House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 079 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, June 19, 2007

Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

Tuesday, June 19, 2007

● (1800)

[*English*]

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

I want to thank my colleagues as well as the witnesses for appearing on such short notice to complete our deliberation on clause-by-clause in Bill C-32. It's very much appreciated.

This morning we left off with a completion of our discussion on clause 8. Mr. Bagnell was interrupted because of the time, and I'll just turn to him for a minute or two. I understand he wants to complete his statement.

Hon. Larry Bagnell (Yukon, Lib.): It's a long statement. I'm not going to be very long, but this is the one clause left that is very serious for me, so I just want to wrap up a bit. Then, if each party could make a comment—because it's very serious for me—I'd be happy to go from there.

Basically, my understanding is that there is a problem in Ontario, for instance, with appeal judges and the machine data being thrown out. If the system is not working there, then my view is to try to fix that system, try to put something in that will prevent the two-beers defence, but without throwing out completely people's rights and the ability to bring other evidence and other defences. It's as though you have a king and a prosecutor and a defence person, but the defence lawyer is not allowed to present anything other than that the machine is broken. All the legal witnesses were outraged at that.

My last quote, which I didn't get to this morning, was from Mr. Rosenthal, from the Criminal Lawyers' Association, who said, “It's a very dangerous system where we're going to convict innocent people at the expense of not getting some people convicted”. So I'd just like to quickly make an appeal, first of all to our senators, that when the bill gets there to look at this very carefully, with more time. As Mr. Comartin said, we didn't get time to bring back witnesses on this particular topic. Secondly, I appeal to the judges in the court, when this will come forward to a charter appeal, to have confidence in us as a committee that we would put something through that would lead to so many charter appeals.

I would further appeal to the NDP and Bloc, who have always been champions of rights and fair trials. I would appeal to the Conservatives, who want, as we all do, to get more convictions for drug offences, even though the witnesses said this is going to tie up the courts immeasurably, going to slow them down, make it much harder, actually, to get the types of convictions and progress we want.

Just to members as a whole, I would say it is our job as parliamentarians to try to hold up both sides and make sure people have the right to at least present a defence. They can say “I didn't commit a murder”, and the judge doesn't have to believe them. They can say “I didn't drink alcohol”, and he doesn't have to believe them, but at least they should still have the ability to present that type of evidence.

I'd be happy to hear from the other parties. I will be asking for a roll-call vote just because I think we're making a decision as to whether or not to put innocent people in jail. I'd also like to hear from the Department of Justice, unless people from any of the parties can convince me otherwise.

● (1805)

The Chair: Thank you, Mr. Bagnell.

Now I will ask if there are any responses from the other parties.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I wish to speak to this issue. I will be very brief, but I do wish to speak to this.

The Chair: Okay, speak to it, but Mr. Moore is next on the list. I just wanted to let you speak to it so we can have the Liberal Party conclude their statement. No?

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I'm happy to listen to my colleague.

Hon. Marlene Jennings: I would simply like to read out a section of an e-mail, which was sent by Mr. Richard Prihoda on June 19, 2007, at 9:28 a.m. to Hanger, Art, MP, with c.c.'s to Justice and Human Rights, and it lists the members of this committee, including me. It says:

> M. Hanger:
>
> I am addressing you the present note as president of the committee on the hearings on the amendments to the Criminal Code...regarding impaired driving infractions.
>
> I am a practicing attorney in the Montréal area for close to twenty years and am a member of the Association des Avocats de Défense de Montréal (AADM) and was told that....

I will skip a couple of paragraphs. It says:

> Our Supreme Court has many years ago ruled on the presumptions which presently appear in our Criminal Code. They decided that they are a violation of the Canadians' Charter rights, but that they are nonetheless justified as an acceptable limit in a free and democratic society because of the possibility for an accused to present "proof to the contrary" in order to rebut these presumptions.
>
> [Bill] C-32 takes the possibility of presenting "proof to the contrary" away from someone facing prosecution of impaired driving offences and thus, we believe contravenes the presumption of innocence and is not an acceptable limit in a free and democratic society.
>
> The second and equally important concern that we would have wished your committee to be aware of is the situation regarding the maintenance of the equipment (breath test equipment) used by police forces across the country following the arrests of Canadian citizens suspected of driving under the influence of alcohol.
>
> As you may be aware, there is presently no regulation regarding the repair and maintenance of this equipment, and the provinces and the individual police forces across the country are left to decide for themselves the nature of this maintenance.
>
> We have recently discovered that the Montréal Police Force does no preventative maintenance of their Intoxilyzer 5000Cs.
>
> The reality is that the Montréal Police Force does not even follow the recommendations of the manufacturer (CMI) regarding the initial setup of the Intoxilyzer 5000C, nor do they follow the recommendation of the Alcohol test committee regarding an acceptable breath test program.
>
> It can therefore be said that the equipment used by the Montréal Police Force do not respect the scientific norms in order to assure precise and accurate readings of individuals' blood alcohol levels. We fear that this situation can also be said for police forces across the country.
>
> Therefore if C-32 were to be adopted in its present form Parliament would thus be permitting individual Canadians to be found guilty, without the possibility to present "proof to the contrary", and all this based on the results of equipment which can not be considered to be scientifically precise and accurate.
>
> The AADM, several recognized scientific experts in the field, as well as the undersigned have grave concerns regarding [Bill] C-32 and were preparing to submit these to you this coming fall.

I'll end it there.

The Chair: Thank you, Madam Jennings.

It should be noted, too, in reference to the comments made by someone who I gather is an individual lawyer, that there is no opportunity for rebuttal by the Montreal Police Department to say one thing or another in reference to those comments. I think the committee should be keeping that in mind as well.

Mr. Moore.

● (1810)

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

I appreciate Mr. Bagnell's concern.

I would say to you that, first of all, as with any piece of legislation, a thorough charter analysis is done of the legislation before it's ever presented in the House. The Minister of Justice has to be satisfied that the piece of legislation is in keeping with the charter.

Now, the reforms proposed in this bill with respect to evidence to the contrary do not prevent a judge from assessing relevant evidence. Mr. Bagnell has mentioned a couple of times that you blow into something and you're guilty. Well, no, that's not how it works. They do not prevent a judge from assessing relevant evidence. They're designed to ensure that the judge considers the evidence—the BAC produced by the approved instrument analysis. That is the only scientifically valid evidence on the central issue before the court. That central issue is whether or not the person's blood alcohol concentration is over 80.

It must be remembered also that the over 80 offence is unique in the Criminal Code. There have been attempts to draw analogies—I think we've all done that—but the fact is that the over 80 offence is unique. It's the only offence in the code that is based on a substance being present in a person's body above a permissible concentration. Parliament established in 1969 the offence of being over 80, on the basis that at that level of BAC, the general population of drivers had a significantly elevated risk of collision. Therefore, when it established the offence, Parliament recognized that it was going to be necessary to analyze a bodily substance such as breath or blood to prove BAC.

We heard evidence that we're at the point where they're getting very accurate readings. But we also heard, and this is the problem we're seeking to address in this bill, that in recent decades, drivers charged with impaired driving were able to avoid conviction for being over 80 by calling on witnesses. These witnesses, we have to remember, and we heard testimony to this effect, are their buddies, their friends. These friends and acquaintances and family members perhaps give sworn testimony that the accused drank small amounts of alcohol, only two beers—that's where the defence got its name, although it could be one beer, two beers—which would not be enough to make their BAC over 80.

Time and time again, we heard evidence at this committee that these buddies are called to give testimony that, no, Joe only had....

Sorry, Joe. I was going to use a name that wasn't at the committee.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): A point of privilege, Mr. Speaker.

Some hon. members: Oh, oh!

Mr. Rob Moore: Okay, so Rob had only two beers.

Not surprisingly, defence lawyers have seized this opportunity to get their otherwise guilty clients off the hook. This defence has become a recurring useful defence. I would see it, as I think the majority of the witnesses who appeared in support of the bill would see it, as a loophole. It's recognized by the police, recognized by crown attorneys, and recognized by prosecutors as a loophole to get people who are otherwise guilty, people who in fact have a blood alcohol level of over 80, off the hook.

Many witnesses also discussed the fact that these approved instruments are an effective and accurate method used to determine the BAC of an individual. In spite of what Ms. Jennings just said, I don't think anyone is actually realistically challenging that the BAC devices we have now are somehow flawed or inaccurate. I think we heard testimony that they're tremendously accurate. But we undermine the instruments and we undermine the readings and allow an individual to present witnesses who are their buddies and friends to contradict the results.

It's important to mention, and I say this to Mr. Bagnell, that we're not in any way eliminating all defences possible to the accused. The person can present evidence to challenge the results, which can include evidence that the machine was not functioning properly or was not operated properly.

We must also remember that although an individual has the right to a defence, we cannot allow loopholes that are well exploited in our system to continue to be exploited. And that's what this has become. It has made a farce, I believe, of our system. We all know that a disproportionate amount of the Criminal Code is taken up by the impaired driving sections. This is a loophole that really does have to be closed. It's allowing people who are in fact over 80 to get off the hook.

So I'll close with those remarks. I think it is fair. I think it's not in violation of the charter. Of course, the protections under the charter are an umbrella under everything we do. The accused continue to have all of those protections under our charter.

I hope that alleviates some of Mr. Bagnell's concerns.

● (1815)

The Chair: Thank you, Mr. Moore.

I will turn now to Mr. Ménard.

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

The Chair: Yes, Mr. Comartin.

Mr. Joe Comartin: I wonder if Mr. Ménard would defer to me and let me go first. I have to get back to the House, and I'm probably going to need about five minutes to give my presentation to respond to—

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): On the condition that the NDP agrees to an adjournment tomorrow!

Mr. Joe Comartin: I cannot do that.

Mr. Réal Ménard: Yes, yes!

Mr. Joe Comartin: Perhaps the chair could do it.

Mr. Réal Ménard: I will give him the floor with pleasure.

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

[*English*]

The Chair: Mr. Comartin, go ahead.

Mr. Joe Comartin: I just want to concentrate on Mr. Bagnell's repeated expressions of concern—and I don't like thinking Mr. Moore and I are in the same boat, but I think we are on this one—with regard to all the defences being brought forth and eliminated by what we're proposing to do with these amendments to the code.

That's not what's happening. What we're really doing is getting rid of a made-up defence. And I say that with all sincerity, watching the breathalyzer being introduced into our criminal justice system a long time ago and watching this defence being slowly created. It wasn't there at the beginning. It started showing up about 15 years ago. It probably started being broadly used about 10 years ago.

I want to be very clear on this. I've gotten this from judges, directly from judges, that they do not have a way of countering this by determining the credibility of the witness. Perhaps I'll just go through the sequence. It's probably the easiest way to explain this.

Here's what happens. The breathalyzer evidence goes in. You identify the accused and everything else the crown is required to do. The accused then gets on the stand and says, “I only had two beers.” More people on the stand say, “We saw him only have two beers.” The breathalyzer expert for the defence puts evidence in from a technical nature and says, “Well, if he only had two beers, the breathalyzer is wrong.” And I'm speaking almost entirely from Ontario here, because I haven't looked at cases elsewhere in the country, although I believe the same thing is happening there.

So that's the evidence the judge has in front of him. Let's say the judge at that point says, “I don't believe you, I'm rejecting your evidence, you're convicted.” The defence appeals. It goes to the Ontario court of appeal. The court says to the judge, “You have no basis for rejecting that evidence. The crown didn't put any contrary evidence in.”

Okay. So you put the crown evidence in, you put the rebuttal evidence in, and then the crown has no ability to respond; they didn't have any witnesses at the bar or the place where the alcohol was consumed. So there's no way of rebutting the defence evidence that's gone in, even though the judge says, “Look, I watched the demeanour of the accused on the stand, and I didn't believe him,” all the standard things that judges do when they're rejecting the evidence. Judges have said to me, “I didn't believe him, I didn't believe his witnesses, but the court of appeal said I had to accept the evidence because the crown couldn't put any contrary evidence in.”

That's really what we're doing away with in this amendment, and I strongly support it. I am concerned about the issue raised over the adequacy of the maintenance and the quality of the testing. I think that needs to be explored. I'm sorry that the amendment from the Liberals in that regard didn't go through this morning, because I think that would have addressed certainly a concern that I continue to have. It's just something that the justice department is going to have to look at more closely.

Thank you, Mr. Chair.

Again, Monsieur Ménard, merci.

The Chair: Thank you, Mr. Comartin.

Monsieur Ménard.

[*Translation*]

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

First of all, I want to say that we in the Bloc Québécois have asked ourselves the question too. Clearly, depriving an accused of an avenue of defence is worrisome; there is no doubt about that. Mr. Bagnell is right to raise that point. At the same time, we start from the principle that when a brief is presented to cabinet, the minister must sign it. The signature attests to legal opinions stating that the document complies with guaranteed rights, especially legal guarantees, and that it would withstand a legal challenge. Of course, it has happened that a minister has signed cabinet briefs but the government then loses court challenges

That said, I would like to ask two quick questions. To your knowledge, are there common law jurisdictions similar to Canada where this kind of two-beer defence is permitted? I am not thinking of places inside Canada, of course, but other comparable countries—like Australia, New Zealand or places like that—where a defence of that kind is allowed. Basically, the government is claiming that there are people who ought to be convicted but who have not been because of this defence which, in addition, they are calling a loophole. Do we know the approximate extent of this in Canada, without the need for scientific data?

Mr. Chair, I am saying that we will be supporting this clause anyway. The Bloc Québécois has discussed the clause—you know that we discuss things and are a highly democratic party—and we have concluded that we must support this clause.

● (1820)

[*English*]

The Chair: Mr. Yost.

[*Translation*]

Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice): With your permission, Mr. Speaker.

In developing the changes before you, we initially sought guidance in legislation in other countries, specifically Australia and New Zealand. In those countries, the two-beer defence is not possible, but this is because people are told that, if they want to contest the breathalyzer record, they must have a blood test. They are told that they can find someone and, if they come back with a different result, they can use it. This is not very practical for the defence. We therefore expressed our legal opinion that an impractical tool had no place in the Criminal Code of Canada. I know that the two-beer defence is not allowed in those countries, but, in our view, the underlying basis for disallowing it is incompatible with the methods we use in Canada.

One of the toxicologists whom we consulted was a former president of their organization. He now teaches at the University of Michigan. He has told me several times that, in the United States, no one could use the two-beer defence, and that you had to find someone to claim that the machine was defective. I cannot tell you that I have examined the legislation and the case law of all 50 states. But I know that in Great Britain, you cannot use the two-beer defence because everything is based on a blood test. This is the situation in other countries as I understand it.

Mr. Réal Ménard: Looking at those who have gotten away with it in Canada, what is the extent of the problem?

Mr. Greg Yost: It varies. It seemed to me that the situation was worse in Ontario than in several other provinces, but complaints have been raised in all provinces. But I have to tell you that the Alberta representative on our committee said that it was not really a problem in that province and the judges there never accepted testimony of that kind. I do not know why. Perhaps their court of appeal is much more...

Mr. Réal Ménard: In Ontario?

Mr. Greg Yost: No, in Alberta. Perhaps the Alberta Court of Appeal considers scientific evidence much more favourably than the Court of Appeal for Ontario. All provinces, with perhaps Alberta as the exception, have complained about the problem. As to the extent, it is a little hard to say. The evidence is always anecdotal. Some Ontario representatives on our committee work in the Crown Law Office. They handle all the appeals, and they have told us that in Toronto these days, 50% of cases of this kind use the two-beer defence.

● (1825)

Mr. Réal Ménard: Wine is certainly cheaper in Ontario, but far be it from us to draw conclusions that could be premature.

[*English*]

The Chair: Thank you, Mr. Ménard.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): My question was along the same line.

Just following up on that, you say it's half the defences in Ontario. That leaves it pregnant for me to ask how many of those are successful.

In other words, Mr. Moore would have us believe this is rampant. I've missed some of the *témoignages*, but I understand from Mr. Lee that we didn't actually have the answer to how many successful two-beer defences there were among all of the charges. And maybe we don't have that step, but what's the general sense here? How many cases are we talking about where this is really a problem?

I'm not against what you say, Mr. Moore. I agree with what you're saying. I just want to have a little more precision as to what quantity we're talking about so that when this soapbox summer comes around, we're not going around saying that the sky is no longer falling, we have saved the world, and the streets are all safe in rural New Brunswick.

The Chair: Mr. Pruden.

Mr. Hal Pruden (Counsel, Criminal Law Policy Section, Department of Justice): Mr. Chair, in answer to the question that has been posed, I would make this observation that has come to us from forensic scientists who work on the alcohol test committee, and that comes to us as well from police officers. That is this: if one were to believe from the number of two-drink defences that arise in the courts across this country that the number really is valid—and this defence is raised in a huge number of cases, according to them—then we have a situation in which the operator error by the qualified breath technician or the machine inoperability—meaning that the machines aren't in good working order—is epidemic in this country.

These officers and these forensic scientists tell us this is just not the case. In their estimation, the two-drink defence is the most prevalent defence used in an “over 80” case.

For argument's sake, 60% of the time that people plead guilty, maybe 5% of charges are withdrawn for whatever reason before trial; so if another—whatever that leaves—35% are going to trial, the majority of those cases are going on a two-drink defence.

Mr. Brian Murphy: You said 50%.

Mr. Hal Pruden: Well, no. I'm saying that 35% of all charges under subsection 253(b) are going to trial. So the ones that go to trial are the ones in which the defence, most of the time, is the two-drink defence. It's a significant number. It's in the thousands.

The Chair: Mr. Yost.

Mr. Greg Yost: I was just going to add to what Mr. Pruden said. We must remember that the double charge may very well have been laid—the impaired driving and the "over 80". And if the crown has very good evidence of erratic driving and all—the smell of alcohol, the bloodshot eyes, the person is falling down drunk—and they've got a BAC of 0.22, it's highly unlikely that anybody is going to take a shot at this defence. So those would be circumstances in which there is likely to be a guilty plea to one or the other of the offences.

But where the evidence on the impaired driving is not as high—through a RIDE program or something like that—the defence is, in all likelihood, going to be the two-beer defence.

The Chair: Thank you, Mr. Murphy.

Mr. Lee.

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

I would say this is probably about as close as we're ever going to get to that envelope of charter acceptability. My gut is telling me this.

So I'm going to ask a question to Mr. Moore. The section attempts to package procedurally one of the guilt and innocence battlegrounds that's present out there in the battle against the drinking driver. I have an obligation to take note of that ongoing battle—and the battle is ongoing. We're not by any means close to where we want to be. And I hope the court will take note of that as well.

We're not likely to make progress here unless we take risks. Simon de Montfort took risks. He was the first person to invite commoners into Parliament, and six months later he was dead and cut up into six pieces: food for thought, Mr. Moore, or Mr. Bagnell, for that matter.

In any event, I want to ask the question. And I know that before a bill is introduced into the House, the Attorney General signs off that it is charter-compliant. I want to ask Mr. Moore to confirm or the department to confirm that the Attorney General at the time this bill was introduced in Parliament did sign off that the bill in all its components was charter-compliant.

And I also want to ask if there is any comment with respect to charter compliance that would otherwise be public. I realize that advice to a minister isn't always public, but I just want to ask that and confirm that before I finally make up my mind on this amendment.

● (1830)

The Chair: Mr. Yost.

Mr. Greg Yost: I was just checking with Ms. Kane, because she's above me in the hierarchy. The minister would have to advise cabinet if a bill was not charter-compliant.

I do know, though, that the previous minister signed off on the memorandum to cabinet, which includes a section on charter compliance. It said it was charter-compliant and assured cabinet that it was. There was perhaps not a certificate, but it happened.

Mr. Derek Lee: I guess that answers my question.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Lee.

A recorded vote on clause 8 is requested.

(Clause 8 as amended agreed to: yeas 9; nays 2)

(Clause 9 agreed to)

(On clause 10)

The Chair: On Bloc motion BQ-4, Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chair, you will recall that we withdrew clause 2 that dealt with the presence of drugs in a vehicle. When we had this amendment drafted, which other parties supported as well, there were other clauses in the bill, if memory serves, which referred to provisions in clause 2 that had been removed.

In the light of what our legislative drafters have prepared, it is my understanding that the amendments would be consequential. I imagine that all members who voted in favour of changing clause 2 will vote in favour of the consequential amendments.

[*English*]

The Chair: Mr. Moore.

Mr. Rob Moore: I believe it's a consequential amendment, then, to what was already done. It makes sense to me that....

An hon. member: Let's vote.

The Chair: The question is on Bloc amendment BQ-4.

Mr. Moore.

Mr. Rob Moore: Mr. Ménard said it was consequential, and I agree that a portion of it is consequential to the amendment we already made, but does it go beyond? I see it's replacing lines 18 to 22 and then deleting lines 13 to 21. I just want to make sure it doesn't go beyond what is consequential.

● (1835)

The Chair: Madam Jennings.

Hon. Marlene Jennings: Just for clarification, Mr. Ménard says this is consequential to clause 2. But clause 2 was defeated. Is this consequential to the fact that clause 2 is no longer part of Bill C-32?

The Chair: That's what we're trying to determine, just how far it goes.

Mr. Rob Moore: That's what...because we want to be doubly sure here.

I agree that part of it is, but I just want to make sure it doesn't go beyond what is necessarily consequential.

Mr. Greg Yost: The heading would have to be adjusted. I'm not sure that's been done.

So proposed subsection 259(1).... Right; sorry, this is the wording we have in the code now. It's there. No need to replace it in this act with the very same words. So I would suggest it's fine.

The Chair: Then I will take the vote on amendment BQ-4.

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

(Clause 10 as amended agreed to)

(On clause 11)

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Can you pass clauses 11, 12, 13 and 14 at the same time? No?

[*English*]

The Chair: No, we have something in between.

(Clause 11 agreed to on division)

The Chair: We have a new clause pertaining to amendment Lib-10, clause 11.1.

Mr. Bagnell.

Hon. Larry Bagnell: I just took a standard clause we put in other legislation that was somewhat controversial, so that there would be a review.

I'm not set on the nature or the details of the motion. I just took a motion section from another act so that it would at least be legal, and because we've had a long discussion today about things that we think are potentially controversial. We have placed a lot more onus on a machine which, according to the evidence we had this afternoon, wasn't even maintained properly, according to schedule, and which cannot even be videotaped. I think there's a lot of potential.

A number of the witnesses—people who are practising in the courts every day—said that there are all sorts of problems that are going to be raised because of this bill. I'm not always in favour of reviews of a bill, but I think within five years we can revisit it and see if it is actually—Of course we have the DRE, the whole drug thing, which in itself is a new type of mechanism to solve the problem that we want to solve. All these things raise a lot of questions among the witnesses. I think we should review it to see how it's working out.

The Chair: Mr. Ménard, the question has been put. You're on the list.

[*Translation*]

Mr. Réal Ménard: I have two questions.

First of all, I congratulate Mr. Bagnell because we should increasingly get into the habit of reviewing legislation—we did so for reproductive technologies. Mr. Chair, you are aware that your government has appointed extremely conservative people to the new Assisted Human Reproduction Agency of Canada, but clearly that is a debate for another day.

My question is as follows: are we studying the act only or the act and the regulations? The regulations are quite important, especially for training. When I was health critic, we studied the act and the regulations on tobacco, for example. In some pieces of legislation, the regulations are just as important as the act. I wonder if this committee would accept an amendment to this clause so that it refers to the act and the associated regulations. We could discuss it. Is it desirable to look at the regulations as well? On two or three occasions, we have referred to the regulations, particularly for the reproductive technologies and training. I put that before the committee for consideration, and before the mover, of course.

● (1840)

[*English*]

The Chair: If I may point out, Mr. Bagnell is asking for a comprehensive review of its provisions and the effect of its implementation. Would that not include the regulations?

[*Translation*]

Mr. Réal Ménard: Correct. I am asking if we should not include the regulations. I am just asking the question. I have not moved an amendment yet, but I would be happy to hear what my colleagues have to say on the matter.

[*English*]

The Chair: Mr. Moore.

Mr. Rob Moore: I think, Mr. Chair, you're correct regarding the provisions and the effect of its implementation. To me, that's a broad look at how the changes that we've made are playing out and how they are working.

I'm prepared to support Mr. Bagnell's amendment as it is. Obviously, we'd want to study the impact of these changes, and we'd include anything that we could contemplate that's relative.

The Chair: Thank you, Mr. Moore.

I believe the scrutiny of regulations committee also has a review of all regulations pertaining to any legislation.

Mr. Lee, you're on the list.

Mr. Derek Lee: I haven't thought this through. I'm in favour of the proposal, but I wouldn't want the wording we select now to obstruct the committee in looking at the whole impaired driving, drunk driving, "over 80", drug-impaired driving package just because we didn't cover something in particular in this bill, although we seem to have covered quite a bit in the bill.

If there were other wording—This particular amendment refers to the comprehensive review of what we legislated in this act, whereas the whole drunk driving, drug-impaired driving piece is bigger than just this act. If we're going to look at it, we might as well look at the whole policy window rather than just this act. We may unnecessarily constrain the committee that's looking at it. I wouldn't want to tie their hands.

How would it be if I were to propose a friendly amendment that would refer to this act and its associated provisions in the Criminal Code?

The Chair: There is a subamendment on the floor that would basically state, on the fourth line down, "this Act and all associated provisions"—

Mr. Derek Lee: In the Criminal Code.

The Chair: —"in the Criminal Code...".

The location of that particular subamendment may not be the best.

Mr. Derek Lee: I'll withdraw it, then.

The Chair: You withdraw?

Mr. Derek Lee: I'll withdraw the amendment.

The Chair: Okay.

Mr. Petit.

Mr. Daniel Petit: No, it's okay.

The Chair: The question is on the subamendment.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Just for information, and without committing ourselves to anything in the future, could you see if it is the will of the committee to include the regulations? I know that a special committee reviews all regulations. But since it looks at them all, it does so very quickly, not to say superficially. If the committee feels that we should not review the regulations, I will respect its opinion. If not, I am going to propose a subamendment, but the mover would have to be in agreement.

[*English*]

The Chair: Mr. Yost, can you comment in reference to Mr. Ménard's concern?

Mr. Greg Yost: Well, practically, I think the committee would in due course insist that it would look at the regulations.

It has been a few years since I was a legislative drafter in Manitoba, but if the wording were "a comprehensive review of the provisions of the Criminal Code with respect to impaired driving, including any regulations under the Criminal Code with respect thereto", I can't see why we would object to that. If you want to put the regulations in, that's fine. My view is that they would be there anyhow, but make a specific mention of it.

● (1845)

The Chair: Can we do that through a friendly amendment?

Mr. Greg Yost: I can't move amendments.

[*Translation*]

Mr. Réal Ménard: I will move the amendment.

[*English*]

Mr. Greg Yost: I can just put wording on it.

The Chair: Monsieur Ménard, would you like to move that friendly amendment?

[*Translation*]

Mr. Réal Ménard: Yes. I will move the exact amendment that Mr —

[*English*]

The Chair: Mr. Yost, could you repeat that, please?

Mr. Greg Yost: It would start with "a comprehensive review of the provisions of the Criminal Code with respect to impaired driving, including any regulations related thereto"—

The Chair: And then it would continue, "and the effect of its implementation"—

Mr. Greg Yost: —"and shall, within six months after the review is undertaken, submit a report—".

The Chair: Okay.

Now, the question is on—

Mr. Daniel Petit: The subamendment.

The Chair: The subamendment.

Thank you, Mr. Petit.

Mr. Rick Dykstra (St. Catharines, CPC): The double subamendment.

The Chair: The question is on the subamendment.

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

(New clause 11.1 as amended agreed to) [See *Minutes of Proceedings*]

(On clause 12)

The Chair: Shall clause 12 carry?

Hon. Marlene Jennings: May I suggest, Mr. Chair, given that there are no amendments to clauses 13, 14, and 15, that you see if there's unanimous consent to deal with them at the same time?

The Chair: Is there unanimous consent to deal with the next four?

Some hon. members: Agreed.

The Chair: There is unanimous consent.

(Clauses 12 to 15 inclusive agreed to)

The Chair: Now we have amendment BQ-5, pertaining to clause 16.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Once more according to our legal advisors, this is part of the consequential process that we started when we removed clause 2 from the bill.

[*English*]

The Chair: Are there any other comments?

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: No. It is a consequential amendment as a result of clause 2.

[*English*]

The Chair: Mr. Yost.

Mr. Greg Yost: That's fine.

The Chair: There's agreement? Okay.

We are voting now on amendment BQ-5.

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

(Clause 16 as amended agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

An hon. member: On division.

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

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: You have successfully moved this piece of legislation through, and I want to thank the committee members for staying late to get that accomplished. It will now be reported to the House.

Is there a motion for adjournment?

An hon. member: I so move.

The Chair: The meeting is adjourned.

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

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

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