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Tuesday, June 19, 2007

Chair

Mr. Art Hanger

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● (0915)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call the Standing Committee on Justice and Human Rights to order. The committee, of course, will be proceeding through a clause-by-clause review of Bill C-32, An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts.

The committee has before it, from the Department of Justice, Mr. Hal Pruden, counsel, criminal law policy section; and Mr. Greg Yost, counsel, criminal law policy section.

We may as well get right into the clause-by-clause review. I know that some amendments arrived late. I trust that everyone has a copy.

Mr. Bagnell has a point of order or a comment to make.

Hon. Larry Bagnell (Yukon, Lib.): Mr. Chair, before we start, I'm wondering if I could ask two questions to the witnesses for clarification, to help me understand the bill better. I think it would be useful for the members. One of them refers to a lot of the clauses. I don't think they'd take very long.

The Chair: Put your question, Mr. Bagnell, and we'll get on with it.

Hon. Larry Bagnell: I just have two quick questions.

One of them is related to the DRE procedures. Is there anything in the act or regulations related to the certification or retesting or anything of DRE officers?

Secondly, one of the police witnesses suggested that this bill is light years ahead of that in any other jurisdiction in the world. Because it's being used in the States and everything, I thought this was to bring us up to be equal with some of the the other jurisdictions where it's working well. I just want to make sure I know where this is really breaking new ground and how it is revolutionary.

Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice): We have Corporal Graham here, who runs the program for the RCMP, and he was the one who said we would be light years ahead of other countries. I'm certainly not an expert on how they have done this in the 46 U.S. states that have brought this together. Their constitutional arrangements are somewhat different from ours, and they may have had to rely upon the implied consent you give when you get your driver's licence, to say that you will do these various things. We will have it entirely in the code.

With respect to regulations, these regulations do not exist now, but for a person to be certified, they will have to have completed the program, and all of those things will in fact have to be done in regulations. Mr. Pruden and I have optimistically scheduled a meeting with the drafters of regulations, in the expectation that this might fly, in order to go through all the material from the International Association of Chiefs of Police and to begin the process of putting that into Canada's constitutional framework and getting the regulations.

I do know that recertification is required of the officers, and I believe it's every two years. I'm looking at Corporal Graham, and he isn't jumping up and down, so I believe I'm giving you accurate information.

● (0920)

The Chair: Thank you.

Mr. Pruden, did you have something you wanted to say in response to that?

Mr. Hal Pruden (Counsel, Criminal Law Policy Section, Department of Justice): Some of the jurisdictions in the States, as Mr. Yost was mentioning, do have that implied consent legislation within their motor vehicle law. Canada will be different in the sense that right in the Criminal Code there will be a demand, the same way there is a breath demand. The draft legislation is modelled on the demands for breath samples. So at the screening level, the officer will be able to demand the roadside sobriety tests. At the next level—if the person fails those—the officer will be able to demand the DRE program evaluation back at the station. That is similar to the demand that is made for a breath sample on an approved instrument back at the station.

So at each step we've tried to parallel the breath-testing regime, which is used for investigations of over 80 alcohol offences, and we've done that for the purposes of investigating offences under paragraph 253(a), regarding driving while impaired by a drug.

Hon. Larry Bagnell: Thank you.

The Chair: Thank you, Mr. Bagnell.

Now we will have the clause-by-clause consideration.

(Clause 1 agreed to)

(On clause 2)

The Chair: We're dealing now with government amendment one.

Mr. Rob Moore (Fundy Royal, CPC): Mr. Chair, I will move government amendment 1.

What this does is limit to the more serious drugs in schedule I, II, or III of the Controlled Drugs and Substances Act when dealing with the section on possession of drugs in a vehicle. It limits that offence to possession of drugs in a vehicle if they are under schedule I, II, or III of the Controlled Drugs and Substances Act.

So it's a narrowing of that offence.

The Chair: Thank you, Mr. Moore.

Mr. Bagnell.

Hon. Larry Bagnell: My understanding is that the opposition parties are against this clause entirely; we weren't in agreement with the possession.

Mr. Rob Moore: That's why this is such a wonderful compromise.

Some hon. members: Oh, oh!

Mr. Rob Moore: It's in that spirit that it's been introduced.

Hon. Larry Bagnell: Well, the purpose of this is already caused in the controlled substances act, and a lot of witnesses said that's where it should be dealt with, not in impaired driving.

The Chair: Madam Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Put the question.

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

The Chair: Mr. Lee.

● (0925)

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Mr. Chair, I have a question I want to put on the clause. And we're scheduled to be here for about three hours, so we'll get through this.

I wanted to ask the Department of Justice, whichever witness is appropriate, to answer this. If clause 2 were not to be adopted, if it were not to be found in the Criminal Code, can I assume that the Controlled Drugs and Substances Act would provide the same criminal prohibition for possession of any one of these drugs at any place, including if the person is in a motor vehicle, or a train, or an aircraft, or a vessel? May I assume that? That's my understanding.

Mr. Greg Yost: There are a couple of slight exceptions to that, the most important of which would be that the Controlled Drugs and Substances Act does not provide for the summary conviction offence with respect to under 30 grams of marijuana. That is not one that would be punished in the same way. More importantly, there are no prohibitions attached to driving in any way. This is getting at prohibiting the driving. It's tied in; there are several amendments later.

So the Controlled Drugs and Substances Act, as it is now, would not have the same effect as proposed section 253.1.

Mr. Hal Pruden: But as you asked, it does apply.

Mr. Greg Yost: Yes. Possession of schedule I, II and III drugs is an offence under the Controlled Drugs and Substances Act. The level of penalties varies.

Mr. Derek Lee: Therefore, if I'm not mistaken, this clause should be taken to be redundant to the overall application and effect of the CDSA provisions, although I do accept that this clause focuses specifically on people who possess while they have care or control of any of these vehicles.

Mr. Greg Yost: The only other thing, of course, is that if you're transporting enough, you're going to be into a charge of trafficking under the Controlled Drugs and Substances Act, which is much more serious than this. If this were adopted, there would be a variety of tools the police officer could use.

Mr. Derek Lee: Yes, the tool box would be much better with this adopted. However, I'm just trying to assure myself that there's no gap, that someone who possesses one of these drugs while they're in a motor vehicle or a vessel or an aircraft is still subject to the provisions of the Controlled Drugs and Substances Act.

Mr. Greg Yost: That is correct.

Mr. Derek Lee: Thank you.

The Chair: Mr. Pruden, you also wanted to add something.

Mr. Hal Pruden: It would be perhaps better to characterize it as additional to the CDSA rather than redundant. It's an additional penalty of driving prohibition that would attach.

The Chair: Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): My question may seem similar to Mr. Lee's, but I want to be sure that you understand what I'm getting at. The question is for Mr. Yost. You are the victim, this morning.

Regarding amendment G-1, which the government has moved, and you have a copy of it in front of you, if we remove the words "substance included in Schedule I, II or III of the *Controlled Drugs and Substances*", the police officer will have far more options. A person could be incarcerated even for a medication. On the other hand, if we limit this to drugs included in Schedule I, II or III, that is to say, to hard drugs, aren't we limiting the police officer's powers?

Mr. Greg Yost: You said that even people who have taken medication could be jailed. Normally, a person in that situation would, I believe, have what we call a lawful excuse.

Mr. Daniel Petit: Yes, indeed, we call that a lawful excuse.

Mr. Greg Yost: Consequently, there is no problem with medication. When we looked at this clause again, we realized that it was the same provision as the one passed by the standing committee in the last Parliament. When we added the prohibition against driving, we didn't think of the effect it would have on Schedules IV, V and VI, which list drugs that do not impair a person's faculties the way hard drugs do, the hard drugs listed in Schedules I, II and III. We are suggesting that it be limited to the illicit hard drugs that no one should have in his or her possession, according to the current act. The prohibition against driving is the major change that has been made.

● (0930)

Mr. Daniel Petit: It's a reference?

Mr. Greg Yost: Yes.

Mr. Daniel Petit: Do you see it as a reference or as an opportunity to enforce Schedules I, II and III? Let's suppose that I am a police officer and I arrest someone along the side of the road. If I don't have to enforce Schedules I, II and III, I can arrest the person for any old reason, given that I have nothing to guide me. However, Schedules I, II and III, as well as the lawful excuse in the case of medication, serve as a guideline. Under such circumstances, can a person get off the hook?

Mr. Greg Yost: I would just add that in the case of cannabis, the lawful excuse offence would apply to a person who has received permission to possess cannabis for medical reasons. In that case, for all practical purposes it is a medication.

[*English*]

The Chair: Thank you, Mr. Petit.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chairman, I want to make sure I understood this.

Parliamentarians are already been asked to be bold when it comes to this bill, in so far as we have been told, generally speaking, that when it comes to drugs, the studies are not as conclusive that they can lead to impairment. There is no effective detection technology, but we understand that there is a responsibility to society, we see that. But I really don't understand what this clause is doing in the bill.

I have two questions for you. First of all, at the present time, under the Controlled Drugs and Substances Act, the possession of drugs in a vehicle or in another place is already illegal. So I wonder what this clause adds, and in particular, what link there is between possibly having prohibited drugs in the glove compartment or in the back of a car and impaired driving. There is no such link between the two, even though from a social policy point of view you may not be in agreement, of course. Other legislation already covers this.

Secondly, is cannabis in Schedule I, II or III of the act?

I am trying to understand what additional tool this would give police officers, since they already have all the tools they need to take action in the case of illegal possession. I really think that this clause 2 certainly goes too far, both in terms of jurisdiction and in terms of consistency.

Please be specific. What more will this give police officers? This is what we want to understand. Where is cannabis? Is it in Schedule I, II or III of the Act?

Mr. Greg Yost: First of all, in the part of this bill that has to do with drugs, the provision is nearly exactly the same as the one passed by the committee during the last Parliament. This new offence, which would apply in the case of all drugs, was added by the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. Of course, it is now up to your committee to decide whether you wish to retain that provision.

When we looked at the provision, we wanted to improve it, make it more useful. In order to send the message that drugs and driving don't mix, we wanted to have the option of taking away your driver's licence if you have drugs in a motor vehicle. That is why the clause has been drafted this way. It was not in the bill that was introduced by the former government, it was something that the standing committee added and we retained.

Mr. Réal Ménard: Your answer has changed slightly. You and I may both understand that this adds nothing for police officers, contrary to what you have stated. This is a different sort of argument, and you can believe it or not. With regard to dissuasion, you say that you want to send a message to society that people should not drive when there are drugs in the car. That is another rationale. But we do agree that this adds nothing for the police officers. Even if it weren't in the bill, a police officer could always take action if he found drugs inside a vehicle. We agree on that point.

Mr. Greg Yost: Currently, if a police officer finds drugs in your possession that are listed in Schedule I, II or III, obviously he can lay criminal charges against you. It is enforcement of the law.

● (0935)

Mr. Réal Ménard: No, but that adds nothing for a police officer. A few moments ago, one of you said that it would provide a police officer with additional tools. In my opinion, that is not so.

Mr. Greg Yost: It gives—

Mr. Réal Ménard: It gives a police officer absolutely nothing more.

Mr. Greg Yost: I agree on that point. Pardon me if I said it that way. It may give the court an additional tool. If the person is found guilty under the suggested section 253.1, he or she will be prohibited from driving. I did not express myself properly. The police officer roadside is not the one who will have another tool. He observes possession of drugs, and he can decide to enforce the suggested 253.1.

Mr. Réal Ménard: Where is cannabis listed in the schedules?

Mr. Greg Yost: Cannabis is listed in Schedule II.

Mr. Daniel Petit: And if a person takes it for medical reasons?

Mr. Réal Ménard: That is something different.

[*English*]

The Chair: Mr. Pruden, do you have something to add?

Mr. Hal Pruden: No, I haven't.

The Chair: Madam Jennings.

Hon. Marlene Jennings: I have just a question.

While I am a lawyer, I never practised criminal law. I do not have a driver's permit. I don't drive. Therefore, I'm not familiar, except though the work that I've done in this committee on this particular bill.

Given that the government wishes to bring in this special provision with regards to the controlled substances in schedules I, II, and III, where in the Criminal Code is there a similar provision for alcohol, for possession of alcohol in the car, creating—

Mr. Greg Yost: Nowhere.

Hon. Marlene Jennings: There is none.

Mr. Greg Yost: There is none.

Hon. Marlene Jennings: That's what I thought.

Thank you.

The Chair: Mr. Pruden.

Mr. Hal Pruden: I think it's been mentioned by witnesses that alcohol in one's possession is covered by the provincial highway traffic act or provincial alcohol legislation. This bill does not name as a criminal offence driving while alcohol is in the vehicle.

The Chair: Madam Jennings, did you understand that?

Hon. Marlene Jennings: I'm sorry, I'm trying to find the bilingual channel.

[*Translation*]

I'm listening to channel 3, and I still hear the interpretation. I want the channel that provides floor sound.

Mr. Daniel Petit: There isn't any floor sound anymore.

[*English*]

Mr. Derek Lee: I'm going to add a point of order so she can find it, because the translation will continue.

[*Translation*]

Hon. Marlene Jennings: I'm going to ask you to give your explanation again. I did not understand what you said because I was hearing the interpretation and your voices.

[*English*]

The Chair: Mr. Pruden.

I will just remind the witnesses as well as the members that if you don't come through the chair, it's going to be hard for the interpreters to determine who is speaking. Just make note of that and get my attention, please.

Mr. Hal Pruden: Thank you, Mr. Chair.

I was just mentioning that for alcohol, provinces do have driving offences under their provincial legislation, so if someone is in possession of alcohol, they are committing the provincial offence. Yes, it's quite correct that we did not, in this bill, propose a change that would criminalize the alcohol in possession, which is already dealt with by the provincial governments.

Hon. Marlene Jennings: It's already dealt with under the highway safety codes of the provinces, if I'm not mistaken.

Mr. Hal Pruden: Yes.

Hon. Marlene Jennings: What is the typical penalty?

Mr. Hal Pruden: I'm not aware of the fines that are given under the provincial legislation. It's not summary conviction.

Hon. Marlene Jennings: Exactly. It's not a summary conviction. It's not an indictable offence.

Mr. Hal Pruden: It's not a Criminal Code summary conviction, obviously.

Hon. Marlene Jennings: Exactly.

So there are no provisions creating a criminal offence in the Criminal Code for the possession of alcohol in any part of a vehicle, knowingly, if I use the expression? There's nothing that says that "Everyone commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or railway equipment or has the care or control of a motor vehicle, a vessel, an aircraft or railway equipment, whether it is in motion or not, while knowingly and without lawful excuse having in his or her possession, or in any part of the vehicle, vessel, aircraft or railway equipment" alcohol? There's nothing like that in the Criminal Code, according to what you've said, for drugs. You've already got the Controlled Drugs and Substances Act.

Why then does clause 2 amend section 253 by adding proposed subsection 253.1(1)?

Mr. Hal Pruden: Mr. Chair.

● (0940)

The Chair: Mr. Pruden.

Mr. Hal Pruden: As Mr. Yost was mentioning, in the previous Parliament when this committee examined the then Bill C-16, this committee chose to add the driving while in possession offence to Bill C-16, the predecessor of this legislation. It was an opposition motion that was passed by this committee.

I would note that alcohol is a legal substance in Canada. While the provinces have chosen to create a provincial offence of having open alcohol in a vehicle, alcohol is not included within the Controlled Drugs and Substances Act, which is what this bill is focused upon. So alcohol not being in the Controlled Drugs and Substances Act, it wasn't included, and it was already covered by provincial legislation. Alcohol is a legal substance. It is a drug, but it is a legal substance in Canada.

The Chair: Thank you, Mr. Pruden and Madam Jennings.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chairman.

As a criminal lawyer, I have read this clause. It is redundant, and above all, it will do harm, because a driver could lose his driver's licence and get a criminal record if he doesn't know that a passenger or a hitchhiker he has given a ride to is in possession of drugs. Furthermore, pursuant to the American provisions, he would be totally banned from travelling to the United States.

This is worse than what was provided for originally. Despite the amendment to section 253, a driver or a person having the care or control of a motor vehicle who is found guilty of an offence may be banned from the United States, even if he had nothing in his possession. He would be found guilty.

Do you agree with me?

[*English*]

The Chair: Mr. Yost.

[*Translation*]

Mr. Greg Yost: The section that we are dealing with naturally stipulates that he must be in possession of drugs knowingly and without any lawful excuse. If the driver does not know that the hitchhiker he has picked up has drugs on him, he cannot be found guilty under section 253.1 as proposed. If the driver is knowingly in possession of illegal drugs while driving, he could be convicted, under the amendment, pursuant to the Controlled Drugs and Substances Act. It would be very difficult for him to get into the United States. Americans do not welcome persons who have been convicted under any section of the Controlled Drugs and Substances Act. He will have this problem if he is knowingly in possession of drugs.

[*English*]

The Chair: Thank you, Mr. Lemay.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I have no questions.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): I want to follow up on the question of alcohol being in the vehicle. If I understand correctly, although that does fall under provincial jurisdiction, if you have open alcohol in your vehicle that is an offence.

Mr. Greg Yost: Certainly it was an offence when I was in Manitoba, and I'm assuming it's an offence here in Ontario. I've never taken the chance of running around with open alcohol, but I'm sure it's that way in all provinces.

● (0945)

Mr. Rick Dykstra: Fair enough, the point being that it did sound like you could have alcohol in the car and not have to be concerned about being charged. But there's a difference between having a sealed bottle in the back in a bag versus having an open bottle sitting next to you in either the passenger seat or the driver's seat.

Mr. Greg Yost: That is correct.

Mr. Rick Dykstra: Thank you.

(Clause 2 as amended negatived)

(On clause 3)

The Chair: On to clause 3, government motion number 2, page 2 on your list.

Mr. Moore.

Mr. Rob Moore: Yes, I'll move government amendment number 2.

Chair, as it's currently written in this section, an officer has to suspect that a person has been driving while having alcohol in the body in the previous three hours before the officer can make a demand for a roadside screening test.

As amended by G-2, it would allow for a demand where there's suspicion of alcohol in the body and suspicion that the person drove in the previous three hours.

I have moved government amendment number 2, and I'd be glad to see everyone support it.

The Chair: Madam Jennings.

Hon. Marlene Jennings: Under Bill C-32, as it is now presented, it reads:

> If a peace officer has reasonable grounds to suspect that a person has in the preceding three hours had alcohol or a drug in their body

With the amendment you're bringing, would it still be that "a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body"?

Mr. Greg Yost: Yes, the effect of what we are proposing is aimed primarily at situations of accidents where the police are running their investigations. Currently you could have the situation, if there has been some lapse of time, where the police officer—

Hon. Marlene Jennings: I'm going to interrupt you, because the only thing I want to assure myself of is that the "reasonable grounds"—the very first line in Bill C-32, clause 3, line 19—remains, and that you're changing as of line 20, so that it would still read "reasonable grounds to suspect".

Mr. Greg Yost: That is correct.

Hon. Marlene Jennings: Thank you.

I believe my colleague Mr. Bagnell has a question.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: I just wanted him to finish what he was saying on the intent of it.

Mr. Greg Yost: The concern has been raised with us by the provinces that you may have a police officer attending at the hospital who smells the alcohol 20, 30, or 40 minutes later. He now has the reasonable grounds to suspect that there's alcohol in the body, but at that time he may not be able to establish that the person had the alcohol while driving. That may have to be established. He knows he drove, but they're going to have to establish at trial that the guy didn't drink alcohol between the time of the accident and the time he got to the hospital.

We're trying to break those two suspicions up. As long as he can establish both of them, he can go to the ASD. By the time they get to trial, they're going to have to be able to prove that he was driving. If he was put in an ambulance and taken to the hospital, the chances that he had access to alcohol are pretty nearly nil, but there may be other circumstances where it would be a difficulty.

The Chair: Thank you, Mr. Bagnell.

Mr. Lee.

Mr. Derek Lee: Thank you.

I'm not finding that we're hitting the nail on the head here in describing why we need this amendment. As I read the original provision, before it's amended here, it simply says that the person is suspected of driving while they had drugs or alcohol within the previous three hours. The amendment separates the two. First of all, at the time of the arrest or the encounter, the person had drugs or alcohol in the blood, and then within the previous three hours they drove, not necessarily having drugs or alcohol in the blood. You might have driven two and a half hours ago, and you might have taken the drug or the alcohol an hour ago, but the person would still be liable to at least the testing procedure here. This is a testing procedure; this is not an offence section.

Correct me if I'm wrong, but we have a scenario where a citizen legally drinks or legally consumes a drug, or even illegally consumes a drug. Sorry, let me reverse it. A person legally drives unimpaired and then consumes alcohol or a drug. They are, by virtue of this amendment now, subject to the testing procedure even though in terms of their driving they really haven't done anything wrong. Is that the intent here?

● (0950)

Mr. Greg Yost: The intent is certainly to separate the two suspicions. This is of course in the context of an investigation for impaired driving. I have some difficulty contemplating a situation in which there has been no strange driving or anything. The police show up at your doorstep two and a half hours later, smell alcohol, and ask you to do an approved screening device, and then they'll try to get you into a car.

In the real world, there will be an accident. There will have been some form of driving that has drawn the attention of the police, and then they will find reason to suspect alcohol or drugs in the body. That's what we're trying to do. We're trying to make sure those two suspicions are there.

You are correct. In the strict reading of the new provision, I guess, the scenario that you have put out is a theoretical possibility.

Mr. Derek Lee: Mr. Chairman, I can understand our desire to purge the streets of drug- and alcohol-impaired drivers, but it's not clear to me why, on a public policy basis, we would implicate a citizen in a Criminal Code testing procedure when he or she, in my fact scenario, hasn't done anything wrong in relation to drinking or driving. He or she may not have even seen a motor vehicle in the previous two and a half hours. Yet a policeman might wish to do the testing, believing that the person had driven to the bar.... The person had driven to the bar, left the bar, taken a taxi home, and not broken any laws, but because the person was drunk as a skunk and the policeman knew that he or she had driven to the bar, the policeman could still subject the citizen to the test. And add in some drugs and you have yourself an issue.

I don't know what kind of charge the policeman would lay, because in my fact scenario there is no evidence of driving impaired by a drug or alcohol. The citizen would still be subjected to a test—and rigorous testing, two-stage testing, I think.

The Chair: Mr. Pruden, did you want to respond? I'm having a hard time following Mr. Lee.

Mr. Hal Pruden: Mr. Chair, this proposed subsection leads to the necessity of having both suspicions fulfilled. The officer must suspect the substance in the body, and the officer must also suspect the operation of the vehicle within the preceding three hours. So a case would not arise where the officer is saying, “Simply because I suspect you have alcohol, I'm going to ask you to provide the tests.”

● (0955)

Mr. Derek Lee: I'm going to just accept the departmental explanation that it doesn't do a whole lot of bad things. It's on the public record, and I'll stand down.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Lee.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: With reference to your amendment as it presently stands, let me give you the following example. At 9:00 p. m., the police are advised of a hit-and-run offence involving two vehicles. The accused is suspected in this case. The police find the accused's vehicle parked near a hotel bar. The accused already has one or two glasses of cognac or some other liquor in front of him. He is obviously drunk and he is drinking.

The police officer is suspicious. He actually believes that the vehicle is the one he is looking for. This has to do with the first criterion. Regarding the second criterion, the police officer thinks that it is the accused. In fact, he finds him drinking in the bar. According to your amendment, could he submit this individual to a breathalyzer test? Have I missed something?

Mr. Greg Yost: He could compel the individual to take the test. However, before requiring him to take the breathalyzer test, he must have reasonable grounds to believe that the individual has committed an offence during the past three hours. He is facing an individual who has obviously been consuming alcohol. He might suspect that the individual is doing this to hide the fact that he had already been drinking.

In any case, if the police officer already has a witness who says that he saw the individual in an obvious state of drunkenness, the police officer could require the individual to undergo a breathalyzer test. This is in our draft. The problem is that if, two and a half hours later, the individual is no longer drunk at the wheel, it is difficult to charge him with a criminal offence.

Mr. Marc Lemay: Let me take this further. Imagine a hit-and-run offence. There is no doubt that a witness saw the accused. As he approached the accused, he smelled alcohol on his breath. Two hours later, the individual is found drinking in a bar. What would be the use of the test in such a case? What is the objective of this amendment?

Mr. Greg Yost: It would hardly be effective at all in a case like the one you described. However, things would be very different if the individual responsible for the hit-and-run offence and the accident were taken to hospital.

If, one hour later, there are reasonable grounds to believe that the individual has been driving under the influence of alcohol during the past three hours, a breathalyzer test would be in order. This information could come from the police officer in charge of investigating the accident, given the fact that a witness has declared that this individual was driving. If both conditions exist, the individual can be required to undergo a breathalyzer test.

Mr. Marc Lemay: Why are you saying that? Under section 254, if the accused is in hospital, a sample of his blood can be taken. We can go even further.

Mr. Greg Yost: It is section 256.

Mr. Marc Lemay: It may be section 256; I'm not going to argue about that. The fact remains that a section in the Criminal Code sets out measures regarding individuals who have been hospitalized.

I don't understand this amendment. Could you explain it to me?

● (1000)

[*English*]

The Chair: Mr. Yost.

[*Translation*]

Mr. Greg Yost: It says that there must be reasonable grounds to believe that, in the preceding four-hour period, the person committed an offence set out in section 253. We are still dealing with this section.

Mr. Marc Lemay: It's even better—

Mr. Greg Yost: We are still trying to establish whether there are reasonable grounds to believe that the individual committed such an offence. We want such individuals to have to take a breathalyzer. If they fail, we can use a breath test. We are looking for reasonable grounds to proceed to the second step.

Section 256 concerns situations where reasonable grounds already exist. It applies now. In some situations, the lack of reasonable suspicion constitutes a lack of reasonable grounds. That is why we have roadside screening tests.

[*English*]

The Chair: Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): This is a really brief question. Just looking at section 256, where the medical doctor's opinion is warranted to take the blood sample, I see it says four hours. This is three hours. I'm just curious about why there's a difference.

The Chair: Mr. Pruden.

Mr. Hal Pruden: Clause 3, which we are looking at, is dealing with the screening level. At the screening level for alcohol, one typically has the approved screening device at the roadside. With drugs it would be three tests at the roadside for sobriety testing.

What section 256 deals with is the next level up, which is the actual blood sampling in certain cases, narrow cases usually. Or in the case of breath testing, it would be the approved instrument, which is typically administered back at the station. When it's an approved instrument it can be used in court to prove the blood alcohol concentration.

Mr. Brian Murphy: So in short, the hours—that's the difference between roadside and another place.

Mr. Hal Pruden: And because of the hospital testing in proposed section 256. It was felt when that amendment was made—I believe it was 1999, after the committee had reviewed all the impaired driving provisions—that the four hours was used for blood sampling. Typically there would be an accident involved, and they wanted to ensure that the police could still make the demand in the time period.

Here what is being suggested is that with the screening level demand, the police should be able to look back three hours to the person's driving.

[*Translation*]

Mr. Brian Murphy: Thank you.

[*English*]

The Chair: Thank you, Mr. Murphy.

Mr. Bagnell.

Hon. Larry Bagnell: I have a bit of a problem with this amendment. It seems to me that you can already do what you want and that this would only add options for abuse.

My understanding of the way you have drafted Bill C-32—and I'm not sure why you'd bring an amendment later—is that if the police suspect a person has been impaired driving, they can run them through the tests. The amendment says they just have to suspect that they have had alcohol and that they drove a car. There's a good likelihood in modern society that anyone has driven a car within the last three hours. He doesn't have to suspect he was driving the car while impaired, which was your original draft; he just has to suspect he was driving, which could force almost anyone into these tests once they've had alcohol. That doesn't seem to make sense. It seems to me that could be open for abuse. The way you have it written in the first bill, the police officer can subject a person to the test if they think they were impaired driving.

As well, I'm not sure why you added this after you drafted the bill.

The Chair: Mr. Pruden.

Mr. Hal Pruden: Under both versions, the original Bill C-32 and the amendment, the officer must suspect alcohol in the body. The officer, at this screening level, does not have to have reasonable belief that there was impairment. It's strictly on a suspicion of presence of alcohol. It's an extremely low threshold already.

As Bill C-32 was first drafted, it says the officer had to have the suspicion...while the person was operating the motor vehicle. The amendment will give them more time. They will be able to look back in time if the person has been taken off to hospital. That's what this is meant to accomplish.

Under the existing Criminal Code, if they've gone off to a hospital and the officer doesn't have the reasonable and probable grounds to believe they've committed the offence, they can't use that lower threshold to get a screening-level demand. That is what this is attempting to accomplish.

● (1005)

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: Whether a person is in the hospital—I'm not sure how you can screen someone who's in the hospital—or wherever they are, the way it's written under proposed subsection (2) suggests that if the peace officer thought they had alcohol in the preceding three hours and they were operating a motor vehicle, then they could force the screening. I don't understand why you couldn't already do that.

The Chair: Mr. Pruden.

Mr. Hal Pruden: As it's currently drafted in Bill C-32, the belief is that at the time they were driving they had alcohol in the body, whereas in the amendment, the officer suspects that they now have alcohol in the body and also must have the suspicion that they were driving within the previous three hours. It's different.

Hon. Larry Bagnell: Yes. It adds time. It adds to the possibility that they were driving without any substance in their body. Why would you run them through a test for that? You can do the test right now if you think they have alcohol in their body and they were driving. Why would you do an amendment that allows you to put people who are driving through a test but who don't have any substance in their body? That's all you're adding. The way it's written, you can already test them if they have a substance in their body.

The Chair: Mr. Pruden.

Mr. Hal Pruden: That's only if the officer has a suspicion that they had that alcohol while they were driving. If the person is at the hospital, the officer may come to that through their later investigation, but they want to be able to do the screening-device test, for example, based on the fact that the person now has the alcohol or drug in the body and the officer also has a suspicion that they were driving.

Hon. Larry Bagnell: Mr. Yost.

The Chair: Madam Jennings.

Oh, I'm sorry, Mr. Yost. Did you have something you wanted to add?

Mr. Greg Yost: I was going to suggest there's another possible scenario. You have the car in the ditch or the accident or whatever, and the person is okay; he's out of his vehicle. The police arrive half an hour later, and he's drinking a beer. This may be because he's trying to avoid any suggestion that...he's going to screw up the evidence, but he's drinking a beer.

So now you have the alcohol, and within the last three hours he's been driving. The screening device would then provide.... If he fails it really badly, you take it to the proper test, the approved instrument test. The guy's now blowing 0.18; he's in the reverse two-beer defence. He's taken one beer, it'll never have gotten him to 0.18, so you could extrapolate. The police officer arriving at the scene would not at that moment have been able to make the immediate connection between the two. He might be able to do it a little bit later.

I admit, though, that we were thinking the hospital scenario and we're making these up as we go along.

The Chair: Madam Jennings.

Hon. Marlene Jennings: Some of my colleagues mentioned the fact that section 256 already exists, so why is this particular provision or amendment being proposed by the government? I've just taken cognizance of section 256. Section 256, if I'm not mistaken, is to obtain a warrant to obtain blood samples where there are reasonable grounds to believe the person has, within the preceding four hours, committed an offence under section 253 and the person was involved in an accident resulting in the death of another person or in bodily harm to himself or herself or to any other person.

So section 256 would not apply in any case where we're talking about an infraction—if it's the highway safety code, for instance, the example that Mr. Yost just gave. The car's in the ditch. The car may be scrapped. The driver is unharmed. No one else was involved in the accident. The police officer shows up, smells alcohol on the breath, and the guy or woman has a beer in their hand. Section 256 doesn't apply. Section 256 only applies if there's been death or bodily harm.

So if the driver or the passengers or the other driver, if there's another car involved.... If nobody's injured, you can't get a warrant for a blood sample. Am I correct?

● (1010)

Mr. Greg Yost: You are correct, but the person here would be capable of providing a sample on a breathalyzer.

Hon. Marlene Jennings: Yes, I know. I understand that.

Mr. Greg Yost: The warrant only applies, yes—

Hon. Marlene Jennings: The only reason I raise this is that in the whole discussion about the government's amendment in Bill C-32 and now the amendment 2 they're proposing, people were talking about section 256 as being the remedy and an argument for not supporting the government's amendment to clause 3. I'm pointing out that section 256 is not an argument for not supporting the government's amendment of clause 3.

That's all. Thank you.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: I'll make one last try, because I think I'm the only one against this amendment.

Let's assume everyone comes home from work at five o'clock. The police come to your house and do a test at six o'clock and you have alcohol in your blood. Under this amendment, they would be allowed to test you, because all they have to suggest is that you're driving—most people drive at that time to get home from work—and that you have alcohol in your blood.

The way it was originally written, you have to also suspect they were driving while impaired. Is that not the case? So this would leave a lot more people open to be tested, because all you have to assume is that they're driving a car, not driving while impaired. Is that not true?

Mr. Greg Yost: If I may, Mr. Chairman.

The Chair: Mr. Yost.

Mr. Greg Yost: The level in the law, even as it exists today, which we are trying to amend in this bill, however it may come out of this committee, is a suspicion of alcohol in the body; it is not a suspicion of being impaired. It is only to get you to the approved screening device, which, if you fail it, will then provide the reasonable and probable grounds to make the other demand, assuming you can put the person behind the wheel, because you have to have proof, a reasonable suspicion of driving while over 0.08.

Hon. Larry Bagnell: You don't need an amendment.

Mr. Greg Yost: This amendment requires suspicion; it is based on what is already in the law for alcohol. The two changes that are being made in it are extending to three hours and, of course, adding the physical sobriety tests that are necessary for the DRE program. As it is currently written, the police officer would have to have that suspicion that the two things were occurring simultaneously. As proposed in this amendment, the police officer would need to have the suspicion of the driving within the last three hours and suspicion of alcohol in the blood.

I will admit that in the rather strange circumstance of a police officer arriving at your house at 5:30 and asking you if you'd driven, and you saying "Yes, I drove home", and you've got a glass of wine in your hand that you'd been sipping at, he presumably, under the strictest wording, could do this, but I have difficulty figuring out why.

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Mr. Yost, there are two parts to the amendment you are proposing, unlike what we saw previously. It clearly states:

> (2) If a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that the person has, within the preceding three hours, operated a motor vehicle or vessel—

You would be imposing an additional burden on police officers. The individual will have to meet two conditions: that he drank alcohol and drove during the previous three hours. Did the previous version not make life easier for police officers? You seem to be complicating their lives. You are being harsher. Your amendment will make things easier for the defence.

● (1015)

[*English*]

The Chair: Mr. Yost.

[*Translation*]

Mr. Greg Yost: As it is currently written, the section stipulates that:

> (2) If a peace officer has reasonable grounds to suspect that a person has in the preceding three hours had alcohol or a drug in their body while they were operating a motor vehicle or vessel—

The driver must meet two criteria: on the one hand, that he drove in the previous three hours and, on the other, that he drove after having consumed alcohol or a drug. We divided the amendment by saying that the peace officer has grounds to suspect that an individual has consumed alcohol and that, in the previous three hours—I think that the end result is the same. In English, we are taking out the words "while they were operating" and in French, we are replacing the words "alors qu'elle" with "et que". It comes down to the same thing.

Mr. Daniel Petit: Okay.

[*English*]

The Chair: Thank you, Mr. Petit.

I have a point that I'd like to ask either Mr. Pruden or Mr. Yost about. This is a real live scenario. Mr. Lemay likes real live scenarios.

A driver going down the road in mid-afternoon on a Saturday strikes a young boy who's crossing the road outside the crosswalk. He hits this boy, kills him, and throws his body forward. He gets out of the car to go and look at that body and staggers back to his car. There are various witnesses around to say that the man was behind the wheel of that car. And he then takes off; he runs over the boy again and takes off down the street and disappears. The police end up with a licence plate, which they then circulate. They track him down and are able to determine that at his own house he was in fact drinking when they got there.

For this particular section, how would that apply to the police officer who lands at the house of this individual?

Mr. Brian Murphy: When did the police get there?

The Chair: Within a three-hour span.

Mr. Greg Yost: If I may, Mr. Hanger, obviously the first improvement in this is that we have the three hours instead of having the current law, that it's the person while operating. Under what we now propose, the police officer would have, in my view, a clear reason to believe that the person has alcohol in their body. The officer would also presumably have, on the basis of witnesses, the evidence of the three hours before.

Under what we propose, that would be sufficient for the approved screening device, which may or may not lead eventually to a charge of impaired driving causing death, depending on what comes out of the evidence in trial, as you know, with regard to the staggering out of the car. It would be dubious, under the wording we have in the bill now, that the police officer would be able to say he had reasonable grounds to believe the person had alcohol while they were driving. Unless there was some witness who had smelled the alcohol there at the scene, I don't see how they could do it.

Now, in the scenario you've given, it would be recognized that it would be very difficult to establish impaired driving causing death under any circumstances, just because of the time and the intervening drinking.

The Chair: But you could determine through the witnesses that this man was in fact driving, maybe showing some evidence that he might have been drinking, or impaired with something. This provision here now extends it. The time and the screening test will determine whether they could proceed further, whereas the existing legislation does not provide for that.

● (1020)

Mr. Greg Yost: Yes, Mr. Hanger.

The Chair: Thank you.

Are there any more questions on government amendment 2?

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

The Chair: We'll now move to Liberal amendment 1. That's on page 3 of your accumulated list.

Madam Jennings.

Hon. Marlene Jennings: Liberal amendment 1 would also amend clause 3, which we just amended with government amendment 2.

This would amend in order to ensure that when the drug recognition expert is carrying out the second phase of evaluation of someone's sobriety, determining whether or not the individual is impaired, in particular by drugs, a video recording of said evaluation would take place. The government in Bill C-32 already states, under subclause 3(3), proposed subsection 254(2.1), that on the road where the standardized roadside sobriety test takes place:

> a peace officer may make a video recording of a performance of the physical coordination tests referred to in paragraph (2)(a).

My amendment would require, at the police station when they're undergoing the second phase of the evaluation, that the evaluation be recorded by video. And given that all or most police stations are already equipped with video equipment for interrogations, etc., it would certainly not be a hardship.

The Chair: Thank you, Madam Jennings.

Mr. Moore.

Mr. Rob Moore: I think we had heard testimony that this would be, on a cost basis, a practical basis, and an evidentiary basis, a bit of a disaster.

To me, there's a big difference in police stations...and that's what we're talking about. They'd have to physically have the equipment in place at these stations to record this. You'd have to have a technician to conduct the recording. In my view, there's a big difference between an interrogation that's recorded—you can see what's going on, you can see the dialogue, you can hear the conversation—and something like this that's recorded, a scientific test.

The bottom line is that we heard evidence that this would be extremely problematic. I can just see, perhaps during a trial, where it's going to be a video itself that comes into play. We'll have testimony on the video itself—the video is too grainy, someone walked in front of the camera at a certain critical moment, and so on. We heard in testimony that these tests are in a very controlled environment—they're scientific, done by extremely experienced people—and that there would be a huge cost to implementing this.

For those reasons and probably more, the government doesn't support putting this burden on local police departments throughout the country.

The Chair: Madam Jennings, do you have a follow-up?

Hon. Marlene Jennings: I certainly do.

First of all, given that on the roadside you do not have the technician with the video equipment to video-record the performance of the physical coordination test, the arguments Mr. Moore is making about a video recording in a police station are not pertinent. First, they would be pertinent for video recording on the roadside. Second, most police stations already have the capacity to do video recording, so it would not be an undue burden.

Out of all the witnesses we heard from, we only heard one witness say that he didn't think a video recording of the drug evaluation at the police station by a drug recognition expert would be useful or that it would add anything. My understanding is that he did not say it would be a negative thing. Second, even if most of the testing is checking the eyes, the blood pressure, and so on, in many cases the individual who has been detained will be speaking. Given that the video recording equipment in the police stations is there for purposes of interrogation, it means they already have the capacity for sound. That's part of the reason they video-record interrogations.

So there would be an added element whereby if there were no video recording of the physical coordination test conducted at the roadside at the point of interception of the vehicle and the driver, you would have that additional element that might in fact further the case of the police officer, and possibly the Crown, should charges be brought. Because you would have the demeanour of the individual who's undergoing the test. In some cases, that individual will have to get up and move for some of the testing. Therefore, you will have filming of the coordination of the individual, the speech of the individual, and the entire demeanour of the individual. It will not take away from the proof; it would actually add to it. In my view, it would actually enhance the ability of both the officers and the Crown to make the case that the individual was impaired.

● (1025)

The Chair: Go ahead, Mr. Moore.

Mr. Rob Moore: When you say “shall” make a video recording, another difference between this and an interrogation, as I see it, is the timeliness.

Hon. Marlene Jennings: Do you want to do a friendly amendment?

Mr. Rob Moore: It has to be done within a certain amount of time.

The Chair: Order, Madam Jennings.

Mr. Rob Moore: I can contemplate—we all can, because we live in the real world with technology and BlackBerrys and videos—getting on location and the video not working. Does that mean we can't conduct what has been proven internationally—that the test can serve a valuable purpose—because the tape is full or the VCR is not working, and all of a sudden that test can't take place?

I think it should say “may”, at best. I don't support it. But “shall” means that this test can't take place unless that video recorder is working. If you have to take the time to go somewhere else where there is a working video recorder, it kind of becomes moot once the person has had six hours to sober up.

The Chair: We'll have Mr. Yost.

Mr. Greg Yost: I certainly can't speak for all detachments in the country, but I do know that there are some very busy stations that do have video recording of breathalyzers, which can be very useful in court. They may have videos elsewhere. Parts of these tests take place in a darkened room. I just believe it would cause very serious practical difficulties in stations that have a video set up in one place for one purpose to have to use that particular place for that purpose, for the DRE. I imagine this would cause difficulty on the ground.

Certainly with regard to the issue of seeing how blood pressure is taken—I'm not sure how much that adds to the evidentiary value—or measuring the size of a person's pupils, which are rather important in all of this, I would have difficulty seeing how the video recording would get it all done. I'm certain there will be many places that do not have videos set up in a way that would be compatible with the battery of tests the DRE includes.

The Chair: Mr. Pruden.

Mr. Hal Pruden: The only thing I could add is that the one witness who did speak about the technical difficulties that could arise happens to be Corporal Graham, who's observing today, who is the national coordinator of the drug recognition evaluation program for the RCMP. He works with police forces across Canada and is familiar himself, having been an investigator in British Columbia, with many drug-impaired and alcohol-impaired driving cases.

So my only comment or observation would be that he is a highly qualified witness who has spoken to the difficulties that would arise if, at the DRE level, the officers had to have a tape recording. I'm simply trying to point out that he is certainly the most qualified, in my submission to this committee, of all the witnesses who have appeared on this particular subject.

● (1030)

The Chair: Mr. Pruden, are you suggesting that the corporal testify right now?

Mr. Hal Pruden: If that's the committee's wish. He is here again and he could speak more to this.

The Chair: Is it the wish of the committee? Sure. Okay.

Corporal, would you step up to the table, please?

Mr. Comartin.

Mr. Joe Comartin: On a point of order, Mr. Chairman, it's the frustration that I'm feeling. I listened very carefully to Corporal Graham when he testified the first time on this issue. Part of my frustration is that we're, in my opinion, rushing this bill through. I would have wanted to hear from other witnesses.

I fully respect Corporal Graham. He testified extensively when we had Bill C-16 before us in the last Parliament. He's a very impressive witness. But he does come, I would say, with some ownership in the program. There's nothing wrong with that at all, but I believe there are counter opinions we could be hearing.

So if we hear him today, are we going to call other witnesses to come back? For instance, I don't know if they've tried to do this anyplace else. As Ms. Jennings was suggesting before you ruled her out of order, Mr. Chair, there may be some amendments to this so that, for instance, when the testing is going on in the darkened room, the videotaping wouldn't have to take place then, or maybe there's a way of doing it using other types of light.

In any event, I'm concerned that we simply hear from Corporal Graham at this point and then not hear from other individuals who also testified that in their belief the videotaping was practical in the station.

The Chair: Your comments are considered, Mr. Comartin. You weren't the only one offering an opinion on the point; there are others who seem to want to hear from the corporal.

What's the consensus of the committee? I'm open.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I have the same point of order. I understand Mr. Comartin. If we want to vote on this amendment within the next few minutes, we need to know whether, yes or no—and I support the same goal as Ms. Jennings—police stations have this technology. To me, the argument that the technology might be defective doesn't hold water because it is true for all detection technologies. If we think that it is fallible, or that we don't have the right batteries, let's not pass this bill.

To me, we need to ask whether police stations are equipped to use this kind of recording. I think that the only person who can answer this question is the corporal and I believe that he should limit his remarks to that. Do police stations have this technology, yes or no? As for the rest, we have our own opinion, as parliamentarians. But we need to know this.

[*English*]

The Chair: Mr. Moore, can you shed any light on that, or Mr. Yost, or Mr. Pruden?

Mr. Rob Moore: No, I just wanted to say let's have Corporal Graham. He's probably in the best position also to answer that question. We have already heard testimony that there could be a cost consideration, so I assume that means there are going to be some areas that would need to purchase this equipment by our putting this onus on them.

So I think there seems to be some consensus that we do hear a bit more testimony on it.

The Chair: I have a point of order. Madam Jennings.

Hon. Marlene Jennings: On a point of order, I would be prepared to bring a subamendment to my amendment to change the word "shall" to the word "may".

The Chair: Madam Jennings, someone else will have to bring that forward.

Hon. Marlene Jennings: Fine.

The Chair: Getting back to the corporal and the consensus here in the committee, the corporal could be considered a government official as far as his presentation is concerned, if need be.

Madam Jennings' subamendment to her amendment would have to be presented by someone else, maybe within the Liberal ranks here.

What's the feeling of the committee now?

● (1035)

[*Translation*]

Mr. Réal Ménard: Can we know whether, yes or no—

[*English*]

The Chair: Would you like Corporal Graham to stand forward and present?

[*Translation*]

Mr. Réal Ménard: Yes, only on this.

[*English*]

The Chair: There seems to be a consensus for him to do that.

Corporal Graham.

[*Translation*]

Mr. Daniel Petit: I think that we need to know exactly what he is saying: either they have the technology or they don't. If they don't have it, we can make up our minds later.

[*English*]

The Chair: Corporal, would you take a seat at the table, please?

Do you want to question him?

Some hon. members: Yes.

The Chair: You can treat him as any of the other officials here.

Corporal, you've been listening, and I gather you can respond to the concerns about the technology at the various stations, etc. Perhaps you would like to make an opening statement, and then there will be some questions coming forward.

Corporal Evan Graham (National Coordinator, Drug Evaluation and Classification Program, Royal Canadian Mounted Police): I am not aware of any jurisdiction that videotapes evaluations. There are a number of problems with trying to videotape them. First and foremost, for any of the police stations that have cameras, the cameras are fixed, so they're going to catch a specific angle. The evaluation is done in such a fashion that, unless you actually position the person to catch that camera angle, you're going to miss things. And regardless of whether you can position them properly, it's still a two-dimensional view.

We use videos for training. The videos are done using hand-held cameras by professionals who have to move with us. They have multiple angles, multiple cameras, and then they put them together so that they are of some use to us for training purposes, and even at that, there are things missed.

When I was stationed in British Columbia, we had in-car cameras and we had the same problem with them. Again, they're fixed. They don't have any depth perception. As a result, evidentially, they have little value in court. From my perspective, I certainly think that aside from the cost of installing cameras, they miss more things than they would capture. No one has that capability right now.

The Chair: Mr. Comartin.

Mr. Joe Comartin: Corporal Graham, at the present time, how many officers do we have trained on DRE?

Cpl Evan Graham: There are currently 300 in the program.

Mr. Joe Comartin: Do we have an estimate of how many we would require, not just for the RCMP but across the whole of the country?

Cpl Evan Graham: We are basically looking at the drug recognition expert evaluator as being the same as an evidentiary breath technician. So if you look at the same numbers, overall about 3,000 would be required.

Mr. Joe Comartin: In terms of the posts or the police departments that they would go into, how many would we have in the country if we had all of those 3,000 officers in place?

Mr. Rob Moore: On a point of order, Mr. Chairman, my understanding was that there was some consensus on this point, on Ms. Jennings' amendment dealing with video recording of an evaluation, that the peace officer shall make a video recording, that there was some interest in having Corporal Graham provide testimony on that point. That's where I thought there was consensus.

But for Mr. Comartin now to go over what I remember—each and every one of those questions—already being asked, not only of many witnesses but of Corporal Graham specifically, I'm not interested as a member of this committee in hearing testimony on the bill that we've already heard. The committee is master of its own destiny, but we're in clause-by-clause right now.

The Chair: There was a point of clarification that I believe we were discussing, Mr. Comartin.

Mr. Brian Murphy: Can I speak on his point of order?

The Chair: Mr. Murphy.

Mr. Brian Murphy: Mr. Moore asked for this witness to give testimony. He cannot script the questions that go to this witness about this bill. So there's no argument.

You agreed and asked that this person give testimony.

Mr. Rob Moore: Well, the committee had consensus—

Mr. Brian Murphy: Just to finish my submission, you cannot now say we're in clause-by-clause, so we can't hear testimony that we don't want to hear. That's the problem.

Mr. Rob Moore: It's testimony on an amendment to one clause.

The Chair: Mr. Moore, order, please.

Mr. Murphy has the floor.

Mr. Brian Murphy: It seems unfair, Mr. Chair, to allow Mr. Moore, by his point of order, if you accept it, to tell Mr. Comartin what to ask.

We've opened the door by consensus to have this witness back. So as a point of order, it just seems wrong for Mr. Moore to—

Mr. Rob Moore: We opened the door on this—

Mr. Brian Murphy: —first of all, interrupt me, because I can speak as loud as he can.

● (1040)

The Chair: Mr. Moore, order, please.

Mr. Brian Murphy: So I think it would be wrong to rule that Mr. Moore's point of order is correct. That's all.

The Chair: I have to say that it was made very clear at the beginning, when Corporal Graham stood forward and presented, that he would be treated like any of the other officials, so the line of questioning is acceptable, although it is repetitious, Mr. Comartin.

Mr. Joe Comartin: Those questions weren't asked, Mr. Chair.

The Chair: Well, I seem to recall them, but go ahead.

Mr. Joe Comartin: The only question that was asked was how many officers we currently have. That's on the record in the blues, but how many we needed is not. In fact, when the minister was here, he couldn't tell us what this was going to cost in terms of the number of officers, so we don't have that information on it.

We certainly got no information in terms of my last question as to how many stations we would have in the country where the DRE second stage would be done. That's my question. If Corporal Graham can answer it, I'd appreciate an answer.

The Chair: Corporal.

Cpl Evan Graham: Currently every police detachment for the RCMP and, as far as I'm aware, for the OPP, the SQ, and other agencies has an evidentiary breath test, so you'd be looking at every facility having a DRE. When you look at the prairie provinces with small detachments, there have to be hundreds of them. I don't have the exact number, but there would be literally hundreds of places across the country where eventually there will be a DRE. For the time being we're training them for the larger, more populated centres because it's just more cost-effective to do that, and we'll get more bang for our buck, basically.

The Chair: Thank you, Corporal Graham.

Mr. Comartin.

Mr. Joe Comartin: I have another question. Of those stations that you're going to start with, how many of them already have—if you know—audio video equipment for the purposes of interrogation, especially in more serious crimes?

Cpl Evan Graham: I'm not able to answer that. I can speak of places where I was stationed, and the larger centres do have that capability; the smaller ones do not. For the most part, it's too expensive for them.

The Chair: Thank you, Mr. Comartin.

Ms. Smith.

Mrs. Joy Smith (Kildonan—St. Paul, CPC): Thank you, Mr. Chair.

I'm a substitute on the committee today, but I've had a lot to do with police forces in terms of working on human trafficking, and our own son is with the RCMP.

I was listening to this amendment and I have to tell you that in a lot of these places, from what I'm hearing from a lot of the police officers across the country—for instance, up north—they don't even have cell phone reception, let alone money for a video camera. The situations there are detachments with only one or two men. So who do you get there to run a video camera, if you have the money to have a video camera and if there are enough of them on duty up there to manipulate the camera and take care of the criminal they've apprehended? The capacity to do the video recording, to me, just from my knowledge as a lay person, is just nil in these small places.

Ms. Jennings talked about blood pressure, and I wasn't aware that inebriated people's blood pressures were taken. From what I can tell, it just seems to be the smell of alcohol and the way the person walks and talks and receives the police when they try to apprehend them.

So regarding this amendment, apart from the fact that it's going to be a big cost factor and we have to make choices about where we put the money, do we put that into video cameras or boots on the ground trying to fill these detachments?

Could you take some time, please, to elaborate on it in more depth in terms of how you see it as a police officer on the ground?

● (1045)

The Chair: Corporal Graham.

Cpl Evan Graham: With the drug evaluation, blood pressure is a key component because of the seven drug categories. They do cause the blood pressure to react. The clinical indicators are different. For alcohol, because there's a presumptive level, of course, there's a breath sample taken, and that suffices.

The capability to do the videotaping in small centres and, again, in large centres is not there. The cameras that are used for videotaping interrogations are fixed. The person sits in a position where they can be viewed. We capture more than trying to write it down. We've gone from a tape recorder to videos. But because the person is not going anywhere, it's an effective and efficient way to do things.

With the evaluation, I was asked by a colleague when they read the blues on this...the analogy I gave was an instant replay in sports. Professional sports have spent millions of dollars. Look at hockey. They've put cameras in a position to cover a goal net to see if the puck went across, and they're still not getting it right. They're looking for one thing, with cameras focused right on that little area.

We're dealing with an evaluation where we cover 15 feet with the walk and turn test. We are in a dark room, as was pointed out by Mr. Yost, so you would have to have an infrared camera that is portable so that you could capture the eyes. In order to take the blood pressure, it depends on what you're looking for. If you want to watch how the blood pressure is actually taken or if you want to watch the gauge to see what the readings are, the camera would have to be right up close in order to read that.

We are in the process of redoing the videos. We're having some significant issues with the amount of time it's going to take, simply because of the different angles that we have to have to capture everything, and then to put it together. I think if you were going to videotape for court purposes, you would have to have the same multiple cameras that even with the large centres are not practical.

The Chair: You're suggesting there would have to be more than one camera to do justice, that would be movable.

Cpl Evan Graham: Yes.

The Chair: Ms. Smith.

Mrs. Joy Smith: Thank you.

One other thing is that police officers go through an awful lot of training. The professionalism of a police officer seems to be higher than—it should be—the ordinary citizen probably in knowing what to look for. Could you talk a bit about the professionalism of the police officers, because we need to have a need there? If there's a need for video cameras and the police officers can't do it, the need has to be there.

Are not the police officers trained very highly to look for and see all the characteristics that they need to see and record it in such a way...? Their professionalism would be more reliable than a video camera like this, in a sense, would it not?

Cpl Evan Graham: When we're testifying in court, basically we have to paint a picture for the court by explaining in detail what we've done, how we've done it, where we've done it, so the court can conjure a mental image. In some instances it would be nice to have pictures, but again, based on experience with the in-car cameras, they've proven to be of limited value in dealing with individuals. They're fine for pursuits, because you can catch everything that's ahead of you that they need to capture, but when you're dealing with individuals, there are far too many things happening and you're either getting the back of the person, the front, or the side, and you're missing what is going on with what's hidden from the camera, basically.

Mrs. Joy Smith: Thank you.

The Chair: Thank you, Ms. Smith.

Mr. Bagnell.

Hon. Larry Bagnell: Thank you.

Videotaping is a common practice. It's used for all sorts of evidence. You only need one camera to get some additional evidence. You've admitted it will add some additional evidence, and that's all you need, some more evidence, in something so serious. The expert witnesses suggested that we need this, even for taking blood pressure. It shows how many times, if they had trouble getting blood, etc.

But that's not my question. My question is this.

I didn't totally understand all the 12 steps in the DRE. Are some of those steps the same as the ones at the roadside? Are there physical tests in the DRE, or replications of the roadside physical test, such as standing on one foot or walking a line? Therefore, if you videotaped the DRE, would you be videotaping some physical steps? I don't understand what all the DRE steps are.

● (1050)

Cpl Evan Graham: The three standardized field sobriety tests are done roadside. For the person undergoing the evaluation, those same three tests are done again in a controlled environment and two other tests are added. So divided attention tests are done, and that is how we prove impairment.

Hon. Larry Bagnell: So if we had a video of the guy trying to stand on one foot and staggering, or trying to walk the line and back and staggering, it would make a lot stronger case for the police and the prosecution. It would get it out of the courts. It would save us tens of thousands of dollars in court time. A lot more people would plead guilty if they were seen right on tape obviously failing these physical tests.

Cpl Evan Graham: The walk and turn test in particular has eight validated clues. They include raising the arms for balance, stepping off the line, and having their heel touch their toe. So in order to capture the heel touching the toe, you'd have to have a camera dedicated to watching that, because you're looking at something where a miss would be three-quarters of an inch. If you're watching the feet, you won't be able to see the hands. You might catch the person stepping off the line, but again you have an angle that will catch one thing but not everything.

The Chair: Thank you, Mr. Bagnell.

Mr. Moore.

Mr. Rob Moore: I felt this way before, but upon hearing more testimony.... In trials you have testimony from psychiatrist and psychologists, and we don't demand that it be videotaped. We're not psychologists, and in the same way as a psychologist might make an evaluation based on something someone said, it might not resonate with someone who is listening to it themselves in a courtroom. That's because we're not psychologists or psychiatrists, and in the same way, we're not drug recognition experts. Drug recognition experts, due to their training, might pick up something on videotape that others might not see and say, “I don't see that their pupils are dilated.”

On the practical side and the policy side, I think we had it right in the first instance. This would open up a whole quagmire that would overtake some of these trials and turn the focus away from the testimony of the drug recognition experts and onto the videotape, the quality of the videotape, and the angle of the videotape.

I don't know if there are any other questions, but I think we should move on.

The Chair: Thank you, Mr. Moore. It does sound like it's an issue of being practical.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I will be very gentle with the witness, and I hope that he will have enough money for his retirement. I have been following the news, and things don't look good. But that is not what I want to talk to you about.

Do you agree with us regarding the principle of the quality of evidence? According to Ms. Jennings, the purpose of the amendment is to facilitate the administration of the evidence. The second witness told us that evidence has more weight when it is supported by a video, before the courts.

Does your hesitation lie in the fact that this technology is not mobile enough to record the entire process or is it rather that you don't agree with the principle? If you can convince us that this principle is not desirable, that's one thing, but if the technology is not sufficiently adapted to the process, that is another thing altogether. If police stations don't have this technology, this doesn't mean that they won't have it in a year. The committee must determine whether, in principle, videos are desirable. Do you believe that the evidence should be supported by a video, as Ms. Jennings is proposing?

Could Ms. Jennings tell me whether this is a requirement? Must this be filmed in all circumstances in order for this to be admissible as evidence? If this becomes mandatory, we will obviously have to think about it. In principle, does Ms. Jennings' amendment facilitate the administration of the evidence? Ms. Jennings is a fair person in all circumstances.

● (1055)

Hon. Marlene Jennings: I am always prepared—

[*English*]

The Chair: Order, please, Madam Jennings. You don't have the floor right at the moment.

Monsieur Ménard, you're finished?

Corporal Graham, you have the floor.

Cpl Evan Graham: Ideally, being able to capture the whole evaluation on video would be the way to go. As for the technology being there, I can't say it's not there. All you have to do is go to a movie theatre and you see what technology can do. But we certainly don't have those kinds of resources. Multiple cameras would be required, and you would have to have the manpower to operate them.

So realistically, it's not something that's feasible for police stations.

The Chair: Thank you, corporal.

Mr. Murphy.

Mr. Brian Murphy: Thank you.

I disagree with you about hockey, by the way. It has improved the game and the calls.

So this is a tool, I think, that could be used for greater certainty, and that's why it's already in the first part of the scheme, which includes the physical coordination test. It says “may”.

The question I have—and it's for anyone here—is, if that's in the bill, does it imply that the police forces do not have the right to take those video recordings at any phase unless they're in an enactment? Whether that's true or not, I'd like to know.

Secondly, if you have the right to video the roadside coordination test and the interrogation for other offences in the police stations in any event, why would they be mentioned in the bill at all? I guess where I'm going is, if proposed subsection 254(2.1) is in there for the coordination test at the roadside, and it's permissive—it says “may”—and we could amend perhaps Ms. Jennings' amendment to say “may,” they could both go in. It wouldn't do any harm. It would be an added tool if there were means. Alternatively, they both should come out if they're already permitted by law.

So are video recordings permitted by law?

The Chair: Corporal.

Cpl Evan Graham: We use in-car videos for evidentiary purposes currently. It's the same as taping a voice conversation, as long as there's one-party consent. We've been doing that for years. I have 27 years of service, and as soon as we got tape recorders, we used them for videos, because using them was a lot easier than trying to read somebody's handwriting who is trying to catch up. We have used the videos for some things.

So I would say yes, we can do that now. We don't generally use them, because they've proven to be more problematic for dealing with impaired drivers than they're worth.

Mr. Brian Murphy: I respect what you're saying. I just say that in proposed subsection 254(2.1) permissive use of a video recording at the roadside coordination test is already mentioned. What would be the harm in making it available as a police tool at the DRE level?

To that end, Mr. Chairman, I propose a subamendment to Madam Jennings' amendment in proposed subsection 254(3.11,) replacing the word “shall” with the word “may”. I believe Ms. Jennings agrees to that.

Hon. Marlene Jennings: That's a friendly amendment.

Mr. Brian Murphy: It should be friendly; we're friends. She agrees with it.

Mr. Réal Ménard: *D'accord.*

Mr. Derek Lee: Question.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: Let's finish with the witness.

The Chair: I don't have anyone else on the list in reference to this witness, and I'm going to ask him to leave his position. I think that part of the debate is over.

Would you like to speak to the subamendment, Mr. Bagnell?

Hon. Larry Bagnell: I know most of my colleagues are probably in favour of the subamendment, but I hope they listen carefully to what I have to say.

I'm in favour of the original amendment and strongly against the subamendment, for the following reasons. We're talking about something very serious. We're talking about ruining a person's life. Once they get a criminal conviction, as you know, it would have a devastating effect on a person's life. To say that just because a video wasn't available, that it shouldn't be allowed, the cost of that...it doesn't make any sense. The police suggested that we have the technology. They've been using videos for evidence in the past for many, many years. The fact is, it doesn't have to be perfect, but if it added one scrap of evidence that's going to change an entire person's life, a videotape is not much of a cost.

All the legal experts, the people who have to prosecute and defend this in the courts, who came before our committee said, “We need those videos.” They said these procedures, this law, the DRE are fraught with all sorts of things that are going to tie up the courts. We're already letting murderers go free because the courts are tied up. We're going to tie them up even more.

They suggested this process will do more justice for the victim because they will have the tapes, which will add more evidence. It will make convictions more certain. A lot of people, once they see themselves on video, won't go to the long constitutionally charged court cases.

A witness brought a report that said the DREs fail in 10% to 20% of the cases, which means 10% or 20% of the people charged would be innocent. If there can be more evidence that would reduce some of that by videotape, it would certainly remove a huge danger to society.

All the lawyers who have to deal with this in court said this is very important. I think this is very important for the breathalyzer.

If later in the meeting we approve the amendment that will allow one to take evidence away, so that the only thing you can do is prove the machine is broken, then it's absolutely essential that we videotape that process, because how is someone ever going to prove that? I hope that amendment doesn't get through, but videotaping in that particular case, for at least some minor protection of the person's rights, would be absolutely essential.

When you see these tests on tape...it's going to clear up the courts. There will be a lot fewer challenges and it will give a lot more justice to a process that many of the witnesses said was already a challenging new process that we're trying to support, that we're getting into place. It's going to be challenged a lot in the courts. If we can make it any more certain by this standard technology that's already in place, there will be a lot fewer....

We should fund the police for whatever they need. It's a lot less cost than the millions of dollars we're going to spend in court cases and the untold tragedy in millions that convicting innocent people will cause.

Thank you, Mr. Chair.

● (1100)

The Chair: Thank you, Mr. Bagnell.

Mr. Comartin.

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

I share Mr. Bagnell's concerns in a great many ways. I recognize, except for Corporal Graham's testimony, that practically we have a major problem at this point to go ahead and make the audio-videotaping mandatory.

I just want to make these points. One, I have thought a fair amount about this over the last two weeks, because it's been over that period of time when we began to hear evidence about the additional benefit we would derive within the criminal justice system if we could videotape both the assessments for the purpose of identifying whether a person is impaired by drugs but also with regard to the same impairment because of alcohol.

Mr. Bagnell's point about reducing the cost within the criminal justice system by reducing the number of trials is extremely well taken. I think videotaping would go some distance to doing that. Many of us who have the experience of seeing videotapes, whether in the civil or criminal setting, know how effective they are in trials. I'm not quite sure why judges and juries believe in videotapes more than they do eyewitnesses, but they do, Mr. Chair. That's just the reality.

The other point I want to make, and I suppose I'm making this to the Justice officials, is that practically, at some point, we will be able to effectively videotape at relatively minimal cost, because we're going to keep increasing the use of videotaping in the police stations around the country. At that stage, it seems to me it would behoove the government, whichever one it is at that time, Mr. Chair, to pass regulations requiring videotaping.

Having made those points, I'll be supporting the amendment. Thank you.

● (1105)

The Chair: The question is on the subamendment.

(Subamendment agreed to [See *Minutes of Proceedings*])

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

The Chair: On government amendment 3, Mr. Moore.

Mr. Rob Moore: I move government amendment 3.

The bill currently provides for the use of an approved screening device that is less stringent than an approved instrument, and its results cannot be used in courts to prove blood alcohol concentration. This is in cases dealing with a combination of drugs and alcohol. What this means is that we would be using the more stringent device that is approved for use in the court and the certificate the Crown would be able to file for a BAC would be produced by the approved instrument, not an approved screening device.

The Chair: I call the question on government amendment 3.

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

The Chair: Liberal amendment 2, page 5.

Madam Jennings.

Hon. Marlene Jennings: Chair, I am not moving Liberal amendment 2, and I am not moving Liberal amendment 3. I am withdrawing both.

The Chair: Thank you, Madam Jennings.

Liberal amendments 2 and 3 are withdrawn. The question now is on clause 3 as amended.

(Clause 3 as amended agreed to)

(On clause 4)

The Chair: Mr. Lee, on a point of order.

Mr. Derek Lee: No, it's not a point of order. It's on the clause.

This is the clause that authorizes the creation of regulations. It allows the creation of regulations, which is just fine. Those are statutory instruments.

The provision also allows the incorporation of what is called "material by reference". And it says very clearly that "material does not become a regulation for the purposes of the *Statutory Instruments Act*".

That makes me nervous here because, Mr. Chairman, as you know, this Parliament scrutinizes with precision all statutory instruments, all regulations made pursuant to our federal statutes, and particularly with reference to civil liberties and compliance with the law.

What I'm concerned about here is—and I want to ask the question—why is the "material" referred to in this provision stated not to be a regulation? And is it possibly the effect of this provision that this material would not be scrutinized by our Parliament for its normal purposes to ensure compliance with the law?

The Chair: Mr. Yost.

Mr. Greg Yost: When we deleted this section, we were guided in large measure by the advice we received from our regulation section when we advised them that there is a great deal of DRE material that may already exist under the International Association of Chiefs of Police and that gets amended from time to time when they receive new advice from their medical and scientific panels. They may suggest a different way of doing the test.

It is certainly not the intention to prevent this from being scrutinized, but if we are able to incorporate, by reference, the International Association of Chiefs of Police norms, then we don't have to go through the regulation-making process in order to change three words or one test when they've done it. That is certainly our intention. Since we haven't met with the drafters of the regulations yet so they can go over what material we have from the International Association of Chiefs of Police, I don't know whether it's going to work out that way. But that's what we're intending.

● (1110)

Mr. Derek Lee: The intention is certainly imbued with the utmost in good faith, and I understand the purpose, but as I read it, it's not clear to me whether or not those changes, as made by third parties—you know, some jurisdiction or non-governmental organization in Kuala Lumpur—may create some of this material that is incorporated by reference. It's not clear to me how much scrutiny our Parliament would be able to apply to that, because there would never be any notice of the change. It would simply be incorporated by reference.

As Mr. Yost points out, the changes would occur, made by third parties, and our Parliament would never have any notice of the change—unless somebody were to call up and mention it.

The Chair: Mr. Yost.

Mr. Greg Yost: I would agree that this could happen. Certainly it wouldn't be any kind of secret we'd be pulling off, because we'd have to advise all the police officers in DRE that there has been this change. These changes are in fact proposed. They take anywhere from six months to 18 months, from what I've seen sort of from the outside, to be validated and finally voted on at annual conferences, etc.

Certainly the proposals will not be hidden, but I agree that there is nothing in here that requires us directly to bring it to the attention of essentially anyone, I suppose. But that's what we were thinking about.

The Chair: So you're to develop training manuals. This is going to be a process. It's not going to be scrutinized through the regulations here as a result of an ongoing process in building these manuals up.

Mr. Greg Yost: You'll certainly see the regulation that would allow us to incorporate by reference; you know, the International Association of Chiefs of Police norm 417-3—I'm making that up, obviously—as amended from time to time. So we'd be able to tell you what it looked like then, and if they amended it later, it would come into force by the operation of being adopted by the International Association of Chiefs of Police.

The Chair: Are you satisfied, Mr. Lee?

Mr. Derek Lee: Ordinarily I would be trying to find a mechanism that would allow the public record to show clearly the current status of these regulations incorporating the materials. That's a basic in a rule of law jurisdiction, and it's not clear to me how the citizen will have access to this material so that he or she could know what the law was.

I don't have a solution, as I stand here today. I'm just going to accept the public record as indicating where we are. In any event, the charter will always continue to apply.

Thank you.

The Chair: Thank you, Mr. Lee.

Mr. Dykstra.

Mr. Rick Dykstra: I see Mr. Lee's point in terms of where he's coming from with respect to the question, but as Mr. Yost has indicated, these types of issues certainly can be covered under the regulations. A regulation would actually identify what we were using in terms of how the qualifications work, and would indicate also that somewhere down the line they would make sure they were updating and approving whatever mechanism was being used from an international perspective.

It seems to me you're right, but your concerns can be met based on a regulation put after the legislation is passed.

The Chair: Mr. Yost.

Mr. Greg Yost: I don't want to delay things, but I've just one point: the citizen who's charged is going to have to prove in court that they followed the prescribed steps, etc., and it's going to be what's prescribed at that time. Their lawyer will presumably get access to what the tests were in order to show that they complied with it.

(Clause 4 agreed to)

(On clause 5)

● (1115)

The Chair: We'll move to Bloc amendment 1.

Mr. Joe Comartin: I have a point of order, Mr. Chair.

The Chair: Mr. Comartin.

Mr. Joe Comartin: As you know, I had to step out. Public safety is meeting next door, and the witnesses and the issue are there because of a motion that I brought. That meeting started at 11 o'clock. So I wanted to put something on the record here, but as I say, I had to step out next door.

I understand that Ms. Jennings has now withdrawn her motions. I wanted to put something on the record with regard to that. Do I have the permission of the committee to do that at this point?

The Chair: Do you mean in regard to the two amendments that were withdrawn?

Mr. Joe Comartin: Yes. I'm referring to amendment LIB-2 in particular.

The Chair: Well, we have passed all that.

Mr. Joe Comartin: I know you have, but I want to beg the indulgence of the committee, since the committee went ahead and scheduled this meeting through the time when public safety normally meets. I would have challenged that, but I was already gone to that meeting last time when we did that.

The Chair: Okay. Without any further explanation, quickly put your comments forward.

Mr. Joe Comartin: I want to make two points.

First, I was going to move similar amendments. I think we should be doing this. Given that we are introducing a new regime to this country, we should not be going to the third stage of the DRE process because we don't have any standards with regards to drugs, and we've heard this.

More importantly, it's because of the prejudice of this evidence going in front of a judge and potentially, in some cases, in front of a judge and a jury. Even in front of a judge, in most cases, there is the prejudicial effect of this evidence going in that the person has consumed drugs or has drugs in their body. But we have no idea what that means in terms of impairment. I understand why the police want it, I understand why the prosecutors want it, and I understand why the government wants it, but with regard to basic justice in the courtroom, it really has a prejudicial effect.

Having said that, Mr. Chair, I'll stop with my comments, but if I had been in the room, I would have asked for that section of the bill to go on division, because I don't know what my party is going to do at this point when it gets before the House.

The Chair: Thank you, Mr. Comartin.

I don't think there's going to be any need for further debate on something that has never been moved and never been entered on the record, so we're going to pass on that, Ms. Jennings and Mr. Bagnell.

I'm on to amendment BQ-1. Mr. Ménard has the floor.

[*Translation*]

Mr. Réal Ménard: Given all of our previous positions, this amendment is obviously extremely consistent. In paragraph 255(1)(a) and so on, we are setting out mandatory minimum sentences. We are not calling into question the offence, but we are opposed to mandatory minimum sentences, and we have been for as long as we've been a political party, with the exception of Bill C-2, as some people will not hesitate to remind me from time to time. So, we are introducing an amendment to strike mandatory minimum sentences.

Mr. Chairman, I know that the majority of the committee does not share this opinion, but I think that we need to be consistent with our previous positions. That is the purpose of this amendment.

[*English*]

The Chair: Go ahead, Mr. Moore.

Mr. Réal Ménard: Do you support this?

Mr. Rob Moore: No, we don't support the amendments. I think that the fines and the terms that are in place are completely reasonable and in keeping with what we're trying to do with this bill, and that's to discourage people from impaired driving, whether by alcohol or drugs.

The Chair: Madam Jennings, did you have a point?

Hon. Marlene Jennings: Yes, I have a question for our witnesses.

Should the amendment that Mr. Ménard has proposed be adopted, what would the penalties be for the infractions?

● (1120)

The Chair: Go ahead, Mr. Yost.

Mr. Greg Yost: The current minimum penalty is a fine of $600 for a first offence. Imprisonment the second time for a second offence is 14 days, and it's 90 days for a third or subsequent offence. Those are the existing minimums.

Hon. Marlene Jennings: So there are existing minimums for first, second, third, and subsequent offences?

Mr. Greg Yost: Yes.

Hon. Marlene Jennings: So Bill C-32 simply increases the existing minimum mandatories?

Mr. Greg Yost: That's correct.

Hon. Marlene Jennings: Thank you.

The Chair: Mr. Bagnell, do you...?

Hon. Larry Bagnell: No, I'll pass.

The Chair: I'll call the question on amendment BQ-1.

(Amendment negatived [See *Minutes of Proceedings*])

(Clauses 5 and 6 agreed to on division)

(On clause 7)

The Chair: Shall clause 7 carry?

Madam Jennings.

Hon. Marlene Jennings: You're forgetting that I have an amendment. Are you asking me if I'm going to move my amendment?

The Chair: I'm sorry. Yes, I'm asking you to present your amendment, Madam Jennings.

Hon. Marlene Jennings: I'm going to make it easy for everyone. Given that I withdrew—it's not something I'm wont to do, I like people to earn—LIB-2 and LIB-3, in order to be consequential with that withdrawal I need to withdraw LIB-4, LIB-5, LIB-6, LIB-7, and LIB-9.

So the only Liberal amendment that remains to be discussed, debated, and obviously carried is LIB-8, and we're not there yet.

(Clause 7 agreed to on division)

(On clause 8)

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: As a point of order, to give people warning, at the end I want to propose an amendment that says:

> this bill and that the effects of its implementation be reviewed after five years by a committee of Parliament, and that the committee report to Parliament within six months of the five-year period.

[*Translation*]

Mr. Réal Ménard: Could Ms. Jennings remind us of the amendments that she has withdrawn?

Hon. Marlene Jennings: Yes, they are LIB-4, LIB-5, LIB-6, LIB-7 and LIB-9.

Mr. Réal Ménard: Are you keeping the amendment LIB-8?

Hon. Marlene Jennings: Yes.

Mr. Réal Ménard: Thank you.

[*English*]

The Chair: BQ-2.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I wish to inform the committee that I am withdrawing the amendment BQ-2, on section 8.

[*English*]

The Chair: Okay, you're withdrawing BQ-2. You're not moving it; that's good.

That brings us up to government amendment number—

[*Translation*]

Mr. Réal Ménard: In fact, we are withdrawing the amendments BQ-2 and BQ-3.

[*English*]

The Chair: Okay, BQ-2 and BQ-3.

On G-4, Mr. Moore.

Mr. Rob Moore: I move G-4.

What G-4 does is this. If evidence is brought concerning a malfunction or the improper operation of the approved instrument—and we heard testimony about that—the amendment would require the displacing of the presumption of accuracy only if the error is serious in that it would give a reading of a blood alcohol concentration of under 80.

This means that if the instrument read something like 1.2 and evidence is brought that it should have read 1.19, we don't throw out all the evidence based on some sort of trivial error. The evidence is only thrown out if it would give a reading below the legal limit.This would avoid throwing out an entire body of evidence based on a trivial problem.

● (1125)

The Chair: Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, we will vote in favour of this amendment, because that is my party's position, but I have a real problem with this. I want to ensure that I have understood correctly what we are talking about.

Currently, with regard to an admissible defence before the courts, it is possible to challenge the operation of detection technologies and the document issued at the end attesting that the individual's blood alcohol concentration exceeded the level set out in the act.

However, imagine that I'm in a bar in Montreal along with the nice and attractive Ms. Brunelle, and I drink five glasses of alcohol and ask Ms. Brunelle to say in her testimony that my blood alcohol concentration was not as high as the device indicated. This kind of evidence would no longer be admissible.

Mr. Greg Yost: This evidence could be admitted, but Ms. Brunelle would not testify that your blood alcohol concentration was lower than 0.08. I suppose that you would agree on her testimony with regard to how much you had drunk, but a toxicologist would have to do the calculation based on your weight, the time it took you to drink your five glasses of alcohol, and so on.

It will still be possible to provide evidence on consumption, but if the operator has not made a mistake and the machine was not defective, it will have to corroborate the fact that your blood alcohol level was lower than 0.08 when you were driving.

Mr. Réal Ménard: So, for testimonial evidence to be admissible, we would first have to prove that the device was defective.

Mr. Greg Yost: No, not necessarily. Perhaps we are establishing that I drank five glasses of alcohol in the 15 minutes preceding my departure from the bar. I was told that I had to immediately return to Parliament on vote on something when I had three beers in front of me, and I decided to drink them. Then, I got behind the wheel of my car and I got stopped five minutes later, while my system was absorbing the alcohol. At the time of my arrest, the test result was below 0.08, but when the test was redone 15 minutes later, it was 0.11 because my system was absorbing the alcohol. This defence, which exists now, would still be allowed. In English, it is called the last drink defence. I suppose that, in French, it would be “la défense de la dernière bière”.

However, the judge would not be allowed to say that you said you had drunk five glasses, but the toxicologist said that you were at 0.07. So, there is reasonable doubt, despite the fact that a device such as the breathalyzer proved it, that it was working well and that it indicated 0.16. That is the problem we are targeting.

Mr. Réal Ménard: It's important that we understand this.

So, testimony by peers in a bar environment will no longer be possible, but I could always ask a toxicologist to testify as an expert.

Mr. Greg Yost: You could get a toxicologist to testify, but he or she will have to start with the blood alcohol level that was established by the certificate, if there was no problem with the device, in other words if there were no errors. He or she will have to start with the fact that you were at 0.12 when you were tested at, say, 10 o'clock, and calculate that you would have been at 0.07 when you left the bar, based on how much you drank.

Mr. Réal Ménard: So, the last drink defence is admissible, but if the reading done by the device is not shown to be questionable, testimony given by one's peers cannot contradict the results. However, an expert reads the results, but based on the reality indicated by the device at the time of the reading.

● (1130)

Mr. Greg Yost: I really like that expression, “based on the reality”.

Mr. Réal Ménard: So you see that I'm a man who can make a difference in your life.

We get the impression that Mr. Moore's amendment—and I find it surprising coming from him, but ultimately I was sort of prepared for it—has given the bill more teeth. In concrete terms, what does Mr. Moore's amendment do in terms of civility?

In fact, we are going to overturn this amendment.

Mr. Greg Yost: Do you want Mr. Moore to explain it?

Mr. Réal Ménard: I would prefer for you to start and for Mr. Moore to wrap up.

Mr. Greg Yost: Mr. Chairman, in some situations, we can identify a mistake, for example, the device's temperature was supposed to be 34°C, but it was 39.9°C.

When we ask the toxicologist what effect this might have the result and he or she says more or less 2%, if the result indicated 160 mg, this isn't very helpful. However, as the bill is currently written, we need only demonstrate two things. First, it is a mistake and, second, we can talk about consumption.

Our worst fear is that a minor error will be identified and someone will say, since this minor error was found, we could ignore it and use the two-beer defence for the five beers I drank with my friends over a two-hour period. This is what happens with the bill as it is currently written. We want to amend this to specifically state that it must be an error—

Mr. Réal Ménard: For example, when you talk about error, is it a mistake concerning body temperature? Are you talking about these kinds of errors?

Mr. Greg Yost: As I said, 34°C, is the instrument's temperature, not the body temperature. To be sure that the instrument is operating correctly, it should be at 34°C just before the test is done. However, at 39.9°C, it's close enough to give you the percentage.

Mr. Réal Ménard: So, it could be the breathalyzer—

Mr. Greg Yost: It could be the breathalyzer, yes.

Mr. Réal Ménard: —and it could be drug recognition expert tests. Or is it only breathalyzers?

Mr. Greg Yost: We are talking here about the certificate and alcohol level, so not drug recognition expert tests. We are only talking about—

Mr. Réal Ménard: —breathalyzers.

Mr. Greg Yost: —breathalyzers, yes.

Mr. Réal Ménard: So, it's not because there was a problem with the breathalyzer that the two-beer defence will be allowed.

Mr. Greg Yost: If such a change is proven, it would have to have sufficiently skewed the results so that the individual is at less than 80 mg, and not just be a minor change which would mean that the individual is still at 80 mg.

Mr. Réal Ménard: I think that Mr. Moore would like to add something. I would like him to tell me which witness asked us for this amendment. I forgot the name of the witness who suggested this amendment to you. Unless this comes directly from the office of our wonderful Minister of Justice.

[*English*]

Mr. Rob Moore: On what you asked, Mr. Ménard, about the effect of this, it's not designed to make the bill any tougher. It's designed to take away the absurdity that would be in place—we would throw out an entire well-established body of evidence based on some trivial amount. The intent there is that if it can be shown that there was an error in the accuracy of the device that would result in a reading that would put a person below the legal limit, then by all means, that evidence can be thrown out. But we don't want to see an entire case lost on a very trivial matter on this issue.

[*Translation*]

Mr. Greg Yost: If I may, Mr. Chairman, I would like to add something.

[*English*]

The Chair: Mr. Yost.

[*Translation*]

Mr. Greg Yost: I must tell you that it was the provincial prosecutors, who obviously studied in detail what we are proposing, who drew our attention to this flaw in the legislation. It was not defence lawyers who came to tell us.

Mr. Réal Ménard: I think that we all had understood that.

Mr. Greg Yost: Obviously this comes from the Department of Justice, upon consultation with the provinces regarding the current wording.

[*English*]

The Chair: Thank you, Mr. Yost.

We'll go to Mr. Pruden.

Mr. Hal Pruden: To add to Mr. Yost's response, there was a case, I believe it was in the early 1990s, when St. Pierre went to the Supreme Court of Canada. It was a situation where the person said that the reading was different. It actually still would have been over 80, but it would have been different from what the instrument showed. And in that case, the court said, yes, you have a defence. Subsequently, Parliament amended the legislation so we would take into account that the difference must also show that the person is below 80 milligrams of alcohol.

So this is tracking, in a similar way, trying to avoid that problem.

● (1135)

The Chair: Go ahead, Madam Jennings.

Hon. Marlene Jennings: You're probably aware that I have a motion to amend, LIB-8, which is still there, which also deals with clause 8 of Bill C-32.

My question on LIB-8 is whether LIB-8 would come into contradiction should the government amendment G-4 carry. Would that create a contradiction?

Mr. Greg Yost: I believe there could be a minor conflict. In terms of “calibrated correctly”, those are all those tests. If you had a 33.9 instead of 34 for internal temperature, unless the certificate said it was done correctly, except for this little detail....

And I'm not absolutely certain about the last part of your amendment: “maintained according to the manufacturer's guidelines”. I believe we follow the recommendations of the alcohol test committee as to what should be done for our machines and their maintenance and so on, not the manufacturer's guidelines.

The Chair: Madam Jennings.

Hon. Marlene Jennings: While we're not at my Liberal motion, I need this information in order to determine whether or not I proceed. There is a major criminal trial going on, as we speak, in Quebec. While impaired driving trials, I've been told by criminal experts, normally take a couple of days at the most, this trial has actually been scheduled for 25 days.

The principal issue at hand is the fact that notwithstanding the guidelines about the maintenance of the breathalyzer machines in the police stations, notwithstanding the manufacturer's recommendations as to how to go about maintaining the machines, how to go about ensuring that they're properly calibrated, etc., with the particular police force in question, the defence is attempting to show that in fact the police force does not follow the manufacturer's guidelines in terms of the maintenance and does not follow the guidelines that are established by the committee, that you're talking about.

That's why the defence lawyers are so concerned about the issue of the two-beer defence being removed.

So my concern is that should amendment G-4 carry and my motion not carry, would that mean then that the burden would be on the defence to show that the machine had not been properly maintained according to the guidelines set out by the manufacturer? Or would the burden be on the Crown—because that's the objective of my motion—in the same way as the burden is on the Crown to show that the technician was properly qualified, that the analyst provides a certificate, etc.?

The Chair: Mr. Yost.

Mr. Greg Yost: In the context of a trial, of course, the Crown bears the burden at all times of proving everything. The certificate is a great assistance to the Crown. Very often, perhaps more often now if this gets through, it saves us from having to call the analyst and go through every step. They provide the certificate. There is full disclosure to the defence of what was done.

In this bill, in another part of it, we are allowing for the printout from the machine, and I obviously don't know what could lead to a 25-day trial over something like that. But if the machine prints out everything that was done and it worked right on blank air—there was no alcohol, it worked right on the test—then you have your test. And again, before the next one, it goes through all of those. We will have a situation where, on the printout by the machine, it is shown that it has worked. It did its own internal testing.

I fully suspect that the defence will attempt to find some way to get around that and look for maintenance records, etc. The new machines, in particular, provide the printout that shows that this machine was working before it took your accused's test, and because we do two of them, it will show that it was working in between, when we tested it again on the standard solution.

If the defence wants to attack it, it can make motions, and if it's unhappy with the disclosure, asking for all these maintenance records and manuals, etc., I presume the Crown will oppose these, saying, “What's the point of it? We know the machine is working because the machine tests itself.”

● (1140)

The Chair: Thank you, Mr. Yost.

Madam Jennings, thank you.

The question is on government amendment G-4.

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

The Chair: On government amendment G-5, Mr. Moore.

Mr. Rob Moore: I move government amendment G-5.

We all recall testimony given on the interval between the tests on the approved instrument. Originally the bill reduced the interval to three minutes. The alcohol test committee recommends retaining the 15 minutes. By deleting clauses 32 to 40 on page 8, that is in fact what we will be doing, retaining the 15-minute interval.

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

The Chair: Liberal amendment number 8.

Hon. Marlene Jennings: I move the amendment.

The Chair: Mr. Moore.

Mr. Rob Moore: Yes, I heard a bit about LIB-8 in the earlier discussion on G-4, and Ms. Jennings' rationale for moving it. The government does not support this amendment, because the instrument already automatically produces a certificate and the machines that we have in place now already recalibrate.

Ms. Jennings, I wasn't aware of this case that is supposedly taking 25 days, but we feel this amendment is redundant and that the instruments we have now are already producing the type of material you are seeking.

The Chair: Madam Jennings.

Hon. Marlene Jennings: First of all, I find it interesting that before the mover of the motion has a chance to speak to the motion, the floor is given to someone else.

The Chair: He was given the opportunity, Madam Jennings. I was under the impression you had nothing more to say than what was written on the paper. You have the opportunity now.

Hon. Marlene Jennings: Thank you.

Given that one of the witnesses here, Mr. Yost, has said that LIB-8—which would amend clause 8 by adding on after line 6 on page 13, the text that one finds on page 18 of the amendments that have been distributed—if I understood him correctly, is not really a problem. There's a minor contradiction. He said there might be a minor contradiction, but that in fact the substance of it is not a problem with Bill C-32, does not change the objective substantially of Bill C-32.

I believe this is in fact an amendment that should be supported by the members of this committee. I think it brings a little more clarity to clause 8, and as he said—I'm not putting words in his mouth, he said it himself—it does not change clause 8. It brings a little bit more clarity. It repeats information that's there, and there's one little technical thing. Now, the government may wish to propose a subamendment for the one little technical thing that Mr. Yost mentioned, but I'm amazed that the government is automatically discounting out of hand this particular amendment that's being proposed.

● (1145)

The Chair: Mr. Moore.

Mr. Rob Moore: I see a problem with it in that we're talking about these instruments that a case could be built on. We've heard testimony about the accuracy and the improvements that have been made. Now, Ms. Jennings' amendment would say "is checked for accuracy on a regular basis and has been maintained according to the manufacturer's guidelines". My understanding of what Mr. Yost had said is that sometimes these aren't the guidelines that are in place; there may be more stringent maintenance guidelines that the committee recommends.

So for us to say this...I don't think Ms. Jennings may know the exact impact of her amendment. I don't know the far-reaching impact. But we do know that this body of law on impaired driving takes an inordinate amount of room in the Criminal Code, and this may be opening up problems that we don't foresee. I've pointed out a few of the problems—one, that this is not the practice that's in place right now, "the manufacturer's guidelines".

Mr. Yost, do you have anything to add to that?

The Chair: Mr. Yost.

Mr. Greg Yost: Already in the existing legislation, we have paragraph 258.1(g), which calls for a certificate of a qualified technician stating that the analysis of each of the samples has been made by means of an improved instrument operated by the technician and ascertained by the technician to be in proper working order by means of an alcohol standard identified in the certificate that is suitable for use with an approved instrument. The policy of the laws, probably for 40 years, is that the way you make sure the machine is working properly is to ensure that it works properly on the alcohol standard first. This is now asking for further information.

I don't want it to be said that we're throwing it out of hand, but we've only seen it for about 30 minutes and certainly haven't had an opportunity to discuss—well, maybe two hours—it with our provincial colleagues and the police, etc.

I am concerned that we might run into a problem. I am not a certified technician. I don't know what this is going to mean.

The Chair: Thank you, Mr. Yost.

Mr. Pruden.

Mr. Hal Pruden: As worded, this motion would require that the certificate be prepared and filed.... If, for example, the breath technician were called to give live evidence—viva voce evidence—there's nothing in this amendment that contemplates that situation. Also, the amendment sets out that this is mandatory; otherwise, the breath tests are thrown out and wouldn't even be admissible in evidence. You wouldn't get to that point unless you have the certificate, even if the technician were available to speak viva voce in court. Those are considerations that are of some concern.

Also, the idea of manufacturers' guidelines is a concern. The alcohol test committee of the Canadian Society of Forensic Science, as I understand, has taken a position that these are guidelines. These are best practices that police officers, qualified technicians, would be well advised to follow. If they had followed them in the Quebec case, they wouldn't be in court.

However, the question still arises that the science may be valid and the result may be valid depending on what aspect was not followed in the guidelines set out by the alcohol test committee, or even a manufacturer, for that matter. I imagine that's why they're taking so long in court—25 days—to settle and argue as to whether the particular guidelines that weren't followed were somehow fatal to the science or the reading.

It may well be that they have scientists who appear on both sides. The scientists who uphold the reading will probably say that even though the guidelines weren't completely followed, it's not necessary to follow that particular guideline exactly to get an accurate result. They would have been well advised to do it. We wouldn't be in court if they had.

● (1150)

The Chair: On the question on LIB-8—

Hon. Larry Bagnell: I'm on the speaking list.

The Chair: Oh, I'm sorry. You are. I'm sorry, Mr. Bagnell.

Hon. Larry Bagnell: Mr. Pruden just said the test would be thrown out if this certificate weren't in place. Well, I wouldn't go on an airplane if an inspection hadn't been done, and I don't think we should convict someone if the routine maintenance and inspection haven't been done.

To help Mr. Moore, I'm going to propose a subamendment. Because Mr. Moore suggested there could be other guidelines that could follow, the subamendment would add the words "or any more stringent guidelines subsequently established".

The Chair: Mr. Moore.

Mr. Rob Moore: Mr. Chair, I have a bit of a problem in this area of the law, for us, on the fly, to be.... I mean, with regard to "or any more stringent guidelines", whose determination is it whether it's a more stringent guideline? It's opening up more questions.

I appreciate what Mr. Bagnell is trying to do, but I don't know if that necessarily addresses my concern. You have to bring some evidence as to which is more stringent: the manufacturer's or the committee's guideline. Is the committee's guideline in some way less stringent than the manufacturer's? You could have a problem.

I don't know which is more stringent at this point. Without knowing that, and without consultation with the provinces on this, I couldn't support the amendment.

The Chair: I think we're going into a whole new round of debate here.

Mr. Comartin.

Mr. Joe Comartin: I have a question for Mr. Yost.

Does the existing certificate make reference to the committee, the guidelines, or the procedures?

Mr. Greg Yost: No, it does not. It makes reference to the determination that it was in proper working order. The alcohol standard is the test. We use the alcohol standard to make sure it worked.

Mr. Joe Comartin: Who determines that standard?

Mr. Greg Yost: The alcohol standard is a liquid—I believe it's 10% alcohol—that when heated within the machine should give you a reading of 100. If it doesn't give you that reading, there's something wrong and the tests will not be valid.

Mr. Joe Comartin: I'm sorry. I'm asking who originally determined the alcohol standard?

Mr. Greg Yost: It's actually the Department of Health that takes care of determining the standard solutions, which are used in various ways. So those are certified, as I understand it, by the federal Department of Health.

It's an acceptable standard to use. The manufacturers are all licensed, and all of that sort of stuff. These have numbers on them, so you can check when they were issued and how long they were good for, and all of that kind of stuff.

The Chair: Thank you, Mr. Comartin.

I call the question on Mr. Bagnell's subamendment to L-8.

[*Translation*]

Mr. Réal Ménard: Could he reread the subamendment?

[*English*]

Hon. Larry Bagnell: It reads: "or any more stringent guidelines subsequently established".

(Subamendment negatived)

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Mr. Lee.

● (1155)

Mr. Derek Lee: Before you call the whole clause, I have one question—and I know we are trying to get this done fairly expeditiously.

Subclause 6(6) purports to remove what is called the two-beer defence. I just have one question. Will the removal of this subject of a defence impair the ability of an individual to defend his or her charge if they have been framed in some way? I realize that the two-beer defence is aimed only at the two-beer scenario, but let's say a citizen has been framed, either with respect to their identity or with respect to somebody slipping alcohol—vodka, or something—into something they have consumed, with the advertent purpose of framing the individual, with or without the police being co-opted? I do not know; it's only a hypothetical case I'm offering. Will this provision impair the ability of that citizen to defend himself or herself properly? Will it impair their ability to mount a full and fair defence?

The Chair: Thank you, Mr. Lee.

Mr. Pruden.

Mr. Hal Pruden: I think the easy and quick answer is no. That particular defence will still exist, because the crown prosecutor must show there was a voluntary consumption of alcohol. If they, as the defence, bring in evidence that vodka was slipped into some drink they had and that they were unaware of it, and that's what caused the impairment, they can still bring that evidence forward, because it goes to whether or not they voluntarily consumed the alcohol—or the drug, for that matter.

The Chair: Thank you, Mr. Lee and Mr. Pruden.

Mr. Bagnell.

Hon. Larry Bagnell: I'm sorry, I know we're trying to speed up the bill, but I have to speak at length to this clause as a whole, because the witnesses have suggested this is a precedent that's upsetting in the entire justice system.

Kirk Tousaw from the B.C. Civil Liberties Association certainly found it violated the charter, just to have a machine spit out a piece of paper and the person goes to jail or loses their driver's licence or both. These are very serious consequences for someone. Saying they cannot defend themselves...if you were drawing a parallel with other types of crimes, in all other types of crimes a person can say they're not guilty and give a reason. The judge doesn't have to believe them. I understand there's a problem in the way Ontario courts have interpreted this, and that should be fixed. But I don't think it gives us the right to take away the rights of individuals to suggest innocence.

To draw a parallel, if any one of us were in a bar this afternoon and there was a murder—someone was shot—and we were charged with the murder and we had nothing to do with it, it would be like saying we can't claim we had nothing to do with it, which is exactly some of the defence this takes away.

It doesn't occur anywhere else. And it's not me speaking, I'm not a lawyer, but this is what the witnesses said. Mr. Lee brought up the Seaboyer case, which said: "A law which prevents the trier of fact"—this would be a judge or jury—"from getting at the truth by excluding relevant evidence in the absence of a clear ground of policy or law justifying the exclusion runs afoul of our fundamental conceptions of justice and what constitutes a fair trial" in our society. I think this came up in Regina v. Boucher.

Mark Brayford from the Canadian Council of Criminal Defence Lawyers suggested a very small number of people are charged and found guilty. The problem doesn't exist, so why try it?

There's been an assumption throughout these hearings that there's a huge problem here. The evidence is that there is not a large number of people, when you look at the defence of the particular cases. This is Mark Brayford once again: "...saying you cannot testify that you did not have alcohol to drink as a basis for winning the case will violate both section 7 and paragraph 11(d) of the charter".

One of the reasons I want to get all this on the record is that when this comes up as a charter challenge, I want the judge reviewing the challenge to see what members of the committee were thinking about this particular case.

He also suggested there may be 100,000 cases in this area, and if this goes forward, being unconstitutional, there's going to be chaos in the legal system. He goes on to say, "...to abdicate someone's liberty, if I could put it that way, to an instrument rather than to allow a judge to judge their testimony would be...unfortunate".

As we've heard in other testimony, the instruments are not state of the art; there are problems with them, they're not infallible. To not allow other defences is just not fair, and it's not the type of fairness we see in the criminal justice system. It's like in the old days, in the Middle Ages, when people said they were innocent and the king said no, they couldn't be innocent, and they were not allowed to present their case.

Mr. Rosenthal from the Criminal Lawyers' Association...and I'm sorry, I've never filibustered before, but I'm going to talk out the meeting, just so, I hope, the NDP and the Bloc can reflect on the seriousness of the precedent we're setting in the justice system. And it's not from me, it's from the lawyers.

Mr. Rosenthal from the Criminal Lawyers Association said, “This is a disturbing and unprecedented provision in criminal law.” We're putting forward an irrebuttable presumption. This proposed amendment will take away from the trier of the fact, whether it's a judge or jury, the ability to determine guilt or innocence. A person goes home and has a drink and the police show up.... You're going to erode the presumption of innocence, which as we all agree—I'm sure everyone in this room agrees—is fundamental to our legal system. You're going to convict a lot more people who are innocent.

● (1200)

In due course someone is going to have to clean up the mess of these wrongful convictions. I can't overestimate the seriousness of a wrongful conviction. They are getting a criminal record. You're ruining a person's life. They won't be able to travel, they will have a hard time getting a job, and it will probably lead to a lot of psychological and health problems—

The Chair: I'm going to interrupt you now, Mr. Bagnell. The time has expired, unless the committee desires to move through the rest of the bill.

Some do; some do not.

We have Thursday yet to fill up.

Mr. Dykstra.

Mr. Rick Dykstra: I would seek the committee's indulgence that we sit for another half hour, to 12:30.

The Chair: Is there agreement? Is there consensus?

An hon. member: No.

The Chair: Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, we have been here for nine hours, and some of us have other obligations. We still have five clauses left, and there's no guarantee that we will finish this study. I think that you should a call a committee meeting for tomorrow afternoon. We could then finish what we are doing. It doesn't matter whether we finish today or tomorrow. I think that everyone has worked hard. No one has been guilty of filibustering, and we have even supported a number of the government amendments. I think that it is time to take a break.

[*English*]

The Chair: Tomorrow afternoon has been the suggestion—say, at 12:30.

Mr. Comartin.

Mr. Joe Comartin: Mr. Chair, 12:30 is fine.

The Chair: Are there any other problems?

We finish at 12 o'clock. Why don't we make it one o'clock, then?

[*Translation*]

Mr. Réal Ménard: Why 12:30 p.m. instead of 3:00 p.m.?

[*English*]

The Chair: So 3:30.

Hon. Marlene Jennings: I apologize, but the Liberal women's caucus sits from 12 until 1:30, so caucus is ongoing until 1:30 in the afternoon.

The Chair: Mr. Moore.

Mr. Rob Moore: Practically speaking, just based on what Mr. Bagnell said in the last couple of minutes, we obviously, as a government, want to get this through. We feel that it is an important piece of legislation. It's going to keep Canadians safer and address the whole issue of drug-impaired driving, which is not sufficiently addressed as is. I'd like to see that happen before the summer, but if we're going to come back here, Mr. Bagnell mentioned the Bloc and the NDP being able to think about the whole bill and giving them some time and that's why he talked out the clock—

Hon. Larry Bagnell: The whole clause.

Mr. Rob Moore: I'm just wondering, when we come back, is he going to continue his filibuster throughout the whole two hours tomorrow? That would certainly have an impact on my thoughts on whether we should meet or not.

We have to meet. I agree that we should meet, but it should be to do some work.

● (1205)

The Chair: You have a point there, Mr. Moore. I don't see the advantage of Mr. Bagnell continuing on that discussion, but the committee can bear with it if he does. But we do indeed have to finish off, or at least try to finish off, this bill. It would be nice to set aside, say, one hour tomorrow. I'm trying to get a consensus from the committee as to what time that might be.

Hon. Marlene Jennings: It should be at 3:30.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, the committee should meet tomorrow afternoon at 3:30 p.m. Let's use the time set aside for the legislative committee. I'd like to know what difference it makes if we meet at 12:30 p.m. or at 3:30 p.m. The only time during the week that we have to meet with people, when we're not sitting in committee, is after caucus. What difference does it make? Everyone wants this bill. There has been no systematic obstruction to date. You can thank God, Mr. Chairman, that we have voted in favour of your amendments. I don't see what the problem is.

[*English*]

The Chair: What about 3:30 today?

Mr. Réal Ménard: Tomorrow.

The Chair: Mr. Comartin.

Mr. Joe Comartin: Do I have the floor? Thank you.

Bill C-21 is coming up for debate in the House this afternoon. I assume several of us will want to be there to debate that, and I can't be here tomorrow afternoon after question period. I'm in Montreal as soon after question period as I can leave. So why don't we just do it on Thursday when we are already scheduled?

The Chair: The suggestion has been 3:30 tomorrow.

Mr. Joe Comartin: I can't do 3:30 tomorrow.

The Chair: Mr. Lee.

Mr. Derek Lee: On a strictly technical basis, what we want to be able to do is report this back to the House prior to the summer break, and if we wait until Thursday's meeting, it may be that the House would adjourn prior to our ability to actually introduce it back into the House. By meeting tomorrow, it at least gives us the opportunity to finish and report back to the House and our job is done.

The Chair: Exactly, Mr. Lee. I think that expresses it all on our side as well. So tomorrow it is, at 3:30.

Mr. Bagnell.

Hon. Larry Bagnell: I just want to reply to Mr. Moore.

I'll agree not to filibuster if we can have a serious comment from each party on this major point in the whole criminal justice system of taking away people's rights in this clause by not allowing them this evidence. If every party makes a serious comment on that, then I will not filibuster.

The Chair: It's good that you've made your serious comment already, Mr. Bagnell, so I guess it's just up to the rest of them.

Hon. Marlene Jennings: He did it on an individual basis; he did not speak on behalf of the Liberals.

The Chair: The meeting is adjourned.

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