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Thursday, November 1, 2007

Chair

Mr. Rick Dykstra

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● (0910)

[*English*]

The Chair (Mr. Rick Dykstra (St. Catharines, CPC)): I'm going to call this meeting to order.

Pursuant to the order of reference of October 26, the committee will now resume its study of Bill C-2.

I know that Mr. Ménard advised me just prior to the start of the meeting that he has a point of order that he would like to make.

[*Translation*]

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

[*English*]

An hon. member: [*Inaudible—Editor*].

Mr. Réal Ménard: I don't want to rush you. I know you are very sensitive.

An hon. member: [*Inaudible—Editor*].

Mr. Réal Ménard: No, don't go slow. Don't push your luck.

[*Translation*]

I'm somewhat disheartened, Mr. Chairman. I appreciate that you are new to this position and that you want to serve the committee well. However, you have to understand that you cannot tell colleagues that the committee is not sitting at 5:30 p.m., and then turn around and call a meeting for 7 p.m., and again for 9 a.m. the following day. Members had already rearranged their schedules. Two colleagues who normally would be in attendance are not here.

In my opinion, it would have been preferable for us to rearrange our schedule and prolong the meeting. I respectfully submit that members need a minimum amount of lead time to rearrange their agendas when the need to do so arises, and it is not your prerogative to randomly ask them to do so.

The witnesses are here. I know that there was no bad faith on your part, but when members are informed that the committee will not be meeting at 5:30 p.m., you cannot turn around and call a meeting for 7 p.m. The witnesses took the trouble of coming here. I hope this does not become a habit. Out of three scheduled committee meetings, two have already been rescheduled. We are prepared to work with the government, but we expect to be treated with a modicum of respect.

I realize that you are new to this job and that you are eager to learn the ropes. We will let it go this time, even though proper procedure wasn't followed. I will not table a motion to adjourn, even though we would have liked to see things proceed differently.

[*English*]

The Chair: Mr. Bagnell, on the same point of order.

Hon. Larry Bagnell (Yukon, Lib.): Yes. I agree with the point generally. In fact, I found out because I ran into you in the hall this morning, but I would say that in an emergency situation, I like things to move. Perhaps the clerk can call members on their cell phones and get agreement that way, but there's no way that a lot of us would have been in our office at nine o'clock even to find out about this. All of us have a BlackBerry or cell phone, and in an emergency like this I would be happy to come if I actually knew. We can't know through an e-mail to our office, because our offices aren't necessarily open that quickly, so to me it would be an acceptable alternative in such emergency situations to make things go and make it easy for the witnesses.

The Chair: Thank you.

Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Chair.

I have to say that I agree with Mr. Ménard on the point that he's raised. I think I can safely speak on behalf of my Liberal colleagues when I say that we do appreciate the efforts to try to make this committee work smoothly and to get through the work that we have all agreed needs to be done on Bill C-2 in order to properly report back to the House as per the instructions of the motion.

So I would suggest, as my colleague Mr. Bagnell has done, that those of us who are prepared to provide our cell phone numbers to the clerk do so, and that those of us who are also prepared to provide our personal BlackBerry e-mail address do so. I would also suggest that in future, prior to a notice being sent out, the members be contacted to see if they would be available. If there are enough members so that we have quorum, then accordingly a notice could be sent out. Members would be called and BlackBerried to let them know that this was happening.

I had made other plans for this morning, and luckily my assistant actually went into our office e-mail account yesterday evening fairly late, saw the notice, and immediately BlackBerried me so that this morning when I got up and checked my e-mail, I saw that—oh, my God—we were going to be meeting at nine o'clock. Then I had to scramble to change my agenda in order to be here.

So the process needs to be worked on a little bit, because I know everyone here is of good faith, we do want to get through this, and we want to do it in a proper fashion so that nobody feels as though we're being *bousculé*.

[*Translation*]

I don't know the word in English.

[*English*]

I appreciate the efforts you're making to try to get the committee to work well together.

The Chair: Thank you.

Mr. Keddy.

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): Not to belabour this, Mr. Chair, so that we get on with our business of the day, I think Mr. Ménard's point is a good point. Perhaps we can all give our cell numbers to the clerk. However, I would also want to bring up the point to the Liberal members, and to all the opposition members, that we do have a timeframe on this bill. This is not an ordinary committee. It's a legislative committee. It doesn't work like ordinary committees work. We also have to take into consideration the return date of November 22. We have a very narrow window of time. Everyone is aware of that.

Certainly, Mr. Chair, we also as parliamentarians have a responsibility to our witnesses. At the last meeting, you said you would try to get witnesses if you could. Obviously you were able to arrange for the witnesses, and therefore we're meeting.

Mr. Ménard's point is a good point, and I would say we simply follow that. But if you have to change the time, I think you have to have leeway to change that time. It's our job to either be here or to have someone replace us.

● (0915)

[*Translation*]

Mr. Réal Ménard: No. You have to understand that you are not at liberty to reschedule meetings, unless an emergency arises. If you do so, you will not get the opposition's cooperation. This needs to be made clear. If an emergency arises, you can reschedule a meeting. Otherwise, you cannot do that and convene a meeting on 20 minutes' notice. We appreciate that you are new to the job. Therefore, I suggest we get the meeting under way, but understand that this is the last time we will accept a scenario like this.

[*English*]

The Chair: I want to thank all members for their input this morning, and I certainly appreciate the way in which it was delivered.

I will in fact make the commitment to folks that, number one, if we can get cellphone numbers from any individuals, those numbers will belong to just the clerk. In fact, I won't even have them. They will be with the clerk.

The point I will make is simply this. The clerk and I are quickly becoming fast friends, because we're speaking on an almost hourly basis to ensure that we can deliver our meetings to the committee in obviously as professional a manner as we can and to make sure that we have quality witnesses, as we do this morning. We did contact folks by e-mail last evening, and in fact also by phone to offices. I know that all of you didn't necessarily get those messages. Mr. Comartin isn't here this morning, and I obviously will endeavour to listen to what he has to say as well.

I do make the commitment to you that, in future, if we do have a change, as we did yesterday, we will contact you directly, not just to inform you about the decision but to find out if it works for you. But I appreciate the comments and the vein they were delivered in.

I would like to get started. We have a couple of witnesses this morning and they have come from different parts of the province.

I certainly want to welcome both Mr. Muise and Mr. Cooper this morning.

As you are the first outside witnesses we've had presenting, I want to quickly outline the procedure. You'll both have ten minutes to deliver your opening remarks. The process we will work with then is that there will be a round of questioning. We have an order that we will go through. The first round of questioning will be seven minutes in length. The second round and the following rounds will be five minutes in length.

I'll try to give you a little bit of a wave when you get close to the ten minutes. I'll also give you a similar-type indication in the seven- and five-minute rounds so that you will be able to finish your comments.

I know that the committee asked me, when we started to put together the committee and the process we were going to use, that we try to keep as strictly to those timeframes as we can. I'll ask all committee members to do likewise, and that when I do look over and make mention of time, we try to stick to that. We're going to try to accommodate everyone and give everyone the opportunity to ask specific questions.

With that, I'd like to turn it over to Mr. Cooper to begin, with Mr. Muise to follow.

Mr. Terrance Cooper (Assistant Crown Attorney, Counsel to the Director of Crown Operations - East Region, Ontario Ministry of the Attorney General): Good morning, everyone.

My name is Terry Cooper. I am currently counsel to the director of crown operations for the east region, Province of Ontario, Ministry of the Attorney General.

I began my career in the administration of criminal justice as a police officer in 1975, which I continued for about seven years in the city of Kingston. After seven years of continuing post-secondary education, I resumed at a lower salary as a crown attorney for the Province of Ontario, and I've been there ever since.

For the last five years, I've been immersed in dealing with part XXIV of the Criminal Code, regarding dangerous offenders and long-term offenders. At the moment, I manage approximately 32 cases that are outstanding in the east region of Ontario. That's the ten crown attorneys' offices from Belleville and Picton to Pembroke to the Quebec border. One crown attorney in the Perth office, for example, has three of these cases pending herself, so these have come a long way from what we used to have when I began my career in the crown attorney system in 1990.

I am not here as a representative of the Ministry of the Attorney General per se. I am not here to comment on policies from my minister's perspective. I am here as a practitioner who has been involved in many of these cases at every conceivable level, and I have a great deal of experience where the rubber hits the road, so to speak, on how to manage these cases. I would like to share with the committee the practical process involved in assembling a case for a part XXIV application, because it might not be what you think. Indeed, in every part XXIV hearing, I make opening remarks to the court to explain the process in some detail, and even judges who have heard these things once have asked to hear them a second time on a second hearing in which they are involved.

Bill C-2, which, I must admit, I read for the first time last night while I was handing out chocolate bars, contains a number of provisions that will assist me as a practitioner, a few that are neutral, and at least one that may prove to have some unintended consequences that could potentially cause some difficulty.

There is also something I would like to address, and which is the biggest single obstacle to the crown putting forth a part XXIV application, and that is the collection of evidence and the preservation of evidence. Section 760 of the Criminal Code, one of the last sections in part XXIV, addresses some preservation issues but not all. I'd like at some point to be able to comment on that and on the fact that none of the mechanisms of search warrants, production orders, and subpoenas is designed to gather evidence related to sentencing at the pre-conviction stage, and that's what we need to do to move these cases forward for the benefit of everyone involved—the offender as much as the crown, and of course the court.

In every part XXIV hearing, the crown must deal with two things, the first of which is the pattern of behaviour. I mention behaviour because that's the word that's used in the Criminal Code. It's not a pattern of convictions; it's a pattern of behaviour. I have had two cases in the east region in which individuals have been declared long-term offenders, one of whom had never had a traffic ticket, so far as I know, in his life. Another one had no previous convictions, although he was convicted for a number of historic sexual offences at the predicate offence.

Frankly, that first step is the easy step. I've never had difficulty bringing a case to the court for which I didn't have that pattern-of-behaviour evidence well in my briefcase before we went. I very strongly emphasize the gatekeeper role that is my responsibility in managing these cases, and my supervisor's responsibility. After that process, it goes to our head office, where a number of lawyers examine the case before it gets to the deputy attorney general and the attorney general of the province. There are countless safeguards involved in these prosecutions as we bring the matter forward. Probably an average of 200 years of prosecutorial experience goes into the consideration of a single case when you consider the prosecution experience of the trial crown, of me, of my supervisor, of the three lawyers at head office who examine it, and then you go upstream to the assistant deputy minister, the deputy minister, and eventually the attorney general himself or herself.

● (0920)

The second step that is involved in every part XXIV hearing is the assessment of the risk posed by the offender and the method of designing something to manage that risk in the community or in prison. Right from the start of this process, we're planning on the exit strategy for the offender. How is the offender going to be managed in the community—if the offender can in fact be managed in the community. That's the very first thing we consider when we embark on one of these proceedings.

The first step, the pattern of behaviour, is very easy. The second step occupies all of my time. The preparation and time involved in one of these cases is approximately 600 hours, including 300 hours of police preparation time and 300 hours of crown preparation time. In the course of the last year, I've been able to trim probably 100 to 200 hours off that simply by building relationships with other members of the administration of justice so that I can obtain records quickly.

I should indicate that we're always interested in obtaining the best possible records for the judge to consider and for the expert to consider. The judge is required by statute to review the assessment report submitted by the expert. The expert in turn will indeed use actuarial instruments to assess the risk posed by a particular individual. The risk assessment instruments in turn depend on a wide variety of materials that far exceed the four corners of the criminal conviction.

So the evidence-gathering process takes a considerable amount of time. We begin with the end in mind, with the expert's needs in mind, because the expert's needs are the court's needs.

The issue of record-keeping, as I mentioned at the outset, is the central problem for us. The administration of criminal justice in Canada is somewhat flawed at almost every level when it comes to preserving evidence within its control. The police shred information. The crown's office doesn't retain information in an accessible way. The courts dispose of information routinely. Worse than that, they don't do it in any predictable pattern. The National Parole Board doesn't keep the audiotapes of its parole board hearings indefinitely. Only the Correctional Service of Canada seems to have a relatively good record at file retention.

The national flagging system is one place we go to as one of our first stops. The national flagging system was designed for a crown counsel to supply certain file information for an individual who is not quite at the stage of being declared a dangerous or long-term offender. That information is retained centrally—or provincially, but accessible from anywhere in Canada.

As I mentioned, section 760 of the Criminal Code is not the subject of Bill C-2, but it has the strange requirement that it doesn't.... It requires the following of the court in every case in which it finds an offender to be a dangerous offender or a long-term offender:

> a court shall order that a copy of all reports and testimony given by psychiatrists, psychologists, criminologists and other experts and any observations of the court with respect to the reasons for the finding, together with a transcript of the trial of the offender, be forwarded to the Correctional Service of Canada for information.

Curiously, it doesn't deal with the situation where the court makes the determination that a determinate sentence, a numerical sentence, is necessary. The court is not given any direction under section 760 for that scenario.

In fact, I would submit that it would be appropriate that section 760 apply to cover the evidence in every case where a designated offence is tried and the person is convicted of one of the listed designated offences, regardless of the sentence imposed. Even if it was a provincial sentence, it would be valuable to me as a practitioner to have that information preserved and retained by the Correctional Service of Canada so that it's accessible when we come to the next hearing, because that's always a difficulty.

The other suggestion I would make is that certified copies of informations and transcripts be made, not simply copies.

That still doesn't begin to cover the wide range of human behaviour that we need to acquire information on. Even in terms of criminal convictions, we often find evidence related to break and enter counts and to dangerous driving counts where, for example, the individual has used his car as a weapon to try to run down his estranged wife. We still have a lot of searching to do, but if the designated offences were preserved, it would bring us a long way toward being able to properly present one of these cases in court when the time arises.

As I mentioned at the outset, neither the traditional search warrant, the general warrant, or a production order are designed to assist in the collection of evidence related to sentencing before conviction.

● (0925)

An amendment or an addition to part XXIV, to the effect that, notwithstanding any other portions of the Criminal Code, these mechanisms apply for the collection of materials relevant to the behavioural history of an accused person before or after conviction in relation to whom the prosecutor intends to make an application under subsection 752.1(1), would be of immeasurable assistance.

The Chair: Could I ask you to wrap up in about ten or fifteen seconds?

Mr. Terrance Cooper: I think I've just wrapped up.

Thank you very much, sir.

The Chair: Thank you.

Mr. Muise, go ahead, please, for ten minutes.

Mr. John Muise (Director, Public Safety, Canadian Centre for Abuse Awareness): Thank you, Mr. Dykstra.

My name is John Muise. For those of you I haven't met before, I'm a recently retired 30-year veteran of the Toronto Police Service, where I've spent six of my last seven years on secondment to the Ontario Office for Victims of Crime, where I provided policy advice to a succession of attorneys general in the province on issues around criminal justice reform, public safety, and support for crime victims. I then returned to the police service, where I spent my last year at the homicide squad in charge of the major case management section and the retroactive DNA section that we formed arising out of legislation that was passed shortly before Karla Homolka was about to get out of jail after serving her 12 years.

I note that because part of being in charge of the retroactive DNA section provided me the opportunity to look at hundreds and indeed thousands of criminal records of serious offenders. It gave me a slice of the kinds of offenders that would be captured by this bill, particularly as it relates to the legacy Bill C-27 section.

I'm currently the director of public safety at the Canadian Centre for Abuse Awareness. We're a not-for-profit charitable organization. I provide consultation support to the organization with respect to the issues that relate to abused children and other people at risk. I do these kinds of things, like coming to committee, and try, where possible, to assist in having legislation changed to enhance public safety.

I appeared previously on Bill C-10, Bill C-27, and Bill C-35, which are all part of this bill. I submitted briefs at the time, and I suspect they've all been translated appropriately. As was the case with Mr. Cooper—although I read the bill last night for the second time, and I did that between serving candy to children—I don't have a brief today, and I apologize for that. In any event, I'm familiar with it. What I'll do is, for the most part, speak to the new sections of the bill that have come up in Bill C-27, in particular, since the introduction of the previous bills.

In addition, I would add that although I didn't testify on Bill C-22, it's probably one of the most important bills for our organization, with regard to the age of protection. We are the Canadian Centre for Abuse Awareness and Child Abuse. At the time I happened to be halfway around the world and unable to attend the hearings when they were scheduled.

I'll briefly go over some of my comments on the original Bill C-27. I referred to a number of cases. I made the point about whether Bill C-27 was fair and arbitrary, and about whether it was the least restrictive or intrusive measure possible in light of the purpose of the bill. I made the point in the brief that yes, indeed, I believed it was. I believe it is. I think the amendments that have been included, I understand at the urging of a number of provincial attorneys general, are good amendments.

I'll say right now that the bill as currently written in Bill C-2 is one that the CCAA does support. CCAA encourages all the members of the committee, once you have done your due diligence, to pass it at your earliest opportunity. I fundamentally support it, and our organization believes that children and others at risk will be protected.

To focus on who some of these offenders are as that relates to the Bill C-27 section, for the most part these offenders will have numerous and varied convictions, likely over a number of years, with a large majority of them being sex offenders.

● (0930)

A recent case that has been in the news and for which much of his criminal history is a matter of public record is the Paul Douglas Callow case. He was also known as the balcony rapist. Mr. Callow has a record dating back to the early 1970s that includes a number of convictions for property and violent crimes, including break-and-enter and assault. Mr. Callow also has a conviction for loiter by night—being a peeper—on his record. He has a rape conviction, a historic offence—that is also, in accordance with Bill C-27, a primary designated offence—for which he was sentenced to four years in prison, and an offence for which he was subsequently recommitted as a mandatory supervision parole violator. We now call that statutory release. Then again he was sentenced in 1987, which is his most recent conviction, for five counts of sexual assault, and those were the balcony rapist convictions. Of course sexual assault convictions are primary designated offence applicable. He was given a total of 20 years in prison. Mr. Callow served every single last day of that sentence and was released, to much public scrutiny and fanfare, and was put on a section 810 order, which applies to sexual assault offenders, in the Vancouver area.

There are more than a few people who are wondering why he wasn't declared a dangerous offender at the time of his conviction in 1987. Be that as it may, he wasn't. I suspect there was a plea negotiation. Quite frankly, the sentence, in the context of the criminal law here in Canada, was a pretty good one.

The important thing for this committee to recognize is that it will be the likes of the Paul Douglas Callows that will end up being captured by the legacy Bill C-27 provisions of the current proposed Bill C-2. If he went out and committed, for instance, another sexual assault of any kind and the judge saw fit to provide him with a sentence of two years or more, the old Bill C-27 section would kick in. And this is an offender for whom the crown would have to declare whether he or she was proceeding, and it would fall within the realm of the contemplated section.

Are there other Paul Douglas Callows out there? Absolutely. I don't think there's any doubt about it. And those are the kinds of people who would be captured, much like the current and ongoing dangerous offender sections of the Criminal Code. I think about 85% of those who are dangerous offenders—and I understand we have between 350 and 400—are sexual offenders like Paul Callow.

The end result, particularly in light of the kinds of offences that have been designated PDO, primary designated offences, will be that we are going to capture more people like Paul Callow. Keeping in mind that it is three separate convictions where somebody does penitentiary time of two years or more—in the main, offences that are sexual or sexually based or sexually based against children—at the end of the day, those are the kinds of people who are going to be captured. In essence, we'll capture more dangerous offenders than we already do. I understand there have been estimates of potentially 25 more a year across the country. I'm guessing. I suspect that is probably sort of a best guess. I suspect that it's not far off.

From my reading of the many criminal records that I did review when I was in charge of the retroactive DNA team, my recollection is there are not a lot of people who have two separate sexual assault convictions and are going on for a third. If anybody is worried about capturing hundreds and hundreds of people and making them dangerous offenders, I just don't see that happening. In any event, however many it is, with the new amendments to the legislation we see that the judge, in making a declaration of dangerous offender or not, is still going to have the option of saying “I am going to sentence you to an indeterminate sentence” or “I'm going to sentence you to a determinate sentence with an LTO, long-term offender order after that” or “I'm going to sentence you to just a determinate sentence without an LTO order”. There is a good fit with the new amendments.

● (0935)

I would add that the amendment that responded to the concerns of the provincial attorneys general, which, in effect, brings somebody back and says, hey, what are we going to do with you now, is a positive amendment and will assist in identifying those who just can't stay out of trouble.

One last thing I would like to point out is that I did not testify on Bill C-22. There was one section that was added to the definitions. I'm not talking about the transition section. I'm talking about the section that was added with respect to people who got married and there was an exemption for the age of consent. I understand that was around concerns with folks in the territories. Although, of course, we support this legislation, and we support it going forward, I can tell you that if all of you could see fit to remove that particular amendment, it would be a really good thing. The specific reason is this. When people in places like Bountiful, B.C., cotton on to this, it will be a recipe for...I can't be any more blunt than this: “Girls, come on down and get married because the law is allowing us to continue to get married.” I ask you to think about that.

I'm happy to respond to questions.

● (0940)

The Chair: Thank you, Mr. Muise. Your point, I'm sure, will engage a couple of questions along the way to allow you to detail it a bit more.

Mr. Bagnell, for the first round of seven minutes.

Hon. Larry Bagnell: Thank you.

I only have one question for Mr. Cooper, but just before that I will make a couple of comments.

Thank you for the Bill C-27 amendment, the good amendment on the long-term offenders. I have to compliment our critic who proposed that and got the attorneys general to agree to it, and the government agreed. It's an excellent amendment. Of course, on the age of protection, on October 26, 2006, and March 14, 2007, we offered to fast-track that, so that actually could have been law now.

That being said, Mr. Cooper, I agree with your point that the collection, storage, and retrieval of data and statistics need a lot of improvement. We've learned that in committee, but that's not what my question is about. Our critic made the good point yesterday that in this law there could be 100 dangerous offences and an application never has to be brought, but the Attorney General does have to say whether he reviewed that option. My question is not about that either.

My question is about what Mr. Lee raised yesterday in committee, and that was this. If you can put yourself on the other side for a moment, on the defence side, with all the data you mentioned you had collected and the effort you have to make to make your case under the existing system of proving they are dangerous under one of the various categories, (a), (b) or (c), I believe, in the Criminal Code, you pick one and use your data to prove that. Now the onus, if the application is actually brought, will be on the criminal. Mr. Lee's question was how would you then proceed as a defence lawyer? Which of those categories are you going to try to defend? The onus would have been on the prosecutor to prove you are a dangerous offender. As a defender, where are you going to start in your defence? Under which category? All categories? What would you do to try to suggest that you are not a dangerous offender?

Mr. Terrance Cooper: Thank you, sir.

Two of the categories are distinction without a difference. When you review the wording of subparagraphs 753(1)(a)(i) and 753(1)(a)(ii).... I have never encountered a case that would satisfy the wording of one yet not satisfy the wording of the other. Those two disjunctive tests are really a distinction without a difference. They both deal with patterns of behaviour, repetitive behaviour or persistent aggressive behaviour. They amount to the same thing in law in the cases I reviewed.

The third, subparagraph 753(1)(a)(iii), deals with brutal behaviour, and that is a test that is so high that I have never personally encountered it. Of course, it would likely be covered by the other two as well, although it could conceivably be a one-off situation.

The test in subparagraph 753(1)(b) is strictly dealing with sexual issues, so that is a distinction, although that quite often could blend in with either subparagraphs 753(1)(a)(i) or 753(1)(a)(ii) above it because it could be part of a pattern of repetitive behaviour or persistent aggressive behaviour, etc. The end result is you're dealing with risk posed by the offender, and the risk can be manifested in any number of ways. Every side deals with it.

I should pause to say this. The work I do with dangerous offenders is not adversarial. In fact, when I do the initial opening remarks, the trial crown is always there, and they sometimes look at me like I am the defence counsel because I insist on presenting everything to the court in an objective, dispassionate manner; the issues here are so important to the court, to the offender, and to society.

Hon. Larry Bagnell: Mr. Lee, was that satisfactory? Do you want to follow up on that answer at all? Because it was your point.

● (0945)

Mr. Derek Lee (Scarborough—Rouge River, Lib.): No, it doesn't really.... In my view, it does not, no.

Hon. Larry Bagnell: Okay.

I'm going to give the rest of my time to Ms. Jennings.

Hon. Marlene Jennings: Thank you.

The Chair: You can have two minutes and a half, up to two minutes and forty-five.

Hon. Marlene Jennings: So precise. Thank you.

Thank you very much to both of you, Mr. Cooper and Mr. Muise, for coming before this committee in such short order and for taking time out of your Halloween celebrations to refresh your memories on Bill C-2.

Mr. Cooper, you mentioned that there are very serious difficulties for crown attorneys in attempting to put together a dangerous offender case, in terms of collecting all of the records that would be documentary evidence presented to the judge; and that there is absolutely no coherent policy governing record-keeping across Canada, across the various institutions that would be expected to have evidence that would be useful in a dangerous offender hearing, whether it be the individual police services, the courts themselves, the prisons, the penitentiaries, or the halfway houses. Someone who has been repeatedly convicted of the kinds of crimes that could lead to a dangerous offender may at one point have been out on parole, may have been in a halfway house, may have been ordered to go into a detox centre, and so on. There is no comprehensive policy for record-keeping for the kinds of offences that could lead to a dangerous offender hearing.

You've said that section 760 should apply in every case, regardless of whether the sentence applied is a provincial sentence—i.e., two years less a day—or a federal sentence, two years and more.

Do you also believe the federal government has a role, or should be playing a role, in trying to encourage the provinces as well to develop a comprehensive policy in terms of record-keeping for institutions that come under them, such as the police, for instance? Federally we could require certain things of the RCMP, but not necessarily of the municipal and provincial police, of the provincial prisons, for instance, of the halfway houses, the transitional houses, etc.

Is that something that you think would go a long way, not just for dangerous offenders but simply for prosecution of anyone being charged with serious crimes?

The Chair: Mr. Cooper, I'm just going to let you know that you have about twenty to thirty seconds to answer that question.

Mr. Terrance Cooper: It would be difficult to deal with all crimes, but if we targeted.... I target the worst offenders who offend against the most victims in the worst conceivable ways. That's my interest group.

If we were able to concentrate our efforts in those regards, and if we kept these statistics as well as we kept hockey statistics, my job would be a lot easier.

The Chair: Very good.

Thank you, Ms. Jennings.

Monsieur Ménard.

[*Translation*]

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

I would also like to thank our witnesses. I enjoyed Mr. Muise's testimony very much, as I always do. We had an opportunity in the past to exchange ideas with him. Mr. Cooper's testimony provided some newer information.

I think you should consider submitting a brief. This is the type of information that we need to get from an actual practitioner.

To follow up on what Ms. Jennings was saying, I have here in front of me the text of section 760. Basically, what amendments are you looking for? Are you prepared to put forward the text of an amendment to the committee? If you are, you can forward your proposal to our clerk who will then circulate it to all members.

After you have answered my question as to how you would like to see section 760 amended, I would like you to elaborate further on your proposal. You talked about the 600 hours spent preparing a case at the risk assessment stage, that is 300 hours of police preparation time and 300 of crown preparation time. Could you elaborate on your proposal and talk to us about the risk assessment instruments available to practitioners such as yourself?

Let's start with section 760. Fundamentally, what are you looking for in the way of amendments?

● (0950)

[*English*]

Mr. Terrance Cooper: Thank you very much, sir.

I will in fact take you up on the opportunity of drafting something and sending it to the clerk if that's all right to deal with that. In fact, if I can just leave that as my answer to that question, I'll get back with something more thorough. I'm not a legislative drafter, and I wouldn't know how to begin to approach that task.

In a nutshell, however, if the section did apply on a broader basis, it would be incredibly useful to begin with.

[*Translation*]

Mr. Réal Ménard: Broader application of this provision to all offences liable to more than two years' imprisonment? What would you like the scope of this provision to be? Without actually suggesting a legal wording, what would you like to see this section encompass?

[*English*]

Mr. Terrance Cooper: If the section encompassed all of the designated offences listed in Bill C-2, that would go a long way to satisfying the needs that I have as a practitioner.

I did indicate at the outset, but I should reiterate, that I'm not representing the Attorney General of Ontario. I'm just representing a practitioner who does a great deal of work in this area.

I should indicate that it's valuable to all parties involved, not just the crown. Defence counsel don't want us to bring the police report forward as the best evidence, because the individual may have been convicted on facts that were diluted quite a bit in a plea negotiation, and that is the evidence that should be brought forward to the court. We find the best evidence we can find. It's in the interest of the offender, as well as the crown, as well as the expert in the court to bring forward the best quality of evidence. It has all been in our hands once as members of the administration of criminal justice, but we haven't retained it properly.

[*Translation*]

Mr. Réal Ménard: That's the question that interests me, the one that I put to the minister, to Mr. Hoover and to all ministry officials. In my opinion, it would be interesting to have a look at the administrative documents mentioned in part XXIV of the Criminal Code at least once before we vote on this bill. When you put together a case, what evidence must you present? Even though each case is understandably unique, give me an example of the type of evidence, or records, that you must present?

[*English*]

Mr. Terrance Cooper: For the court documents, sir, we need certified copies of the information or indictment. We need certified transcripts. We need the exhibit list and all the documentary exhibits that went with it. All of that material, as well as the police materials, is relevant to the court process. It goes far broader than that, and I'll start to answer one of your other questions, if I may, briefly.

I'm reading from a book called *Without Conscience*, by Dr. Robert Hare. Dr. Hare is the creator of a PCL-R, psychopathy checklist-revised. It's a risk assessment instrument that is used throughout the world, and it's probably the leading risk assessment instrument. In fact, it forms the basis for many of the other risk assessment instruments.

For example, there has to be consideration given to how the individual was behaving at the point in time when he was reaching puberty. Dr. Hare indicates that these factors—and I'll go through them very quickly—are relevant: repetitive casual and seemingly thoughtless lying; apparent indifference to or inability to understand the feelings, expectation, or pain of others; defiance of parents, teachers, and rules; continually in trouble and unresponsive to reprimands and threats of punishment; petty theft from other children; apparent persistent aggression, bullying, fighting; and it goes on with sexual precociousness, vandalism, bedwetting, fire-setting, and cruelty to animals.

That's the information we have to gather about one individual as a child. When the individual is an adult, such things as glib and superficial personality, egocentric and grandiose character, lack of remorse or guilt, lack of empathy, deceitful and manipulative shallow emotions.... And I've just covered half the list for the adults.

[*Translation*]

Mr. Réal Ménard: Would you agree to allow the clerk to make a copy of this excerpt and to have it translated? Not that I recognized anyone from this checklist of factors, Mr. Chairman, but I think it would be useful for us to keep this particular instrument in mind.

An hon. member: [*Editor's note: Inaudible.*]

Mr. Réal Ménard: Don't insult me, Mr. Petit. You know how sensitive I am.

Perhaps the clerk could arrange to have this excerpt translated... That's all.

[*English*]

Mr. Terrance Cooper: It is not a requirement that a dangerous or long-term offender be a psychopath, but it doesn't hurt.

In addition, there are many psychopaths who do not have criminal records. There are psychopaths, I'm sure, who are crown attorneys, judges, police officers, and politicians. It doesn't necessarily imply criminal traits.

● (0955)

[*Translation*]

Mr. Réal Ménard: Can you name any parliamentarians?

[*English*]

Mr. Terrance Cooper: I can't help you with that.

Do I have any time left?

The Chair: You have about 45 seconds.

Mr. Terrance Cooper: On the 600 hours, 300 for the crown, 300 for the police, we begin this by going to the national flagging system and asking if they have any file material. We then go to the Correctional Service of Canada if the individual has a federal criminal record. In Ontario we go to the MCSCS, which is the Ministry of Community Safety and Correctional Services, to find out if he has any provincial record, and that would include the probation records, for example. Then we look for CAS records, school records, police records across Canada or outside Canada. As you can see, the information-gathering process is very daunting.

We've streamlined much of it simply by building relationships with these different ministries, with the federal and provincial ministries. So that's brought us forward, probably shaved at least a hundred hours off every case.

The Chair: As Mr. Comartin is not in attendance yet, I will give him some time when he does get here.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Since our party is the most left-of-centre in the House of Commons, could I not have his time, Mr. Chairman?

[*English*]

The Chair: You're an excellent negotiator, Monsieur Ménard, but not today.

Mr. Kramp.

Mr. Daryl Kramp (Prince Edward—Hastings, CPC): Thank you, Chair, and welcome to our guests.

If I might just take this opportunity, Mr. Cooper, of course I'm from the riding of Prince Edward—Hastings and chair of the eastern Ontario caucus, so quite naturally a lot of your responsibilities fall in close proximity to a lot of concerns in our particular region. And let me say right now that in my normal course of responsibilities there's a lot of interaction, as you would expect, among crowns and defence and justices. As a matter of fact, I attended a retirement for Justice Byers just a short while ago, and without exception, your region has an unbelievable reputation for effectiveness and efficiency. It's one of the very few regions where there is not a huge backlog, simply because the work is performed very well. So let me thank you on behalf of not only my colleagues but all of your partners in the judicial process. Obviously you're able to work together very effectively as a team, and I think we all win on account of that. So let me take this opportunity to thank you very kindly on their behalf.

The one thing that did disturb me a little bit—and of course we're not necessarily exposed to some of these statistics unless we're asked—is 32 outstanding LTOs in the eastern region. Could you give me a brief summation of how long it's taken to gather these people? And where do you see us going? How many DOs would you pursue in a year or over the course of five years? Do you anticipate any change in this pattern as a result of Bill C-2?

Mr. Terrance Cooper: In the 32 that are outstanding at the moment, I'm counting dangerous offender applications, long-term offender applications, and breach of long-term supervision order cases as well, because all of these require the same amount of work.

In terms of the breach of long-term supervision order applications, the Kingston crown attorney's office, with I think nine counsel, has eleven cases. Two of them are individuals who didn't get out of the supervision of the Correctional Service of Canada. These are pending cases, so I'm not going to mention names. One was in a halfway house when he allegedly sexually assaulted another inmate in the halfway house. He was already a long-term offender, so obviously we have to move on, take the next step, and have him declared a dangerous offender. Another individual, similar, only he didn't even get to the halfway house. He was in Kingston Penitentiary, in the maximum security area, when he allegedly assaulted somebody quite severely.

The unique situation in Kingston generates an awful lot of individuals dealing with breach of long-term supervision orders. I think the highest sentence in Canada was just issued in Kingston for a breach of a long-term supervision order, a three-year sentence.

So Kingston explains about a third of our work. The city of Ottawa, of course, is a fairly large city, and that explains another third of our work. The remaining third is scattered throughout the region. There's been an aberration just recently in the Perth office, where we've had so many.

What we're seeing come forward in higher numbers now are domestic assault, domestic violence individuals who have done this time and time again with a series of partners. We see those cases coming more and more into the system. For some of these individuals, it's shocking, when I examine their files, that it's taken this long to catch up with them, so to speak.

Up to that point, it's mostly been.... A large number of our offenders are pedophiles, and another large number are adult sexual offenders; they sexually offend against adults.

So in a year, of the 32, I would expect we'll deal with perhaps a third or half of that number in the course of a 12-month period. As to an increase in the number, I don't know that this is going to be the case with Bill C-2, because my standards are higher than the three-offence section of the Criminal Code to begin with. So I don't know that this will bring anything additional to my plate in terms of reviewing these.

I should say that we try to identify these cases at the bail hearing stage, because it takes so many.... That 600 hours is over a period of six or eight months to collect this information. You send out a letter, you send out a subpoena, you wait, you read the material you receive, and that causes you to send out more subpoenas and more letters. So it takes a long time to deal with this many cases.

● (1000)

Mr. Daryl Kramp: Thank you.

Mr. Muise, in your role as an advocate on behalf of victims in particular, are you aware, over your long history as a member of the police force and now of course in your current position, how many LTOs have actually breached the conditions of their supervision orders?

Mr. John Muise: Do I have numbers? No, I don't. Mr. Cooper may or may not be able to help with that. You know, we—

Mr. Daryl Kramp: It would be beneficial to our committee to have an idea, and as well, building upon that, not only the number of people who might have breached their conditions but also how many have reoffended and committed sexual offences.

Mr. John Muise: I don't have actual numbers. What I can tell you is that the requests by a number of provincial attorneys general is directly related to that particular issue. You have these people who many of us believe are dangerous offenders, but in light of Regina v. Johnson, they are on LTO orders, including some people who have, for instance, 24-hour protection beside them, shadowing them as they go about being LTOs and things like that.

I think I would answer your question by saying that Bill C-2 and the new amendments that have been included as a result of the concerns raised by the provincial attorneys general are going to respond to those very offenders who are inclined to commit new serious personal injury offences, sexual offences, and in particular and significantly those who are going to in some way breach their LTOs, their long-term offender orders. The very kinds of people who are out there as LTOs and are prepared to breach, and do breach—those are the ones who will go on to reoffend in a serious way, because we're talking about that small minority.

Mr. Daryl Kramp: Thank you very much.

The Chair: Thank you, Mr. Kramp.

Mr. Lee, five minutes.

Mr. Derek Lee: Thank you.

I wanted to ask Mr. Cooper—and this is just a hypothetical question—where you have a busy crown attorney, would he or she, do you think, in a certain situation be more disposed to entering into a plea bargain where the accused was coming up close to this threshold or might in fact get to this threshold and the counsel for the accused saw it and knew this could be pretty heavy timber? The counsel for the accused would try to negotiate a plea bargain, would offer a plea of guilty in return for a commitment not to proceed with the DO application. That's hypothetical. I'm not questioning the bonafides of all of our crown attorneys, but in busy courts with heavy schedules sometimes they just might go for the guilty plea and dispense with the DO application.

Do you think that hypothetical question has any practical validity?

● (1005)

Mr. Terrance Cooper: I can't say that it doesn't, of course.

We have very strict policies in Ontario that we are not to bind the Attorney General. We are never to undertake, for example, to pursue a long-term offender designation as opposed to a dangerous offender designation. When the consent of the Attorney General is required, we take instructions from our client, the Attorney General.

In all other situations, frankly, we are the local minister of justice. But where the Attorney General's consent is required, as it is in many different parts of the Criminal Code, perhaps three dozen times, we take instructions. We don't bind the Attorney General's hands by agreeing to something that would bind his or her discretion if we make an application.

Now, the decision as to whether to make an application to begin with is the trial crown's decision. What we've done in the east region, and probably the reason we have so many of them, is we've tried to reduce the barriers to trade, so to speak. We've raised the awareness among crown attorneys in the east region as to what is involved in one of these hearings. We've tried to do an enormous amount of case law research so they don't have to climb that learning curve every time. We've developed forms and precedents that make the paperwork a lot easier.

Mr. Derek Lee: My second question has to do with what Mr. Bagnell raised earlier. When a crown attorney makes a decision to make a DO application, does that crown provide some kind of a bill of particulars? Does the application contain specific references to any of the four subsections described by Mr. Bagnell, 753.1(a)(i)(ii)(iii) or (b)? Can I just ask you if specific reference is made to any one of those sections when preparing the DO application?

Mr. Terrance Cooper: Eventually, yes. The application—

Mr. Derek Lee: If in fact there is a specific reference made in your normal DO application to one of those subsections, then the follow-up question from me is, what happens when there's a presumption that all of the subsections have been met and are presumed to have been met? That's what this new provision does provide, that there's a presumption that all of them have been met. How does the offender know which of these particulars he would be expected to rebut in dealing with the presumption?

Mr. Terrance Cooper: There's a requirement existing currently, in part XXIV, that notice be given to the offender, of course, before we proceed. In the course of the notices that I prepare, and that I urge other crown attorneys in my region to prepare, is a comprehensive notice, which indicates what we are relying upon specifically. Of course, it's only required that we prove one of those disjunctive tests, but quite often it's the case that we're relying on three. Normally, the brutal nature doesn't arise. As I said before, I've never seen that one arise. But the first two that precede it and the one that follows it are often in the same case.

Mr. Derek Lee: If you were a defence counsel and you were trying to prepare the full answer in defence to what ensued after the application of the presumption, how would you, as defence counsel, know which particulars to deal with?

Mr. Terrance Cooper: I would ask for particulars from the crown, and the crown would no doubt be ordered to give particulars.

The Chair: I have to move to our next questioner.

Monsieur Ménard.

[*Translation*]

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

Mr. Cooper, you talked about the national flagging system in conjunction with information gathering to assist you with presenting evidence in court. Could you elaborate further on the flagging system and talk to us about the instruments available to the various parties in the area of risk assessment.

The clerk will photocopy the document that I requested from you, and that will shed some light on the subject for us. However, I'd like more information about the process used to assess how dangerous a person is, his risk of re-offending and his inability to control his impulses. You seem to have some tools that either the defence or the Crown can use and I'm curious to know more about them.

● (1010)

[*English*]

Mr. Terrance Cooper: Yes, sir. Dealing with the national flagging system, the national flagging system works like this. If an individual is flagged, the crown who was prosecuting that individual for the most recent offence gathers certain information that is readily accessible at the time, such as transcripts, the court information, and that sort of thing, and submits them to the national flagging system. In Ontario we have an individual who runs that system. The current individual is Howard Leibovich. The national flagging coordinator is in Saskatchewan, Dean Sinclair.

In any event, the materials submitted to these people and the offender's name are put on the CPIC system, indicating that he or she is flagged. That means that when that person is re-arrested for anything, there will be a hit on the CPIC system alerting the investigating officer, or whoever queries the individual, that this Terry Cooper has been flagged and there is material in Saskatchewan or Toronto or wherever relevant to him, and that is accessible to the crown that's doing the prosecution.

[*Translation*]

Mr. Réal Ménard: I see. I wonder if my understanding is correct. If an individual has already been declared a long-term offender or a dangerous offender, it is possible for the Crown, for the judicial system, obviously... However, this is not the same thing as having a sex offender registry. Who has access to this type of information? Does this apply to those who have been declared a dangerous offender or a long-term offender, or does this apply to all other offences as well?

[*English*]

Mr. Terrance Cooper: I frankly don't know a lot about the sex offender registry. I have passing knowledge of it, so I can't comment on that too much. I could find someone who is an expert in that field and have them testify here, if that is of some assistance to you.

In terms of the flagging system, the initial conception was anyone who was getting close to a dangerous or long-term offender application would be flagged. So you need a pattern of behaviour. If the pattern is just a little bit shy, as it sometimes is, and we don't have quite enough to establish the pattern, then for that person we'd gather up the information that was available at the time and put it in the flagging system. So the next time that person is arrested, regardless of where it is in Canada, whether it is in Prince Edward Island, where there are nine crowns, or in Ontario, where there are 800, the crown doing the bail hearing would within a day have all the information they could conceivably need to deal with that particular offender.

[*Translation*]

Mr. Réal Ménard: But is this system administered by the Correctional Service of Canada, by the Department of Justice? Who is responsible for this information?

[*English*]

Mr. Terrance Cooper: It's a federal system. I'm not sure where the responsibility lies. I'm sorry, I can't narrow the ministry for you.

[*Translation*]

Mr. Réal Ménard: I understand.

[*English*]

Mr. Terrance Cooper: In terms of how the assessments are used, as I mentioned, the psychopathy checklist is one of the central instruments, and this book is available at Chapters. I know they have at least one copy a couple of blocks from here, because I tried to pick it up the other day and I didn't get around to it.

The other ones have different acronyms: SORAG, VRAG, STATIC-99. There is a number of different risk assessment instruments that psychiatrists and psychologists use to predict risk, and they are designed for a specific situation. Some deal with sex offenders, some deal with domestic assault situations, and some, such as the PCL-R, just deal with psychopathy generally. This information is considered by experts.

Another point I wanted to bring up is that there is a slight change in the wording of the psychiatric assessment in the new bill that indicates the court would designate the individual. With the current wording, what we do in Ontario is the crown retains one expert and the defence, virtually invariably, retains another expert. It's been incredibly useful for the courts to have two perspectives brought forward. The only time we don't see a defence expert is if the report comes back and it's not favourable and then it never sees the light of day. Those are the rules, and that's fair.

● (1015)

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, could we ask the researchers to prepare briefing notes for us on the national flagging system? These notes could be distributed to members to ensure that everyone understands clearly the process involved.

Thank you very much.

[*English*]

The Chair: That's fair enough.

Mr. Comartin, you were in the five-minute rounds, but based on our arrangements this morning in terms of starting, you obviously have your seven minutes to use.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Well, they're pretty useless, Mr. Chair, since I didn't get the notice that we were starting early and I didn't hear any of the testimony we've had so far. It would be like boxing in the dark, so I'll just pass.

I just want to say for the record that this should not have happened. I understand that you've committed to not letting it happen again.

The Chair: Thank you.

Next is Mr. Moore.

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

Thanks to the witnesses for appearing and for the very knowledgeable testimony.

One of the scenarios that Bill C-2 contemplates is someone who breaches their long-term supervision order. I wonder if either of you would care to comment on the changes proposed in Bill C-2 in dealing with someone like this.

Mr. Muise, you mentioned a couple of different individuals and put real faces to the types of long-term offenders we may be talking about and perhaps how dangerous they are to society. You even mentioned cases where someone is actually shadowed by another individual to ensure that they comply with their supervision order. But we know that all too often there are in fact breaches of the long-term supervision order.

I wonder if you can comment, either of you, on the changes contained in this bill. Then I do have one follow-up question for Mr. Muise.

Mr. John Muise: I'll briefly repeat my point about the amendments that are contemplated in relation to both those who breach and those who commit another serious personal injury offence while on a long-term order. These are the very people who....

As I stated before, sex offenders make up approximately 85% of the dangerous offender population. If you accept the truism that it's a small minority of offenders, particularly when it comes to sex offenders, who commit a disproportionate amount of this kind of crime, and those very same people just keep coming back to the well, the amendments that the provincial attorneys general have said we should include will be very good in terms of identifying those particular people.

If you put that together with the amendment that in effect creates a hearing where somebody is declared, the way the legislation is written is that rather than having to go through the dangerous offender hearing down the road, the hearing then converts to a situation where this person has already been declared, and now it's up to the judge to decide what to do. This person was originally put out on an LTO, potentially, and now what to do: am I going to now create an indeterminate sentence, or is there evidence to convince the court that yet again he can be put out on another LTO?

So I think the two amendments, those two pieces, are going to do a good job of making the court and the criminal justice system aware of those particular people and bring them back in a way that is not overly onerous. It puts it back yet again in front of a judge. It's not saying, "You struck out on the LTO, you're going to be indeterminate sentence." It's not even that far. It's back in front of the judge.

Also, for those who were concerned that it might appear like a three strikes and you're out, I believe nothing could be further from the truth. I think it strikes certainly a balance that should, I hope, satisfy most.

● (1020)

Mr. Rob Moore: Thanks.

Mr. Terrance Cooper: With respect to breach of long-term supervision order, it's very important to realize that we're not looking necessarily simply for further offences. The individual was assessed by experts to begin with under his or her first part XXIV hearing, and there were, no doubt, found to be certain things that escalate the risk. Perhaps the individual has a drug or alcohol problem, or perhaps being near children or a public park or something such as that is a catalyst for future offences. So quite often when we're pursuing a breach of long-term supervision order charge, we're looking at one of those things, and it's incredibly important that that be addressed as a very significant elevation of risk. When the individual has begun drinking when he or she shouldn't be because doing so has resulted in offences before, that's something as serious as committing another offence in terms of managing the risk. That's what it's all about.

Clause 43 in Bill C-2, which calls for a mandatory assessment for a breach of long-term supervision order, is a blessing. We've never had access to that situation. So we've gathered up all the same evidence for any part XXIV hearing, only we can't present it to an expert unless there's some consent, and that's unlikely to happen.

Mr. Rob Moore: Do I have a few more minutes?

The Chair: You have about 15 seconds.

Mr. Rob Moore: Mr. Muise, maybe you'll get an opportunity in another round of questioning, but you did mention that the provisions that were in Bill C-22 for raising the age of protection were very important to your organization, and I wonder if you might just want to take the opportunity to comment on that a bit.

Mr. John Muise: Yes. The section that deals with an accused who is married to the complainant—I'm not talking about the transition section, I'm talking about the section going forward—I suspect was included with the best of intentions. What will happen is that communities like Bountiful, B.C., will see this as the welcoming mat for those who are 30-, 40-, 50-year-olds wanting to get married to 14- and 15-year-olds in those kinds of communities. It's a big problem in certain communities. This particular clause, with the greatest of respect, I think will just make it worse.

The Chair: Thanks.

Ms. Jennings.

Hon. Marlene Jennings: I want to thank you both for a lot of the information that you have brought before us.

Mr. Muise, when you came before the previous committee that was dealing specifically with Bill C-27, you talked about Paul Callow, also known as the balcony rapist. I believe there may have been one or another witness who also raised that case as an example of a repeat offender who normally should have been designated as a dangerous offender, received an indeterminate sentence, etc., and who has now been released and presents a high risk.

I was contacted over the summer by a member of Mr. Callow's family, because he is out; he is a under a section 810 recognizance order. The member of his family was quite upset with the way he is being portrayed today and the risk that he represents today and sent me a report that was compiled by Professor Michael Jackson, Queen's Counsel, at the University of British Columbia faculty of law. It was done on June 5, 2007. It's a documentary review of all of his files, all of the assessments done, the programs he participated in or did not participate in, correctional files, you name it.

It's 56 pages, and he uses the actual reports and quotes the actual reports stemming all the way back to 1987, I believe, when he was first convicted and all the way up to his actual release in February 2007. I would like to table this, because I think it's important that we don't simply rely on one or two words. I would like to quote from page 1 of this report.

> In the extensive media portrayal of Mr. Callow at the time of his release, based upon information provided by the correctional and law enforcement authorities, he was in fact described as an untreated dangerous sexual offender who has either refused to undertake treatment or not responded to treatment and had shown little or no remorse for his crimes. This portrayal has fanned the flames of widespread public fear and political calls for changes to the law, including indefinite civil commitment of those believed to be dangerous sexual offenders. This portrayal of Mr. Callow is however misinformed....

He provides the documentary evidence. With the agreement of the members, If members are interested in reading the actual documentary review done by Professor Michael Jackson of Mr. Callow's case and forming their own opinion following that as to whether or not Mr. Callow remains an untreated dangerous offender with a high risk, I would ask the indulgence of the members to table a copy of this actual report.

● (1025)

The Chair: What I would suggest, Madam Jennings, is that as you suggested, if someone is interested in reading a copy perhaps they could get a copy from you. Would that be a fair way to do it? There is an issue with tabling it. You can certainly forward a copy of it. Is it translated?

Hon. Marlene Jennings: No, I didn't think of that.

The Chair: The only suggestion I would have is that if anyone from the committee is interested, they get a copy from you.

Hon. Marlene Jennings: I'd be more than happy to provide them with a copy of this, because I do think it's worth reading. It does not in any way put into question the government's Bill C-2, Bill C-27 portion. It's simply a report that astounded me. I listened to the testimony, and I went away thinking, my God, you have communities now and women who are at a real risk. Then I received this, and I went through it, and it's significantly different today from what it was twenty years ago, or even ten years ago, in terms of the expert opinions and so on. So I would encourage the members to contact my office, and it would be my pleasure to make this available.

Do I have any more time left?

The Chair: You do not have any time left. You're pretty much right at your time limit.

Mr. Richard Harris (Cariboo—Prince George, CPC): I have a point of order. I think it's a point of order.

The Chair: All right. Mr. Harris, on a point of order.

Mr. Richard Harris: Ms. Jennings has made this report available for us. I wanted to ask first, Ms. Jennings, if you have a copy of the credentials of Dr. Michael Jackson. Is there a copy of his credentials that would go along with that report?

Hon. Marlene Jennings: May I?

Mr. Richard Harris: No, no, no, I mean....

Hon. Marlene Jennings: It's part of his report. It lists his entire experience.

Mr. Richard Harris: If I request that, I'd like to have a copy of his credentials as well. Thank you.

Hon. Marlene Jennings: His credentials are in fact described in the report itself: who Mr. Jackson is, what he has done, what kinds of awards he has received, etc.

The Chair: Okay, thanks.

Just as we move forward, I know that you presented that, Madame Jennings, and either the witnesses didn't have a chance—I don't know whether you were asking a question or putting it forward—but I can't give you the time to respond, obviously. But if one of the next questioners wants to give you the capacity to do that, of course they're free to do so.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you.

Thank you, Mr. Cooper and Mr. Muise, for joining us.

Mr. Cooper, this is the first opportunity I have had to hear you testify about a proposed piece of federal legislation. Thank you.

I quite liked the comparison that you drew. You stated that since leaving the police force, your income has declined. There's a saying in Quebec that if you want to demote a police officer, from a salary standpoint, you give him a job as a Crown attorney.

Mr. Cooper, I'd like to hear your views on something that's very important to me. Like Mr. Muise, you said that you read the bill yesterday. In your opinion, will Bill C-2, as tabled by the government, resolve—and I use the word cautiously—the problem of violence against women?

In Quebec, as in your home province and elsewhere in Canada, there have been many reported cases of repeated violence against women. In the past, there was no possibility of declaring the perpetrator a dangerous offender or some such thing, and after a while, he would end up killing his spouse. Two or three famous cases come to mind, including one in your province. Can this bill help us to resolve this very real problem in both of our provinces?

Elsewhere, Mr. Cooper, do you also believe that this bill will help to address the problem of child abuse? I'm thinking here about abuse of a sexual nature, among other things. Sexual predators manage to slip through the cracks and at some point, they must be caught.

Since you have read the bill and since you may be required to work within its parameters, do you believe that it will help to address these two major problems, namely violence against women and child abuse?

● (1030)

[*English*]

Mr. Terrance Cooper: There are several provisions, as I mentioned at the outset, that provide me as a practitioner with significant assistance in terms of bringing forward to the court all of the information that the court needs to make a decision. So in that sense, of course the bill is quite helpful. And because it's more helpful, it will undoubtedly enable us to deal with more cases. So the answer to your question in both respects should be yes. That is a good prediction of what should happen, in effect.

The number of cases will no doubt change somewhat. I don't know that it will be a dramatic change. It does assist us in bringing forward particularly the assessment provision for the breach of long-term supervision order. That is an enormous assist.

What I haven't mentioned to the committee yet is that you may be under the impression that these assessments are conducted in an institution. Five years ago, that would have been the case. When I first gained an interest in these cases, almost all of them were done in an institution. We would get reports not just from the psychiatrist but also from the psychologist, the nurses' notes, from the recreationalist, from the master's of social work people. We'd have a very comprehensive report. Now in Ontario there are only two locations that offer beds at all—the Royal Ottawa Hospital on occasion, and I think there are two beds, for the entire province of Ontario, available at Penetanguishene.

So the vast majority of our cases, if not well in excess of 95%, are assessed at the jail in perhaps a four-hour interview. That's a long way from where we were five years ago. The facilities are simply not there at present. I just wanted to clarify that. The ground we're gaining is sometimes compromised by the reality of what's available to us in the community.

On the whole, I think the assistance rendered to us as practitioners will move us forward significantly. In terms of providing the material to the court, what the court does with it is, of course, the court's call. The best we can do as crown attorneys—and as defence counsel, for that matter—is to assist the court as fully as possible.

The Chair: Mr. Comartin.

Mr. Joe Comartin: With regard to the last response we got from Mr. Muise, I should point out to him and to the committee that the province of British Columbia has a marriage age of 16. So the point he is making is irrelevant, quite frankly, to the actual situation. What is going on in that particular community in B.C. is about polygamy; it's about sexual abuse, if one accepts the facts, or at least the allegations of facts, on the surface. This change in law would not change anything at all with regard to that community.

Mr. John Muise: In response to that, I understand that it's based on the provincial age that is allowed for marriage in each province, in each territory. I used Bountiful simply because we know it's happening.

I would say two things here. One, all of these things are interlinked—child abuse, polygamy, and older men wanting to marry 14- and 15-year-olds. So with respect to Mr. Comartin dismissing my comments because it wouldn't apply in B.C., I don't think Bountiful, B.C., is the only place where this is going to happen. It could happen anywhere in Canada. I used Bountiful because this is one we know about.

I think my overarching point is that we don't need this section because the end result will be used by those who can in whatever provinces allow marriage of 14- and 15-year-olds.

● (1035)

Mr. Joe Comartin: That yet again demonstrates a sore lack of knowledge of the law. In those territories—because none of the provinces have an age of marriage under 16—you're not allowed to marry under the age of 16 unless you either have the permission of the provincial attorney general or some minister, or you have a court order.

So Mr. Muise's comments are in fact irrelevant. That section was put in there...and in fact it should have been broader. I had pushed for an even broader amendment.

I'm sorry, Mr. Chair, I'm going on about this just so that the new members of the committee, those who weren't in on the round when we did Bill C-22, will understand.

The Chair: Yes.

Mr. Joe Comartin: The reason it was put in there was to avoid the constitutional conflict that we were inevitably going to run into between the provinces and the federal government.

The Chair: Thank you.

Mr. Muise.

Mr. John Muise: Thank you, Mr. Comartin. I am aware of the fact that there are these other requirements, including consent. My point is simple. Other than the transition law, I don't understand how it is that we will be protecting 14- and 15-year-olds. At the end of the day, whether there's attorney general consent or indeed consent of parents in a particular community, how are we advancing protection of 14- and 15-year-olds with regard to a decision that quite frankly they're not capable of making, notwithstanding these other protections or however you would refer to them?

I think it's a philosophical issue, and I think it is a section of the bill that somebody is going to use, and at the end of the day they're going to use it in such a way that a child who is 14 or 15 years old, who is not even close to making these kinds of decisions, is going to be violated. Those are my concerns, and I think we're going to see it happen.

Obviously I support this bill; I support the passage of the bill with or without it. I'm asking the committee at large to remove that section. That's the point I'd like to make.

Mr. Joe Comartin: Perhaps I would suggest to Mr. Muise that he go to law school, and maybe then he would understand the significance of this section.

The Chair: I would like to call an end to the debate here, because—

Mr. John Muise: I understand the significance of the section, and I'll take Mr. Comartin's comments as they were intended.

Thank you.

The Chair: Mr. Keddy.

Mr. Gerald Keddy: I have a comment on the exploitation of 14-year-olds for profit or for dollars or with the intent of sexual coercion. I will certainly go back and look over the notes on Bill C-22 on the age of protection, and read up on what the committee had to say on it and educate myself on the issue, but you don't have to be a lawyer to know the difference between right and wrong, and I've always found that pretty handy in life.

That's simply a comment; I'm not asking for a comment from our witnesses on that.

I would like to thank our witnesses for being here today.

Ms. Jennings raised an issue about Mr. Callow. I will read the report that she has there. I will ask for that. However, I would like to hear our witnesses' opinion on that case and the designation or lack of designation of dangerous offender.

Mr. John Muise: Regarding Ms. Jennings' comments, as a retired police officer, I accept that there is another side to this, but I raise Mr. Callow for a couple of reasons. I know that the committee likes to focus on case studies or on those the legislation actually applies to, as opposed to bringing up something that has no applicability. I think Mr. Callow, who has two previous offences that are primary designated, is precisely the person. So, hey, if Mr. Callow is somebody other than his four years for rape and his 20 years for sexual assault, and the fact that he was among the 1% or 1.5% of the population in prison who are gated until the very last day of his sentence would show, and he carries on, that's wonderful. Nothing would make this witness happier, and I'm certain nothing would make anybody in this room happier. I think the point is that Mr. Callow is somebody who would be captured by this legislation, both with respect to the third predicate offence if he committed another primary designated offence, and because he would also be subject to the terms of the new section 810, which would allow for two years instead of one, and also allow for broader protective measures with respect to section 810, whether it's electronic monitoring or residency or any number of the good conditions suggested.

I raised him because he applies. If he doesn't commit another crime between now and whenever he passes from this world, that will be a good thing. Hopefully, we'll have a section 810 order that lasts two years, and if we need it we can use it. If he does commit another offence, this section will be available for the likes of Mr. Callow.

I have one last thing. If you accept that if you identify this small minority of offenders who commit a disproportionate number of serious violent crimes, and these are precisely the kinds of people we should be incapacitating, then if this legislation allows for one, five, ten, or twenty more dangerous offenders being declared every year—and I think those are probably the numbers we're going to see—that will result in one, five, ten, or twenty dangerous persons being off the streets if they're given indeterminate sentences or incapacitated, and people won't be victimized by those kinds of individuals.

● (1040)

Mr. Gerald Keddy: Mr. Cooper.

Mr. Terrance Cooper: I don't know enough about the Callow decision to make an intelligent comment, but I'd like to make this point. Dangerous offenders, of course, do in fact get released. They become eligible for release on day parole four years after they have been arrested, and they become eligible for release on full parole seven years after their arrest date, assuming they've been kept in custody, as most of them have. Those are dangerous offenders I'm speaking of, not long-term offenders. The average release date of those who do get released—and not nearly all of them get released—is approximately 13 years. That's the evidence, I've been told, which, curiously, is the same average release date time for an individual who is serving a life sentence with a 10-year minimum parole eligibility. Those individuals typically convicted of second-degree murder are on average released at the 13-year mark, if they are in fact released. There is at least one and maybe two dangerous offenders here in Ottawa now who are on release. One of them seems to be rehabilitated—the one I know about—and maybe they both are.

The Chair: Thank you, Mr. Keddy.

Just in the interest of trying to make sure everyone has an opportunity to speak here, I would ask Mr. Harris if he would like to use his five minutes now.

Mr. Richard Harris: Thank you, Mr. Chair.

Mr. Muise, I'd like to go back to the age of protection section, which we were discussing recently. I'd like to submit, notwithstanding the comments of Mr. Comartin, that while the age of consent in many provinces and territories is 16, there do exist provisions that would circumvent that age of 16. If indeed we are to honour the title of this portion, “age of protection”...we are seeking to protect children from sexual predators. One has to assume, given the nature of sexual predators, that they know about the provisions in law now that bypass the age of 16, and given the nature of their character, they are probably already thinking about or seeking ways to use those provisions.

I see this part of the bill, which I guess kind of recognizes the marriage thing, as a possible tool that a predator could in fact use. I submit that if we are to truly seek to provide an age of protection of a minimum of 16 for children, to protect them from sexual predators, then we have a responsibility—I agree with you, I believe we have a responsibility—through the use of this bill, to delete a part of it that could be used as a tool by a sexual predator—

● (1045)

Hon. Marlene Jennings: I have a point of order, Mr. Chair.

The Chair: We have a point of order. This won't use up your time, Mr. Harris.

Hon. Marlene Jennings: Given the statements Mr. Harris is making about the possibility of circumventing the law in terms of the age for marriage, I would request that we ask Carole Morency to come back. She testified before a committee in June that the only case where someone under the age of 16 is able to marry is if they go before a judge. She gave the exact provinces and territories where that's permitted and made the statement that in all other places there is no exception.

So I would like to have—

The Chair: Thank you, Madam Jennings. It's not a point of order; it's a request to have an additional witness placed on the list. We will certainly take that into consideration, but it's not a point of order.

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

The Chair: Mr. Harris.

Mr. Richard Harris: I guess I've probably run out of time now, but, Mr. Muise, I'd like to strongly urge you to continue to lobby for your point of view. I'd really appreciate that.

There will be those who will say, why do we have to go this far for a small number of people who would be deemed dangerous offenders? I want to go on record here. Some may argue against this bill, but I think we have to look at the number of victims as a priority rather than the so-called small number of predators. If you were to have, say, 50 dangerous offender candidates over the next ten years, it's likely that each one of those people could have assaulted or victimized five to ten people, so now you're up into the range of 400 or 500 victims. That's important. Our duty is to protect our people from predators in our society, and that's what this bill is for.

I guess that was more of a statement than a question, but I would love to have your comments on that, if there is any time.

Mr. John Muise: Thank you, Mr. Harris.

I didn't raise the point cavalierly and I certainly didn't raise it in a personal way. I understand that marriage legislation is a provincial jurisdiction and it varies in different provinces. I raised it because I believe it is an opening for those who would want to be with 14- and 15-year-olds who, notwithstanding safeguards, are not capable of making that decision and are the very people we need to protect.

That's why we were drawing a line in the sand. That's why the CCAA, the Canadian Centre for Abuse Awareness, suggested a five year close-in-age exemption. It suggested maintaining the exploitation section and raising it to 16 years old. We certainly didn't add in, “Oh, and by the way, marriage is allowed where the province allows it”. I think it's a mistake, and notwithstanding the comments of Mr. Comartin, I think it's something that at some point in time will be used, and I think this committee has an opportunity to turn back the clock on that. And in terms of your comments about raising it with others, I hope it's changed.

● (1050)

The Chair: Thank you, Mr. Muise.

We have about three folks who would like to speak. We do need about five minutes of time to go through the witness list to make sure.

I have Mr. Lee, Madam Freeman, and Mr. Moore. I would ask, for the sake of time, if you have your questions, please ask them, and we'll reduce our time to about three minutes per round.

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

I'm listening to Mr. Harris and Mr. Muise, and I'm sorry I've been sidebarred into this, but Mr. Harris is at liberty to propose an amendment to the bill if he thinks it's so egregiously out of whack with what the public interest is.

Secondly, the only way this loophole could be a loophole is if a judge or an attorney general became an unindicted co-conspirator with a child predator. This is absurd, and it shows a misunderstanding of the provision that was legislated in the last session. In any event, my question here is really directed at Mr. Cooper, and it has a general focus.

The changes to the old Bill C-27, to the dangerous offender application process here, will not in your view, based on what you've said, increase materially the volume of dangerous offender applications because it doesn't really make any direct difference in how those are commenced—i.e., on the decision of a crown attorney. But where it will make a difference is that it will expedite them, or facilitate them, because it shifts the burden now to the convicted person who will have had three serious convictions. It sort of alters the burden and changes the deck of cards in a way that shifts the burden away from the state and the people to prove something and moves it over to the accused. That makes it easier for the state and the public to designate someone and to take them out of circulation. Is that consistent with your view here?

Mr. Terrance Cooper: Actually I'd like to clarify this, if that's what you took away from it. The provisions of the bill to which you were making reference will not affect how I do business because my standards are already higher than the standards that are proposed in the east region—and still, with those high standards we have 32 pending cases. I don't think there's another jurisdiction in Ontario that has nearly that many, but I don't know that for certain.

It may increase the volume when it heightens the awareness for crown attorneys in other regions of Ontario, in other provinces, or other territories. So there may be an increase in the volume of cases. It just won't affect what I deal with in my administration of this region.

Secondly, the facilitation is not, in my view of how it affects me, because it shifts the burden. Shifting of the burden is largely not a challenge for me because I'm not bringing cases to the court that are close to the line to begin with. I don't need the burden shifted with the way I practise law. My cases are well above the standard.

There will always be some debate whether the individual should be a dangerous offender or a long-term offender, of course. When I bring forward a case for a dangerous offender designation, if I come back with a long-term offender designation, I don't consider that a loss. The court made the decision about risk management and that's the court's responsibility. My responsibility is to assist the court. So the shifting of the burden thing may assist how things are managed in other parts of Canada, but it just doesn't affect the ten crown attorney offices that I assist with respect to this.

If I could just respond—

The Chair: Sorry, Mr. Cooper.

Mr. Terrance Cooper: I've run out? Okay, very good.

The Chair: Madame Freeman, three minutes.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Mr. Chairman, I would like to clarify something. This morning, I was not notified that the meeting had been rescheduled. To my mind, this committee and the serious work it is undertaking are vitally important to all of our fellow citizens. At least Quebeckers are interested in what we are doing here. Given the speed at which this legislative committee is proceeding and the authority it wields, I find it totally unacceptable that while at an in camera meeting last night, it was decided that this morning's meeting would start at 10 a.m. and that later in the evening, for one reason or another, the start of the meeting was moved up by one hour.

As far as I'm concerned, Mr. Chairman, that's not the right way to go about our business as parliamentarians. I hope this won't happen again. Mr. Comartin and I were not notified of the scheduling change and as a result, we were not on hand for the presentations by Mr. Cooper and Mr. Muise. It's truly unfortunate that such things occur as part of the parliamentary process. Thank you.

● (1055)

[*English*]

The Chair: Do you have any questions for our witnesses?

[*Translation*]

Mrs. Carole Freeman: Unfortunately, I didn't hear the presentations they gave between 9 a.m. and 10 a.m., since the meeting was supposed to begin at 10 a.m.

[*English*]

The Chair: Okay. Thank you.

Just in fairness, we did have this discussion prior to your arrival here. It was acknowledged that actually official notice was sent out to your office, to all offices, and phone calls were made to each of the offices of the members of this committee. I have apologized to the committee, and I certainly apologize to you personally that you did not receive those or didn't get them. They were made, and the attempt was to meet and to certainly give notification to everyone. I've indicated to the committee that we'll work hard to make sure it doesn't happen again.

Mr. Moore.

Mr. Rob Moore: Thank you, Mr. Chair.

I guess...and I heard Mr. Comartin leaping to the defence of perverts who want to marry 14- and 15-year-olds—

Mr. Joe Comartin: Point of order.

Mr. Rob Moore: I didn't interrupt you when you were making allegations that—

Mr. Joe Comartin: I didn't make an accusation of that nature, Mr. Moore.

Mr. Rob Moore: First of all, it's not....

Is this a point of order or not?

Mr. Joe Comartin: Mr. Chair, if you're in control of this meeting, you have to rule that kind of comment out of order.

The Chair: That's not a point of order, but I will say this. We've had a good meeting this morning in terms of hearing a lot of information. I would respectfully request each member of the committee, when they do make a remark, to do so in a professional way that does not infer a personal slant on anyone. I would respectfully request that from each member of this committee.

Mr. Rob Moore: I agree, Mr. Chair, and I think we went off that track a while ago, at the suggestion that in order to appear at a justice committee meeting and speak to legislation that impacts on all Canadians, someone should be a lawyer. I mean, heaven forbid if all of us were lawyers. What kind of society would that look like? So I reject that as well.

Then Ms. Jennings was mentioning a report by Michael Jackson—we don't know who this individual is—that somehow Mr. Callow, the balcony rapist, is now a great guy, and we're going to table that. I think it's all very telling, because in the past—

Hon. Marlene Jennings: A point of order, Chair.

The Chair: Madame Jennings.

Hon. Marlene Jennings: This is a complete mischaracterization of the statement I made. I do not appreciate the parliamentary secretary to the Minister of Justice mischaracterizing my statement.

I never said the words you're attempting to put in my mouth, and I don't appreciate that.

The Chair: Your point has been made, Madame Jennings, and it's not a point of order.

Mr. Rob Moore: I have a question.

There seems to be a hesitancy to hear.... I mean, we have advocates who will come to the defence of these types of individuals, but what sometimes becomes lost is the victims.

Mr. Muise, you work with victims, and you have for a long time. We appreciate your contribution in that way. It's tough to narrow it down, I know, but in terms of dangerous offenders, you mentioned the 85% sexual nature. Perhaps you could talk a bit about the victims of crime and how important it is that someone who has earned that indeterminate sentence does not victimize again. In the case of the balcony rapist, you have the offender but you also have the victims. In the case of the age of consent, we have the victim.

So could you speak a bit about the victims? Hopefully we can prevent future victims through this legislation.

Mr. John Muise: Thank you, Mr. Moore.

The Chair: If you could respond to that, Mr. Muise, we'll then wrap up, because we do need to have a couple of minutes to deal with some committee business. Thank you.

Mr. John Muise: Victims of serious violence, particularly sexual or child sexual in nature, carry that with them for the rest of their lives. They often end up hurting themselves or hurting others, or both. For many of them, particularly victims of child sexual abuse, it's a lifetime thing.

I can tell you that they also feel further victimization because of the justice system when they see it as not operating appropriately. I'll give you an example.

Gordon Stuckless was the offender in the case of Martin Kruze, the young man who committed suicide and in whose memory and honour the Canadian Centre for Abuse Awareness works. Two things happened there. One, the original judge gave a sentence of two years less a day. Four days later, Mr. Kruze jumped off the Bloor viaduct. It was the straw that broke the camel's back. The appeal court did change the sentence five years later, but that was too late for Martin.

Three and a half years into the five-year sentence, the many Maple Leaf Gardens survivors, dozens and dozens of them, found out that Gordon Stuckless was getting out at the end of two-thirds of his sentence. We attempted to intervene with the Correctional Service of Canada to convince the commissioner that there were several good reasons why they should gate Mr. Stuckless. In any event, they didn't, but they did put him on a shorter community corrections leash.

I will never forget the day when, in the tiny little CCAA office—it was one of my first contacts with the CCAA—all of these adult survivors of sexual abuse were in there wondering, trying to understand why Gordon Stuckless was out after serving three and a half years of his sentence. It was a continuing victimization. Many of these men will go on to commit suicide or hurt other people—

● (1100)

The Chair: Thank you, and sorry for interrupting.

I appreciate your presentations this morning and the time you spent responding to the questions. I'll allow you both to exit now while we do a little bit of committee business. Thank you very much.

I would ask everyone else to stay in their seats and allow for the cameras to shut down for about 30 seconds.

● (Pause) ●

The Chair: I would ask committee members to come back to their chairs so that we can finish up.

You have in front of you a schedule of witnesses. These witnesses have been submitted as priority witnesses by each of the four parties.

Our goal and the clerk's goal is to ensure that during the next week that we're back, we have two witnesses from each of the parties represented here. Also, our goal is to have three witnesses at each of these meetings, for a total of nine witnesses at our next three meetings as of next week, so that we can then move into clause-by-clause.

If that's acceptable to folks, I would certainly appreciate a motion.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: I'd simply like us to agree on certain things beforehand.

When the motion was drafted as part of the negotiations with our respective leaders, even though it wasn't specified in the text of the motion, I had understood that there was a gentlemen's agreement of sorts whereby the committee would devote 16 hours to hearing from witnesses before moving on to the clause-by-clause study stage. Of course, that's not counting organization meetings at which technical matters are discussed.

I don't wish to harp on procedure, but as I see it, if I discount the organization meeting and tally the hours that we will be devoting to witnesses when we return, that is the three two-hour meetings planned, that gives us a total of 11 hours devoted to witnesses.

As I see it, we should hear from a minimum of four, not three, witnesses per meeting. On occasion, the Standing Committee on Justice and Human Rights has even managed to squeeze in five witnesses. I must admit that it does seem we would be moving fairly quickly if we vote on a bill after devoting only 11 hours to testimony from witnesses. First, let's try to see what kind of information we need.

I would ask the committee to invite four witnesses to testify at each meeting. That's not so unusual. I will check with my leader and ask my Liberal colleagues and Mr. Comartin to do likewise, but it was my understanding that we had an agreement, not officially stated in the motion, to hear from witnesses for a total of 16 hours before proceeding to the clause-by-clause study stage.

● (1105)

[*English*]

The Chair: I certainly, as chair, cannot speak to the gentlemen's agreement that was put into place or how that was agreed to. I do have the motion in front of me that came from the House. I also have a general understanding that we had agreed that this committee would meet for a minimum of 16 hours. We did spend our first meeting going through routine motions. One part of that was to indicate the times and the dates that we would be meeting. We agreed to that by a motion.

I take into account what you're saying, Monsieur Ménard. I would suggest that if you would like to alter the schedule and add additional witnesses that you do so through a motion. I would consider it a procedural motion. I wouldn't consider it a significant motion. So if you would like to move a motion that we add additional witnesses and additional time, you're certainly free to do that, but in terms of adjusting the schedule as we have it now, it has been passed by motion and endorsed, so it would require you to move a further motion to add either additional hours or additional days, and of course that would include adding additional witnesses.

Moving back to our issue....

Madam Jennings.

Hon. Marlene Jennings: Specifically on this issue, I understand that our committee did in fact discuss and agree to dates that the committee would meet, times that the committee would meet. We began preparing a witness list, but we also said that if needed, we would be prepared to increase the number of sittings or extend the sitting hours.

At this point in time, I'm not in a position to say that the actual dates and times we've agreed to are not sufficient. I think we'll know that only when we see which witnesses are available for the week we get back. If we need to increase the number of sittings or the number of hours that we will spend on hearing witnesses during the week of November 12, that's when we would have to act on it.

The Chair: Thank you.

Mr. Keddy.

Mr. Gerald Keddy: Let me deal with our witness list.

Very quickly, I think we want to deal with the witness list, but I would appreciate if we could see a transcript of our original meeting at which the discussion occurred. To my recollection, there was no discussion of extending sittings. There was discussion about 16 hours of meetings, and at the end, I believe, we said we would sit into the night if it took longer in order to prepare the bill to go to the clerk and come back to the House. I believe that was the discussion.

The Chair: Certainly the transcripts are available, so we'll have a look at them.

Mr. Derek Lee: He has a transcript in his own office.

The Chair: Yes, he does.

Thank you, Mr. Lee.

If we can now get into the list of witnesses and complete that, that would be great. We can suspend until we get back.

Mr. Lee.

Mr. Derek Lee: All the witnesses are fine, but I have questions about two because they are solo names on the list, and they are unaffiliated.

● (1110)

The Chair: Yes, Mr. Lee.

Shawna Silzer is no longer on the list. I apologize. You can just cross her name off.

Mr. Derek Lee: Secondly, there is Joe Tarasofsky. Does he have an affiliation?

[*Translation*]

Mr. Réal Ménard: He's a former justice, now retired, of the criminal division of the Quebec Court.

[*English*]

Mr. Derek Lee: All right.

That answers my questions. Thank you.

The Chair: I'm looking for a mover for this motion: that each party identify two or three priority witnesses and that panels of three or four witnesses be organized for each meeting.

Mr. Réal Ménard: I so move.

The Chair: Thank you.

The motion has been moved by Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: We have submitted names that do not appear on the witness list. Mr. Frémont's name and that of three other proposed witnesses do not appear on the list. In addition to Mr. Frémont, we had proposed Peter Hogg. Both of these individuals are constitutional experts. If we had to select a particular witness to hear from before we conclude our business, I would have to choose Ms. Sherman. This choice has been confirmed by the Bloc. Next on the list would be Mr. Tarasofsky, a retired judge. I don't know if he will agree to testify. I had also submitted the name of Mr. Frémont, a constitutional expert with the law faculty of the University of Montreal. I think these would be my three preferred choices.

[*English*]

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin: It's along the same lines. Looking at the list, and I don't think this is any secret, I have serious concerns about the Bill C-27 part of this bill, from a charter or constitutional standpoint. In both of those areas I think there's some infringement on provincial jurisdiction in some of this legislation.

Mr. Chair, I support Mr. Ménard's position with some of the witnesses he's mentioned, because they'll give us that perspective we need, which I don't see strongly represented in the other witnesses who have been put forward. I'd want a panel just on that, so those witnesses would go there.

The Chair: I see what you're saying. You're saying there are priority witnesses, but there are also priority issues that you want to address. If there are priority issues based on who can present, I would ask that you submit that, and we'll certainly take that into account.

The clerk has just indicated, and I think you got this from our discussion, that you make sure she does receive some names so she's able to do that.

Mr. Joe Comartin: Of the names Mr. Ménard put forward, there are at least two constitutional charter experts in that group. I don't know if the judge is one of the ones Mr. Ménard would suggest should go on that panel.

The Chair: I guess the only question is, do those become your priority witnesses, or are the two that you have on there your priority witnesses?

Mr. Joe Comartin: I'm quite prepared to take a second position to Mr. Ménard.

The Chair: All right, thank you.

Madam Jennings.

Hon. Marlene Jennings: For the Liberals, besides all of the witnesses who were included on the previous list of the previous committee, in response to the request that we provide names of the priority witnesses we would like to see, which we did, given your request now, I would like to inform you that the Canadian Bar Association would clearly be one of our three priority witnesses. I'm pleased to see that they've been confirmed for November 15. I would like to see L'Association québécoise des avocats de la défense, Quebec's association of defence lawyers. I would also like the Canadian Association of Crown Counsel. I think this would give us a really good overview of how the defence, the crown, and the legal profession in general would see it.

We're pleased with the suggestion of the Bloc Québécois.

The Chair: Thank you.

Just prior to adjourning the meeting, I'm going to make a request.

I thought we had a pretty good meeting this morning. I've taken all of the criticisms—I was thinking of hits across the back of the head, but I won't call them that—and certainly will endeavour to inform all of you if changes are required. Certainly the clerk and I are getting to know each other quite well, and we will endeavour between the two of us not to make any errors or omissions in terms of contacting you.

In terms of meeting process, I think it got a little personal towards the end of the meeting. I'm not going to name anyone, as that's not my point here, but I would simply ask if we can do our best to stick to the issues we are dealing with and try not to, across the table to one another, take some personal opportunities to speak on behalf of what someone else's position may be. I would simply ask that we do our best to stick to the agenda and to stay focused on what we've been asked to do here.

Thank you.

● (1115)

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, should our discussions ever become heated, I think the government would be obligated to amend the bill so as to create a new category, that of “long-term member”.

[*English*]

The Chair: Mr. Moore, to wrap it up.

Mr. Rob Moore: I agree with what you're saying, and I certainly didn't mean to hurt anyone's feelings, because I felt your comments might be directed at me. I think we also have to be careful about how we treat our witnesses. I think that would go a long way towards not getting other people hot under the collar. Everyone who appears here is doing so as a volunteer, and we have to be respectful of our witnesses.

The Chair: Points well made.

I would ask that all of you enjoy the break. We'll come back on Tuesday—because Monday is a holiday—and we'll see you then.

We're adjourned.

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