committee members and we will be able to shed some light on this matter in committee. We all know that these are issues that stir up a great deal of passion in the House. The Leader of the Bloc Québécois and the Leader of the Liberal Party have asked many questions. The NDP has asked questions about the selection process. It is only normal that we do our job as opposition parliamentarians.

● (1130)

[*English*]

The Chair: Ms. Jennings.

[*Translation*]

Hon. Marlene Jennings: Thank you, Mr. Chairman.

I would like to thank my colleague Mr. Réal Ménard for his comments. I can tell you that we Liberals are in support of Mr. Ménard's motion, first of all because we believe that the objective is quite commendable and also because it is a topic on which many parties, both within and outside Parliament, have already expressed an interest, namely to obtain a review of the judicial selection process that the current Conservative government has set up.

Nevertheless, given the objectives and priorities of the Liberal caucus regarding strategy and justice, we have a liberal justice strategy by which we have given priority, ourselves, to government bills presented last spring, after the opening of Parliament. In the fall of 2006, we had very clearly identified bills with which we were in complete agreement and we offered our collaboration and cooperation to the government so that we could fast track these bills so that they could be debated in the House, referred to committee, studied in committee, referred at report stage to the House, etc. Unfortunately, the government did not feel it necessary to accept our offer, which dealt with several bills, including Bill C-22, which concerned the age of consent. It was only in February that the government finally saw fit to put it on the calendar for the second reading debate.

We want to see the work of this committee progress, with respect to this bill. That's why, despite the fact that we are supporting Mr. Ménard's motion in the name of the Bloc, we members felt that it would be wise to make or suggest amendments to his very motion. Our objective was to enable the committee to continue its work and follow its regular calendar, to proceed with the second reading examination of Bill C-22 on the age of consent, but at the same time, to take into account the importance that many interested parties are giving to the review done by the government of the judicial selection process, without any consultation.

I should add that I am not the one saying this, nor is it Mr. Ménard, Ms. Freeman, Mr. Comartin, Mr. Murphy, Mr. D'Amours or Ms. Barnes. This is coming from the Chief Justice of the Supreme Court of Canada herself, who stated publicly that if the government wanted to change or review the judicial selection process, it was obliged to consult. However, this consultation was never done.

So not only do we support Mr. Ménard's motion, but we have also brought forward our own amendment. You heard Mr. Ménard state that the Bloc will be supporting the Liberal amendment, presented by me, to his motion.

I move that a vote be held.

● (1135)

[*English*]

The Chair: Go ahead, Mr. Petit.

[*Translation*]

Mr. Daniel Petit: When came back here, I was suppose to speak first. You gave the floor to Mr. Ménard and Ms. Jennings, when in fact it was my turn to speak; that is what had been decided earlier. I am not finding this funny one bit.

[*English*]

The Chair: Mr. Petit, my apologies. You have the floor.

[*Translation*]

Mr. Daniel Petit: To begin with, I read Mr. Ménard's motion, which I find very interesting. I also read Ms. Jennings' amendment, which I find even more interesting.

If you read Mr. Ménard's motion—and he has said that the preamble will be retained—it says the following:

> Whereas this modified review procedure bears flagrant signs of partisanship and ideological influence;
>
> It is moved:
>
> 1. That the government postpone the reform made to the composition of the judge selection committees and that it restore the previous procedure for these committees.

Up to that point, I can read it, it is comprehensible. Nevertheless, if you want to say that we are partisan, we have to know what happened previously. I think that this is logic itself. If you want to say that we are partisan and that we are ideologues, I want to know what occurred from 1993 to the present.

At that point, I began to consider the possibility of getting behind what Ms. Jennings was saying, that is that we should study the issue in-depth. I sincerely believe that the Liberals, like the Conservatives and Bloquists, want to know what has gone on since then. We are trading insults, accusing each other of being ideological or not, of being partisan or not. I don't agree. We must get to the bottom of things. To do this, people have to have an opportunity to say that the judicial system is impervious to partisan and ideological decisions.

I share the position taken by Mr. Ménard of the Bloc Québécois, but I also agree with the Liberals who want to investigate what occurred between 1993 and today. Certain things have been said in the House, and I will ascertain whether or not this is true. I'm still a lawyer, I still practice in Quebec, I still appear before judges and I do not want to have any doubt in my mind when I go before the court. That also applies to the future lawyer that Mr. Ménard will be, and to Mr. Brian Murphy, who is a lawyer as well. He does not want to have any doubts when he appears before the court about there possibly being any partisanship on our side, or ideological problems, as Mr. Ménard asserted. I don't want that. Justice must be impartial.

If you read my amendment, which I had translated into English as best I could because I didn't have access to all of the services last evening in order to have this done, you will note that I am in reality proposing a subamendment. Under this subamendment, we would start a subcommittee. I think that this issue is too important to deal with it in two or three meetings and then adopt it very quickly. No, we must study the issue in an in-depth manner. This is an important aspect under section 100 of the Constitution. We are the ones who appoint all members of the judiciary. We must therefore study the issue in an in-depth manner.

● (1140)

[*English*]

The Chair: Order, please. Mr. Petit has the floor.

[*Translation*]

Mr. Réal Ménard: On a point of order, is the amendment in order?

Mr. Daniel Petit: If I may, I would first of all like to provide some explanation. I haven't even presented it yet. Why would I proceed quickly? There are no time constraints on me, Mr. Ménard.

[*English*]

The Chair: On a point of order, one moment, please.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, is the subamendment in order?

You cannot explain a subamendment that is out of order. If it is, we will listen to you for 10 hours, it that's what you choose.

[*English*]

The Chair: Mr. Ménard, wait. I will rule on that once I've listened to the entire presentation.

[*Translation*]

Mr. Réal Ménard: No. We will not listen to the explanation of the subcommittee if it is not in order. What is the reasoning for this? Is it in order, yes or no?

[*English*]

The Chair: I'm looking at it right now. He's presenting in the meantime.

[*Translation*]

Mr. Réal Ménard: All right, we will wait for your answer. We will suspend the meeting and wait for your decision.

If it is in order, we could listen to you for 10 hours, but it has to be in order. Personally, I don't think that it is.

[*English*]

The Chair: I'll rule on the subamendment presented by Mr. Petit.

The subamendment is not acceptable. It would be acceptable as a motion, but not as a subamendment. It tends to enlarge on the amendment and on the motion itself. It introduces other foreign aspects to the amendment and to the original motion.

On that basis, Mr. Petit, your amendment will not be accepted.

Going back to the discussion on the amendment, Mr. Moore, you're on the list.

Mr. Petit, do you want to continue discussion on the amendment?

[*Translation*]

Mr. Daniel Petit: With respect to Ms. Jennings' amendment, I am entitled to move a sub-amendment which should be in order for the following reason.

I do not agree that there should be a minimum of three meetings. We can see that she wants to hold more than that, and I would like there to be many more because the issue is too important. I will not tolerate this situation where, after two or three sessions, we all decide, as a group, to scratch our backs. We are serious parliamentarians, I have no doubt about that, with respect to both the opposition and the government members. I think that we should cast our net further afield and not simply invite those witnesses that may want to make disclosures that could suit us.

I would imagine that we will have to obtain a budget for this purpose: there are many services required to do this. I could easily see us holding many more meetings than just these three, which alone represent six hours of debate. That is not enough. I would suggest that we plan for about ten meetings where we call witnesses. It is not true that they will call only those they want to hear.

I understand that I am in a minority and that they can do what they want. However, as parliamentarians, I really believe that we should ensure that everything is done properly and that public confidence in the process is restored. Indeed, if people are saying that we are partisans and ideologues, I may want to know what happened before, during and after my stay here. That's what I would like to know. And isn't it true that, in order to get a good answer, three meetings are not sufficient.

You said that the Honourable Supreme Court Justice spoke in your favour. I have a great deal of respect for Mrs. Claire L'Heureux-Dubé, who is a lawyer from Quebec City. Indeed, she was my family's lawyer for a long time. So I have a great deal of respect for her, but we are parliamentarians. We are not...

[*English*]

Hon. Sue Barnes (London West, Lib.): On a point of information, the Supreme Court Justice is Beverley McLachlin.

[*Translation*]

Mr. Daniel Petit: Excuse me, but it is because we were talking about Mrs. Claire L'Heureux-Dubé.

● (1145)

[*English*]

The Chair: Order.

Mr. Petit has the floor.

[*Translation*]

Mr. Daniel Petit: So, to be clear, I am saying in all honesty that a limit of three meetings is not enough. We will simply look ridiculous because six hours of debate is much too short.

[*English*]

The Chair: Thank you, Mr. Petit.

Mr. Moore.

[*Translation*]

Hon. Marlene Jennings: Mr. Chairman, on a point of order.

[*English*]

The Chair: Ms. Jennings.

[*Translation*]

Hon. Marlene Jennings: I simply want to make sure that I have understood properly.

The sub-amendment moved by Mr. Petit pertains to item 2 on line 2 of Mr. Réal's motion. So instead of saying: “devotes a minimum of three sessions”, it will be “devotes a minimum of ten sessions”.

Have I understood properly?

[*English*]

The Chair: Madame Jennings, the subamendment was not accepted.

Hon. Marlene Jennings: Oh, so it's not in—?

The Chair: No.

Hon. Marlene Jennings: No, he's just proposed a new one.

[*Translation*]

Mr. Réal Ménard: We will happily support the motion. That must also please the Chair, because holding ten sessions is not insignificant.

[*English*]

The Chair: Yes, but he didn't really move it as a subamendment.

Mr. Moore.

[*Translation*]

Mr. Réal Ménard: He said that this was a sub-amendment.

[*English*]

The Chair: No.

[*Translation*]

Mr. Réal Ménard: We will be supporting it.

[*English*]

Mr. Rob Moore: I've listened to what Mr. Petit said, and I think he was referring to extra sessions if we have a broader consultation, and I think that's called for.

Earlier I was asking why one year. I question Mr. Ménard on that, because as you know, the judicial advisory committees have been in place since 1988 and they've been changed a number of times. To say it is something earth-shattering that the composition of the judicial advisory committees would be changed—in my opinion a positive change, but that's a matter for debate.... We're all entitled to our opinions on it, but why would we just look at the last year? I think we should look at more than the last year concerning the judicial advisory committees.

Now, if we're discussing just Ms. Jennings' motions and amendments to her motions, I would be prepared to support a motion—if you want unanimous support; if not, it doesn't matter. But if you wanted unanimous support, I would be prepared to support a motion that did not have such a torqued preamble, as we have already discussed—I'm certainly not going to support your preamble—and that calls for the committee to devote two sessions... and carrying on with the rest, as long as it doesn't interfere, as you said, with our priority to deal with Bill C-22.

I'm fine with point 2, with the amendment to change the “three” to “a minimum of two”.

Then finally, in point 3, I would say: “That these additional sessions be dedicated to hearing witnesses who will inform the Committee of the consequences the government's proposed changes will have on the...legal system.”

I think it's presupposing the outcome of the testimony to say "the integrity of the legal system", as if there would be some negative impact on the integrity. We'll draw our conclusions perhaps from the testimony we hear from witnesses, but I'm not prepared to support a motion that's calling for the study of changes that we've made to the judicial advisory committee. I'm fine with studying it, and I've made that clear, but not with a motion that seems to already have drawn its conclusion. I would like to hear the testimony, and then we can all draw our conclusions.

If the opposition members want to genuinely study it, then I would suggest we talk about making those few amendments that leave in place the main goal of studying the judicial advisory committees for a couple of days, at times that do not take away from Bill C-18 or Bill C-22.

The Chair: Are you proposing a subamendment?

Mr. Rob Moore: Yes. The amendments I would propose to Ms. Jennings and Mr. Ménard.... Specifically I'm looking at Ms. Jennings' amendment. Mr. Ménard said he was fine with Ms. Jennings' amendment, so I'm looking at her amendment.

The amendments I would make would be to take out the preamble, because I think it's too torqued, and to take out point 1, "that the Government postpone the reform made to the composition", because the changes that have been made to the composition have already been made. So I would take out point 1.

Points 2, 3, and 4 I would leave in place, except to change the “minimum of three” to a “minimum of two”, and to take out the words "the integrity of" in number 3.

So we would have a study of the judicial advisory committees, which I think is what Mr. Ménard is in favour of, but I would take out the language that I think would indicate the committee had somehow already drawn a conclusion.

● (1150)

The Chair: I find those amendments acceptable.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, as Ms. Jennings' co-mover, I must say that we do not want to withdraw the preamble.

Your colleague requested ten sessions; you want two. We think that we may strike a balance by suggesting three. But if Ms. Jennings is in agreement, we would also agree to withdraw the word “integrity”. Hence, the motion would read:

> to hearing witnesses who will inform the Committee of the consequences the government's proposed changes will have on the legal system.

However, there is no question about withdrawing the preamble, whether the government likes it or not.

Mr. Chairman, I would like Mr. Moore to explain why police officers have been included. If it's not for ideological reasons, why not include nurses or teachers? There are a lot of people in society who have things to say about the legal system.

The government is entitled to have this ideological orientation, but it must not try to make us believe that this is not what it's talking about. They're entitled to want to include police officers, but this is in line with ideological considerations. Otherwise, what's the point of having a police officer participate in appointing a judge to the Canadian Tax Court? How does a police officer have any expertise in that area? So there is an ideological orientation. We are in a democracy, we accept the fact that people do have ideologies, but don't try to make us believe that the government is not acting on the basis of ideological considerations.

Why am I against going back to the 1980s? The problem is not that the government wants to change the nomination process. Yes, the minister is entitled to change the nomination process. The Standing Committee on Justice and Human Rights must be consulted.

Moreover, if the Liberals had appointed police officers to the selection committee, I am convinced that my colleague, Richard Marceau, would have tabled this motion. We are not doing this because this is a Conservative government, we are taking this action because we don't think that it is desirable to have police officers, who often begin the process of laying charges, sitting on selection committees. That's what we are debating about.

You have done this for ideological reasons. Otherwise, we are prepared to vote unanimously in favour of appointing nurses, professors, journalists, people who had expertise as well. The government was very careful about expanding the range of people they want to see appointed to this committee, because they want to have police officers who buy into its vision of the legal system. The government is entitled to say that, but it should not take offence when we point this out.

I will not, for any consideration whatsoever, withdraw the preamble, and I hope that I have the support of my Liberal and NDP colleagues.

[*English*]

The Chair: Thank you, Mr. Ménard.

Ms. Jennings.

Hon. Marlene Jennings: Thank you.

[*Translation*]

We accept Mr. Ménard's motion to withdraw the words "*l'intégrité du* " in French, and "the integrity of", in English, in item 3 of the motion.

[*English*]

The Chair: Thank you, Ms. Jennings.

Mr. Moore.

Mr. Rob Moore: We could have a debate on this, and I don't think now is the time.

I do reject, though, the premise of some of Mr. Ménard's comments that somehow we can pigeonhole police officers into one category of ideological thought or persuasion. Just as there are lawyers on these judicial advisory committees—do we say that lawyers are of one ideological persuasion? I do not believe you would suggest that. In the same way, the police officer representative on the judicial advisory committee should not be put into one box. So I think that was an unfair thing to say.

Also, on the issue of teachers, journalists, and firefighters, there is the ability to appoint anybody to the judicial advisory committees. There's a spot, as we know, for a representative from the province; a representative from the bar association; and at-large representatives such as teachers, journalists, or anybody else. But we did create a spot just for police officers, because police officers play a part in the judicial system, just as lawyers play a part in the judicial system.

You may disagree with that, and I take it that you do, but I do think it's unfair to suggest that all of the police officer appointees would come with one set of value systems or one set of ideological thought.

Now, as to the motion of Ms. Jennings, I put forward something we could support. Obviously we do not support the preamble, so we will not support the motion.

We're trying to be constructive, so I agree with Mr. Ménard that we should have a study. I agree with him now, as Ms. Jennings has amended his motion, that it should not interfere with what has come from the House, with what this committee is invested with from the House, and that's the responsibility for Bill C-18 and Bill C-22.

So we could have unanimous agreement on this motion, but not if we leave in the preamble or paragraph 1 of the motion.

● (1155)

The Chair: Thank you, Mr. Moore.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: The parliamentary secretary talked about the fact that there were police officers sitting on a committee. Mr. Ménard gave a long statement that we were ideologues, etc.

Earlier, I simply wanted to know if the fact of appointing a police officer to this committee made us ideologues. When members from the Liberal Party appointed lawyers, were they ideologues as well? I would like to know because we need to make a decision. The members from the Liberal Party who appointed these people—and here I am making the same criticism that Mr. Ménard has made with respect to us—were they ideologues? Were they acting in a partisan way? I need to know that, because I am new to the government.

Mr. Ménard has been around for 14 years, he knows the entire system. Very often, even in my province, it has been said that certain federal judges have an Ottawa slant, because there is a perception. It is important that people appearing before these judges no longer have this perception.

So the member is saying that because we have appointed a police officer, we are ideologues. But I would ask him this question: when you appointed the seven other individuals, in 1993, were you ideologues, were you acting in a partisan way? I don't know.

I do believe you when you say that Ms. Jennings wants to make the same inquiry as I do. I want to know if this is true or false. I especially want to reassure the people that what Mr. Ménard and I have been saying is false and that we are all good people, good parliamentarians, and that we all want to have an impartial justice system. That's all that I want. That is why I wanted to hold a more in-depth investigation.

However, if you erect barriers, if you put the lid on the pot, it's very simple, things will continue to heat up underneath. Don't forget that. The only thing that's going to be said in the House and the only thing that the public is going to say is that we wanted to move, but that we only moved a bit. We are here, we have a unique opportunity in our career as parliamentarians to do some good work, to perhaps bring about a change, to make improvements that will ensure that when Mr. Murphy and Mr. Ménard become lawyers and that we make our representations before the judges, that we will have absolutely no doubts in our minds about them. That's all that I want.

I know that Ms. Jennings wants the same thing as I do, although we do appear to disagree about certain points. Moreover, I thought that this was what the Bloc Québécois wanted. I am pleased to see that Mr. Ménard is very abreast of events and that he is so supportive of what we call the Canadian courts. I know that this is not in line with his views, but I find it wonderful that he is able to get beyond this, to sublimate in order to help us.

Mr. Réal Ménard: If you are asking for a vote about me being wonderful, we will support you.

[*English*]

The Chair: Order, please.

Thank you, Mr. Petit.

Is there any further debate? First, we will have a recorded vote on the subamendment presented by Mr. Moore.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, are we voting only on the withdrawal of the word "integrity", or on the four points made by Mr. Moore?

[*English*]

The Chair: No, the vote is on Mr. Moore's points, or the entire subamendment. There is no preamble or point 1; the minimum will be two days as opposed to three days, per point 2; and point 3 is about removing "the integrity of".

(Subamendment negatived: nays 6; yeas 4 [See *Minutes of Proceedings*])

● (1200)

The Chair: Now on to Ms. Jenning's amendment of Monsieur Ménard's motion.

Hon. Marlene Jennings: A recorded vote.

Hon. Sue Barnes: With "the integrity of" removed?

The Chair: No, as it's presented before you by Ms. Jennings.

(Amendment agreed to: yeas 6 ; nays 4 [See *Minutes of Proceedings*])

The Chair: Thank you.

Now to Monsieur Ménard's motion as amended.

(Motion as amended agreed to: yeas 6; nays 4 [See *Minutes of Proceedings*])

The Chair: That concludes this particular meeting.

We are 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
