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Chair

Mr. Rick Dykstra

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● (0910)

[*English*]

The Chair (Mr. Rick Dykstra (St. Catharines, CPC)): I know Mr. Comartin is not here yet, but he has been sighted in the building, so we will endeavour to get started.

We've given all of us about 10 minutes. Before I actually call the meeting to order, I just want to note that there's coffee, juice, fruit, muffins in the back, so no one needs to go hungry this morning. I want to make sure everybody is feeling good, it's a positive meeting, and we get everything started off correctly.

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

I just want to make a few brief remarks and outline a couple of things for this morning—and I guess potentially for this afternoon—in terms of where we are at. Obviously, we have finished with our witnesses. We have the ministry folks here this morning to respond to any specifics from our bill, to see what questions, if any, arise during clause-by-clause. So they are available for us to question and receive comment from.

I know I joked a bit about the fact that we do have some coffee and juice here this morning. I'd just make a very simple request of everyone. I think we've done a very good job at staying professional, staying focused on what we're trying to accomplish here. I would just ask the members of the committee to indulge for at least another day to do the same and keep everything as professional as we possibly can.

In terms of a couple of things with respect to clause-by-clause, before we proceed to take up this bill, I need to share some information with the members in regard to tie votes. As most of you are aware, the *House of Commons Procedure and Practice* explains the casting of votes. Basically, the chairman does not participate in debate and votes—only in cases of equality of voices. In such an eventuality, the chairman is responsible for breaking the tie by casting a vote. So I did want to just briefly mention that. I certainly don't want to anticipate any results in clause-by-clause, but I do want to inform members that if there are tied votes on clauses of the bill, I will vote in the affirmative to leave the bill in its existing form. If there are tied votes on amendments or subamendments, the chair will vote in the negative, in order to maintain the status quo and to keep the question open to further amendment, either here in committee or in the House at report stage. I obviously will notify the Speaker of any casting votes delivered on amendments.

There are a couple of other things with respect to debate on clause-by-clause. Obviously, the preamble and the short title I'll postpone until—welcome, Mr. Comartin—we've completed this specific clause-by-clause review. I'd like to point out that any member may ask questions about provisions in the clause or may debate any part of a clause, even if he or she has no amendments to propose.

Second, any member wishing to move an amendment should keep a number of rules in mind. One is obvious. Only members of the committee may propose amendments. I should say at this stage too—in fairness to everyone—a legislative committee works a little differently from a standing committee. We have a couple of subs this morning, so keep in mind that if and when your committee replacement comes back, you need to make sure that the individual subs back in to be able to vote this morning on any of the clauses. If you're not subbed in, obviously your vote will not actually be counted by the clerk.

No seconders are required to move amendments in committee, and obviously amendments may be proposed in either official language.

I'll just note that the committee will consider only one amendment at a time, so I'll try to keep us as tight as possible on that. Likewise, subamendments are obviously amendments to amendments, and the committee can have only one subamendment before it at one time. And when a subamendment is moved to an amendment, it's voted on first.

So I think that basically covers our procedures for this morning. I guess we can jump right into this. I'll just read for the record that the preamble shall be postponed pursuant to Standing Order 75(1) and also that clause 1, the short title, shall be postponed pursuant to Standing Order 75(1) as well.

● (0915)

Just before we get started, there are a number of clauses in this bill. I know it's been our past practice, at least at the justice committee, if there are no questions on specific clauses, to move a number of clauses at one time. I'll leave that open to the committee's jurisdiction, or at least your decision on that. Obviously, we need unanimous approval to do that, but I'd like to think if there are no amendments we could potentially shorten our timeframe by doing that.

Mr. Harris.

Mr. Richard Harris (Cariboo—Prince George, CPC): Mr. Chair, how does the committee make that recommendation, to move a group of clauses?

The Chair: Essentially we just need one person to move the number of clauses, get a general consensus from everyone else that it is okay and there aren't specific questions to a clause, and then we could move in that direction.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Could I suggest that the way we conduct the clause-by-clause is that we look at Bill C-2 in light of the prior bills, that we move on four of the five sections of Bill C-2 that have already been through a standing committee or special legislative committee, that we deal with them in the same manner, and that we move all of them, since they already have been passed. I have one amendment involving that, but it would be included in that section.

I don't know if it's possible to do that, Mr. Chair. I'm looking at the officials and the parliamentary secretary to see if it would be possible to break Bill C-2 into those kinds of sections, get through the ones that have already been passed as quickly as possible, and move to the old Bill C-27, the dangerous offender section, and spend our time on that.

The Chair: Just indulge me for a second to see if we could actually work that out, Mr. Comartin.

Mr. Comartin, your suggestion is a positive one, but I think it's going to create a bit more confusion. We have a couple of amendments that have a potential impact. I have a feeling that if we were to move clauses in groups versus trying to achieve what you suggested, we might end up creating a bit more confusion than help.

Madam Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): My question is, given that there are no amendments being proposed to clause 2 up to clause 33, would there be a problem in moving all those clauses at once?

The Chair: All we need, as I indicated, Madam Jennings—

Hon. Marlene Jennings: I would propose that I move that this committee vote on clause—

● (0920)

The Chair: I think what Madam Jennings is suggesting is that we get started by moving clause 2—I would just ask, as you mentioned clause 33, that you might want to include clause 34.

Hon. Marlene Jennings: I hadn't finished my sentence—clause 2 to clause 33.

The Chair: Would we leave clause 34 because clause 34.1 is a new clause?

Hon. Marlene Jennings: I would prefer to leave clause 34.

The Chair: Do we have unanimous consent?

Some hon. members: Agreed.

(Clauses 2 to 33 inclusive agreed to on division)

(Clause 34 agreed to on division)

The Chair: There is a new clause, 34.1. Procedurally I do have an issue that I need to speak about with respect to this clause.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chairman, if you deem this amendment in order, I will invite my colleagues to vote in favour of it. My colleagues may recall that in June, the Bloc Québécois put forward a series of fifteen or so alternative measures to the Canadian justice system. The inspiration for these measures came from a federal-provincial conference held three years ago. It was suggested at that time that a reverse onus provision apply to permit the confiscation of property in the case of a certain number of offences.

This measure was discussed at a federal-provincial conference of justice ministers and common sense dictates that a reverse onus provision should apply. Moreover, this would be in line with the wishes of the majority of Quebeckers. I hope that you will deem this amendment admissible.

[*English*]

The Chair: Thank you, Monsieur Ménard, but the ruling on this actually is that the amendment seeks to amend section 462.37 of the Criminal Code, and based on *House of Commons Procedure and Practice*, page 654:

> an amendment is inadmissible if it amends a statute that is not before the committee or a section of the parent Act unless it is being specifically amended by a clause of the bill.

Section 462.37 of the Criminal Code is not being amended by Bill C-2; therefore it is inadmissible to propose such an amendment, and the amendment is ruled inadmissible.

So new clause 34.2, Monsieur Ménard. I obviously have comments on this with respect to procedure as well.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I am particularly found of this amendment. As you know, the Bloc Québécois has been especially interested in fighting organized crime. It was the first party to table a bill to fight organized crime and criminal "gangs". As you may know, a British Columbia trial court ruled that Hells Angels members belonged to a criminal organization.

If the committee saw fit to adopt this amendment, persons would not be allowed to wear a symbol or representation that identifies them with an organization deemed by a court to be a criminal organization. I hope that you will find this amendment in order, Mr. Chairman.

[*English*]

The Chair: We have a couple of questions on this. I do have a ruling that is similar, if you'd like to get my ruling first and you have a question on that, or is this specific to...?

Yes, Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): This is a very minor point of order, but it would be really helpful to me if you could refer to the amendments by their proper number. You've referred to the first amendment as a new clause and you've referred to the next amendment as a new clause 34.2. What we're dealing with here on the record is an amendment that has been shown as BQ-1 and BQ-2. That would tie the record into the documents we have in front of us.

It's a very minor point, but it would help me immensely.

Thank you.

● (0925)

The Chair: All right, let me do this. Going forward, technically speaking, they are actually new clauses, but with the permission of the committee, I will refer to them as amendments, with the understanding that we're talking about them as new clauses.

Thank you, Mr. Lee.

I'm not going to get into reading exactly the same thing on each of these rulings, but I will, just for the record, note that the amendment seeks to amend section 467.14 of the Criminal Code, and based on the fact that that section is not being amended by Bill C-2, it's inadmissible, and therefore the amendment is inadmissible.

That is BQ-2.

We now have clauses 35 and 36.

(Clauses 35 and 36 agreed to on division)

The Chair: We have BQ-3.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, the regular members of the justice and human rights committee will recall that we heard from some witnesses—specifically chiefs of police—who made representations when Bill C-95 and even Bill C-24 were adopted. Thirty-day warrants authorizing the use of electronic eavesdropping devices have been extended. Judges can now issue a warrant authorizing the use of an electronic eavesdropping device for a period of one year. However, no similar changes have been made regarding warrants authorizing the use of other investigative tools, such as GPS tracking devices.

Therefore, the Bloc is proposing that, as per the wishes of law enforcement officials, judges be allowed to issue a warrant that is valid for a period of one year, rather than 30 days. Of course, Mr. Chairman, we will respect your ruling.

[*English*]

The Chair: Thank you, Mr. Ménard. Unfortunately, however, the amendment seeks to amend section 492.1 of the Criminal Code. The amendment is inadmissible because of course that section is not being amended by the bill itself.

(Clauses 37 and 38 agreed to on division)

The Chair: We have the first NDP amendment, proposing new clause 38.1.

Mr. Comartin.

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

This specifically addresses the mandatory minimum penalties that have been introduced into clause 38. What I'm attempting to do—and I won't go on for any length, anticipating your ruling on the admissibility of this—is reintroduce judicial discretion with set criteria. You will see this in the last three points, in basically the last sentence of the amendment I'm proposing; namely, a judge would have the discretion to vary from the mandatory minimums in circumstances where the judge "does not consider it necessary to do so"—and then here's where the test applies—"having regard to the public interest, the needs of the community and the best interests of the person who commits the offence".

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Basically, my ruling on this is that Bill C-2 amends the Criminal Code to provide for escalating minimum penalties for offences involving the use of a firearm. This amendment proposes to allow for the court to exercise its discretion and select a lesser punishment than the minimum provided for by the bill.

As *House of Commons Procedure and Practice* states, "An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill." In my opinion, the introduction of the concept of discretion is actually contrary to the principle of Bill C-2, and is therefore inadmissible.

On the ruling, Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): We went at this before, but I'll just say briefly that I disagree with the ruling. Proportionality in the code on sentencing, in section 718—

● (0930)

The Chair: There may be a little bit of latitude here, as you know —

Mr. Brian Murphy: I challenge your ruling.

The Chair: You challenge the ruling. Okay, thank you.

Mr. Brian Murphy: Can I say why I challenge your ruling?

The Chair: You actually can't speak to a challenge.

Mr. Brian Murphy: I think it's wrong.

Some hon. members: Oh, oh!

The Chair: I'm shocked, I'm shocked.

Mr. Murphy has chosen to exercise an option that is available under the rules of procedure. Obviously, a member appeals a ruling by requesting that the committee vote on the motion, and that has happened.

Basically, I'm going to ask the committee members to confirm the ruling of the chair. If you vote yes, it's to confirm that my ruling on this is in fact something you agree with.

(Ruling of the chair sustained: yeas 8; nays 4)

The Chair: Madam Jennings.

Hon. Marlene Jennings: This is not really a point of order but a point of clarification. It's not at all calling into doubt the vote that just took place. It's just a clarification on your actual ruling.

Why did you not rule that it was out of order because it was touching on a section of the Criminal Code that Bill C-2 was not amending? Your rulings on the previous amendments that had been presented were on the basis that they dealt with a section that Bill C-2 did not amend, and therefore were beyond the scope. That was not the wording you used in ruling this particular amendment out of order.

I'm just confused on that, and I'd like some clarification.

The Chair: The request for clarification is reasonable. Basically, determining which of these amendments actually were within the scope of the bill and which were outside the scope of the bill certainly was part of the discussion. It was determined, though, that this ruling, specifically dealing with the amendment, first and foremost, goes against the principle of the bill itself.

Hon. Marlene Jennings: Yes, and secondly, had it not gone against the actual principle of the bill, by virtue of the fact it was seeking to amend a section of the Criminal Code that was not being amended by Bill C-2, it was also out of order on that basis.

The Chair: It's a fair and valid point. The fact is it went against the principle of the bill, and that was where I determined to stop in terms of the research.

Hon. Marlene Jennings: Thank you.

The Chair: We have amendment BQ-4.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I believe that when you talk about this committee a few years down the road, you will have very fond memories of the members working harmoniously together. It will certainly go down as one of your personal accomplishments as chair of the committee.

Mr. Chairman, my one wish would be for the committee to adopt this amendment, since it was discussed at the federal-provincial ministers conference. This amendment proposes an end to the practice of deducting double the amount of time spent in custody from the sentence to be ultimately served. I know that the provinces were in agreement on this. I know that even the Conservatives conducted surveys to gauge the public's support for this initiative.

Of course, I will not challenge your ruling, Mr. Chairman, but I ever you sense unanimous support for this measure among committee members, I think our friendship would be further solidified.

● (0935)

[*English*]

The Chair: Mr. Ménard, your success, I'm sure, in the constituency is due very much to your very capable means of speaking. Unfortunately, we are at a legislative committee here and the amendment does seek to amend subsection 719(3) of the Criminal Code. Since the section actually is not being amended by Bill C-2, it is therefore inadmissible, and the amendment is inadmissible in itself.

Thank you. It's as close as we have to always being friends.

(Clause 39 agreed to on division)

(On clause 40)

The Chair: We have amendment NDP-2.

Mr. Comartin.

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

There are a number of amendments that flow in the same vein, so I don't want to repeat the arguments each time. Essentially, what I'm attempting to do here by these series of amendments is to remove from the list of designated offences and primary designated offences those charges that are of a less serious nature.

I'm sure we'll have some argument over whether they are of a less serious nature. But we did hear evidence from a number of witnesses who suggested that by simply saying if you break and enter with intent—I'm just using that as one of the examples because it's one of the ones I'm moving to delete—there is such a wide range of factual occurrences that the expectation of the Canadian public in terms of what is being attempted here...by saying we want to get a list of offences where, if you commit them and you get more than two years, you are putting yourself in a category as a dangerous offender. It's my firmly held belief and opinion that a number of these charges that are listed do not call for that type of a designation if you've committed these offences, and the range of violent conduct, which may or may not be included in the factual realities, is so wide that it in fact undermines the credibility of the legislation.

So I'm moving that motion for that purpose.

The Chair: Are there any other questions?

(Amendment negatived)

The Chair: We have NDP-3.

Mr. Comartin.

Mr. Joe Comartin: Mr. Chair, in terms of the result of that prior vote, I believe the same attempt on my part to delete those sections runs through amendments 3, 4, 5, and 6, and I'm not sure about 7. I was just about to look at that.

Amendment 7 is one as well?

I'm accepting Mr. Kramp's assessment appropriately. So if I can, Mr. Chair, I suggest that I move all five of those amendments.

The Chair: Do we have unanimous consent to move all amendments?

Some hon. members: Agreed.

The Chair: Thank you.

Those in favour of the amendments—

Mr. Derek Lee: Sorry, is Mr. Comartin not going to speak to them? He's just going to move them.

The Chair: Yes, he's moving them.

Mr. Derek Lee: He's not going to speak. Could I speak to the amendments, then?

● (0940)

The Chair: You certainly can, Mr. Lee.

Mr. Derek Lee: Thank you.

I'm rather attracted by the logic that Mr. Comartin brings to these sections. As I look through the listing in this statute of the primary designated offences, all of the Criminal Code offences, I'm struck by the degree to which they include offences involving violence, which is one of the intentions, and then offences involving sex, some aspect of sexual conduct.

I know the intent of the legislation was to incorporate offences that dealt with the most serious and most violent types of offences that might be out there. But in drawing the line here and in sketching out and painting the picture of the most serious offences, the bill, as drafted now, includes offences that, while involving some aspect of sexual conduct, would not in many cases be regarded by the public as being really serious. Mr. Comartin has identified some of those, and other offences, for example, the offence of pointing a firearm, which, on the face of it, is simply the pointing, it's not the shooting and not the threat to kill; it's simply pointing a firearm, not involving physical violence, although it may scare somebody.

I'm rather taken by the principal line behind Mr. Comartin's amendments, but in the interest of getting the bill passed, if it is to have warts, I guess it will have warts that will attempt to protect society a little better. So I won't be supporting the amendments, but I did want to express some support of the principle enunciated by Mr. Comartin.

The Chair: Thank you, Mr. Lee.

Madam Jennings.

[*Translation*]

Hon. Marlene Jennings: I must say that I hold a completely different view from that of my colleague Mr. Lee. Of all the criminal offences that would be removed from the list as a result of Mr. Comartin's amendments, we would have, for instance, “assault”, and “assaulting a police officer”.

[*English*]

Now when one hears “assault causing bodily harm” or “assaulting a police officer”, people will necessarily believe it involves some serious injury. In fact, if I get into a verbal altercation with a police officer and at some point I merely put my hands on the police office —I don't push him, I simply put my hands on him—that's assault of the police officer.

An hon. member: Or an MP.

Hon. Marlene Jennings: Unfortunately, or fortunately, we're not listed in the Criminal Code. It's not a specific criminal offence to assault a member of Parliament.

Some hon. members: Oh, oh!

Hon. Marlene Jennings: So the point is—We heard testimony that some of these criminal acts or infractions are so broadly defined that it would capture many infractions that in fact the public, if it had the details and facts of the actual infractions, would say no, these should not be among the three convictions that would lead to the reverse presumption, for instance, of a dangerous offender.

Simply on that basis, amendments 3 to 7 from Mr. Comartin seek to remove from the list of primary designated offences those criminal acts that are so broadly defined that they will not only capture the violent and serious infractions, they will also capture, under that broad definition, what most Canadians—ordinary Canadians who are concerned with violence, who are concerned with repeat offenders, who are concerned with offenders who do in fact represent a real, high risk of danger to the protection of the public and public safety—would clearly say are not the ones that should be included.

The Chair: Thank you, Madam Jennings.

We'll go to Mr. Murphy.

Mr. Brian Murphy: Thank you, Mr. Chair.

I hope you don't think I'm trying to get in the back door what I couldn't get through the front door, but if this bill had been properly characterized and coloured as a bill dealing with mandatory minimum sentences and not as a bill that was quintessentially about escalating mandatory minimum sentences, and if 718.3 included some discretion for a judge in these, I would suggest, greyer instances of offences, I would be happy to have kept them in. But we're dealing with three groups of offences, I would say.

The first, which we all agree on, which most of us agree on, that should be subject to mandatory minimum sentences escalating—some of them—are those that, even in the best light, in the best light of the facts of the case, deserve those mandatory minimums. These, however, in their best light, might not deserve the mandatory minimums this law will put forward.

So I just wanted to point out that by virtue of what I think is a logical flaw in the rulings of your predecessor, Mr. Hanger, and you —this is not personal, it's just my view—I will be supporting Mr. Comartin's amendments.

Thank you, Mr. Chair.

● (0945)

The Chair: Never let it be said, Mr. Murphy, that you are not entitled to your view.

We'll have Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Just quickly, I believe that on the offences Mr. Comartin set out, we're not dealing with mandatory minimum penalties. We're talking about the dangerous offender provisions of the bill. That's number one.

Number two, we have to also couple the offence with the sentence a convicted offender received for that offence. Under this bill, in order to trigger the provisions of this bill, a person has to have been tried, convicted, and sentenced to two years or more. So to Ms. Jennings' point, a person is not convicted and sent to prison for two years for putting his or her hands on someone. A judge would not convict someone with a two-year sentence for that.

I think that in the vast majority of cases for which someone gets a sentence of two years or more, it's going to be a more serious circumstance, and that is why that additional provision is in the bill.

I hear what the members are saying, but they have to take that in light of the further trigger, that being that the person had received a sentence of two years or more for each of those acts.

The Chair: Thank you.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): I just wanted to go on record to explain my view on this, but it will apply to some other clauses in this bill in the future too. Basically, I agree with all my colleagues. What I disagree with is an omnibus bill. It should never have been brought forward this way, because you've got a whole bunch of different topics, so that if you want the bill to pass with good things, then you're going to have to vote for bad things.

So I'll be voting the same way as Mr. Lee, but certainly if I were ever to form a government, I would be agreeing with what my colleagues said and would want to get Supreme Court references to certain things, or make amendments to the bill to take out the things that don't make any sense.

The Chair: Mr. Bagnell, thank you.

Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chair. Just so Mr. Moore is clear, I understand that these amendments don't have anything to do with the mandatory minimum part. I think Mr. Murphy's argument is a good argument. It's just that it's not really relevant to the amendments that are before the committee right now.

I do want to challenge Mr. Moore on his statement with regard to the two years. Of course, he's right about that, that even these lesser offences—as I see them—can call for two years or more in a number of cases. Obviously he didn't understand the point I was making, and that may be my fault rather than his, Mr. Chair.

Let me take as an example—because this is where the flaw is in the legislation—breaking and entering again. I say this from experience and from looking at a large number of cases. You will get a series of convictions for breaking and entering. I know how demeaning that is—my house has been broken into I think three times in the last 20 years, and I know the consequences. One time my daughter was present, and that was quite scary, Mr. Chair.

But the reality is that this was a petty criminal, and if that person —I don't think he has ever been caught—had been caught, we probably would have found that he had a series of B and Es and probably had been convicted. On the first occasion he would have been given either probation or a short provincial jail term, but escalating. The reality still is that this is a petty criminal, and you can see quite easily—I know Mr. Hoover and I disagree over this—hundreds of cases in which there would be that exact situation and in which the judge would finally say,"I give up. You're not listening. I'm sending you away for two years plus, into federal prison." We could have a series of those, and then the dangerous offender application would come for a person who was clearly, by any objective standards, not a dangerous offender. You can repeat that same argument for a number of the other sections. That's why I moved them.

● (0950)

The Chair: Okay. To be clear, by unanimous consent we are going to apply the result of the decision on NDP-3 to the amendments 4 through 7.

(Amendments negatived)

(Clause 40 agreed to: yeas 11; nays 1)

(On clause 41)

The Chair: We have amendment NDP-8.

Mr. Comartin, just before I give you the floor, I want to note that there is a conflict between your amendment 8 and your amendment 9. It's a line conflict with NDP-9. If NDP-8 is adopted, NDP- 9 cannot be proceeded with. I'd like you to be aware of that.

Mr. Comartin.

Mr. Joe Comartin: I'm trying to follow the logic of that ruling, Mr. Chair, and I'm not.

The Chair: Excuse me. We have the two amendments. If your amendment NDP-8 were to carry, as I understand it, you're removing a portion of clause 41. If that amendment were to carry, you'd be unable to move amendment NDP-9, because it wouldn't exist.

Mr. Joe Comartin: I'm going to need to look at this. I think we may have the wrong lines. What I'm attempting to do with NDP-8 is to delete those, and I think I may be moving to delete the wrong ones. You have to do NDP-8 in relation to NDP-10 and NDP-11.

What I'm attempting to do, and perhaps the clerk can be of assistance here, is to take that section out—in fact, replace it—and I think I may have made an error. Perhaps, Mr. Chair, we could stand these down, but we'll have to stand down NDP-10 and NDP-11 as well.

The Chair: I'll need unanimous consent from the committee to stand down amendments NDP-8, NDP-9, and NDP-10—

Mr. Joe Comartin: I'm sorry, I still want to proceed with amendment NDP-9. Can we stand down NDP-8, NDP-10, and NDP-11?

The Chair: My understanding is that you want to stand down amendments NDP-8, NDP-10, and NDP-11.

I think the best way to handle this is probably to stand the clause down, because if there is some confusion around which lines you meant to remove, if we move forward on your amendment NDP-9, Mr. Comartin, it actually eliminates the ability to move amendment NDP-8, so if—

● (0955)

Mr. Joe Comartin: I'm wondering, Mr. Chair, if we can stand down the whole section of it. We may be having a break at some time later this morning, and then I can speak to the clerk about it.

The Chair: Mr. Comartin, I'm not trying to put words in your mouth, but I believe you are moving that we stand down clauses 41 and 42 for the time being and that we come back to those two before the end of the day.

Do we have unanimous support to do that? Is it agreed?

Mr. Keddy is next.

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): Mr. Chair, my understanding is that it is not his intent to stand down the entirety of clause 41 but simply his amendments NDP-8, NDP-10, and NDP-11 in clauses 41 and 42, and to go ahead and vote on his amendment NDP-9 in clause 41.

The Chair: That may have been Mr. Comartin's intent. If he so moves that, we run into the problem that he will not be able to move amendment NDP-8, because as the two amendments stand, they conflict with each other.

Mr. Joe Comartin: I would have to ask that all of clauses 41 and 42 just stand down for the time being. I'm not comfortable about where the error has been made, but I have made an error.

The Chair: Okay.

We have had the request from Mr. Comartin to stand down clauses 41 and 42 for the time being with—

Mr. Derek Lee: No. Mr. Chair, I have an amendment to clause 42 and I'm reluctant to stand it down.

The Chair: Go ahead, Madam Jennings.

Hon. Marlene Jennings: I would suggest that you begin by asking for consent of the members to stand down clause 41. Those only have NDP amendments.

On clause 42, Mr. Lee has his own amendment, and Mr. Comartin has suggested that he would be prepared to stand down amendment NDP-10, but Mr. Lee has the right to go forth with his own amendment. I would suggest that you might wish to take a short break now to allow Mr. Comartin to attempt to sort out the confusion and conflict with his amendments. When we come back, we may be able to accommodate both Mr. Comartin and Mr. Lee.

The Chair: I think that's a good suggestion. It may also allow Madam Jennings to get some water.

Why don't we suspend for five minutes to see if we can get this straightened out?

Thank you.

● _____ (Pause) _____ ●

● (1005)

The Chair: I know our clerk doesn't like it when I overuse the gavel, but I would like to just get everyone back to the table. It seems we have had some clarification, and we did not have the unanimous consent to stand down clause 41.

Mr. Comartin, the floor is yours regarding amendment 8.

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

I don't need to have it stood down. When I had indicated I had made an error, I was wrong. It's like that old story, Mr. Chair. I've only once made a mistake in my life, and that was because I thought I had made a mistake and then I was proven to be wrong about that.

The Chair: I'll grant you that.

Mr. Joe Comartin: Thank you.

I do want to proceed with NDP-8. The purpose here is in keeping with what I was attempting to do in the earlier amendments, to, in effect, reduce the usage of the reverse onus in these circumstances. Mr. Chair, what I believe is going to happen as these sections get challenged, as we heard from numerous witnesses, is it is going to get challenged, probably the very first time this part of the bill is used, and it probably will end up going all the way to the Supreme Court. What I'm attempting to do here is to forestall that and try to make this part of the bill charter-proof. I believe strongly that it is going to be successfully challenged. You may hear me repeat this a number of times.

I've gone back and looked particularly at the Lyons decision. The dangerous offenders section of that, as it is now, was challenged. The court used quite clear and strong language, saying, look, this is what we have now, the use of this is very restricted, and they said appropriately so. By both using the designated offences, primary and otherwise, and this section, which will trigger the application by the prosecutor, it goes way beyond the directions we had from the court as to what was permissible with regard to the use of the dangerous offenders section.

So I just feel very strongly that this is ultimately what's going to happen. It will probably be after a number of us are no longer here. This is one of those cases that will take five or seven years to wind its way through the courts and back up to the Supreme Court of Canada. At some point, I believe strongly that these sections, and this one specifically, will be struck down. So we might as well do it now and save all that time and effort.

● (1010)

The Chair: The question on the....

Mr. Bagnell.

Hon. Larry Bagnell: Can I hear from the parliamentary secretary or the staff, please?

The Chair: Ms. Kane.

Ms. Catherine Kane (Acting Senior General Counsel, Criminal Law Policy Section, Department of Justice): It appears to those of us who have looked at it that this amendment is seeking to remove the provision of the bill that requires the crown to declare their intention to bring a DO application or to indicate the reasons they're not bringing the DO application.

That would be my only comment. If Mr. Comartin's comments might suggest that he's seeking to do something broader, the effect of the amendment would simply be to—well, not simply, because it's quite a significant amendment, but it would be to remove that whole provision that requires the crown to state their intentions.

The Chair: Thank you.

Madam Jennings.

Hon. Marlene Jennings: I just want to make sure I am clearly understanding you. Clause 41 of C-2, as it now stands, replaces section 752.1 of the Criminal Code by a new section, which is section 752.01. That new provision is the provision that will now make it mandatory for the crown, upon a third conviction of a serious personal injury offence that is also a designated offence—a third conviction with at least two years' imprisonment—for the prosecutor, to advise the court as to whether or not he or she, on behalf of the crown, will be seeking an application for remand and assessment. It has absolutely nothing to do with the section of C-2 that creates the reverse presumption once that application is made.

Ms. Catherine Kane: That's correct.

Hon. Marlene Jennings: Thank you.

The Chair: Mr. Bagnell, do you have a question, or are we moving to the vote?

Hon. Larry Bagnell: No, I have a question.

Mr. Comartin, are you understanding that's just taking away the declaration of the fact that they have to declare whether or not it's going to be a dangerous offender?

The Chair: Mr. Comartin.

Mr. Joe Comartin: I was going to ask to summarize this because I did miss part of the point I wanted to make on this section.

I don't agree entirely. Clearly, what triggers what requires the explanation from the prosecutor is whether they fit into the category of a designated offence. The other part of this that's offensive, Mr. Chair—and I haven't made this point yet—is the constitutional balance of power between the provinces and the federal government and who has authority to do what. The prosecutor is under the administration of justice. That clearly is a provincial responsibility. We're imposing federal jurisdiction in the provincial area. There's going to be a double challenge on this. There's going to be a challenge based on the powers in the Constitution between the provinces and the federal government, and there's going to be a challenge, I believe, on the charter as well.

The Chair: Mr. Bagnell, one more time, and then Madam Jennings.

Hon. Larry Bagnell: I think this is one of the good things about the bill, so it doesn't fall between the cracks, so the prosecutor either says he's going to proceed or he's not, which makes sense to me, so I'll oppose the amendment.

The Chair: Madam Jennings.

Hon. Marlene Jennings: I have to disagree with my esteemed colleague, Mr. Comartin, that by virtue of requiring the prosecutor to advise the court whether he or she intends to make an application for a remand and assessment, somehow this will, one, lead to a court challenge by the provinces, and two, such a court challenge would be successful.

In fact, it does not at all go to the actual meat of the issue, which is whether or not an application should be made. That remains in the confines of the provincial jurisdiction. This in no way impedes the authority of the provincial attorney general to make the determination that, yes, an application should go forward or, no, an application should not go forward for whatever reason. All it does is require that the decision be made known to the court. That's all.

Right now, under the current system, there is no obligation for the prosecution to advise the court that it will be seeking such an application. Many experts who deal with the dangerous offender system, including defence attorneys, have pointed to the fact that it is a weakness of the system. I have had the opportunity to discuss this with not all the provincial attorneys general but several of some of the most populous provinces, and they had no issue with the requirement to advise the court of the intention to seek or not to seek an application.

Therefore, I will not be supporting the amendment NDP-8.

(Amendment negatived)

● (1015)

The Chair: On amendment NDP-9.

Mr. Comartin.

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

I won't go into this in great detail. You've heard my arguments with regard to the lesser offences that have been included in the primary list. What I'm attempting to do here is to say that if we're going to leave those offences in, which has now been decided by the committee, then what we should do is make it very clear that it has to be a serious offence and so increase the number of years. So it has to be one of these listed designated offences, and they have to have received a sentence of five years rather than two years. That would move us away from the petty repeat criminal to one who, if you're getting five years almost certainly, Mr. Chair, you in fact have moved yourself into the dangerous offender category, especially if it's the third offence.

The Chair: Madam Jennings.

Hon. Marlene Jennings: I'd like to hear from the parliamentary secretary on NDP amendment 9.

Mr. Rob Moore: The government is not going to be supporting the amendment for a number of the reasons I expressed earlier. We feel that when you look at both the triggers to these provisions and the fact that for what Ms. Jennings had earlier characterized as a non-serious happening...a person wouldn't receive at least two years for something that was non-serious. We have to look at both the primary designated offences and then, finally, that it is definitely a serious offence that triggers the crown declaration. I think when we look at those offences that are set out, no one would argue that they are not serious.

In fact, someone has to have been arrested, tried, convicted, and sentenced to two years or more, once, then again, and then convicted of a very serious offence the third time convicted before these provisions are triggered.

I should add that I'm told that in 95% of the instances involving some of those offences to which Mr. Comartin has made mention, in 95% of those cases, a sentence of less than two years would be rendered. We're talking already about someone who has committed on the more serious scale of those offences.

We feel what's included is the appropriate threshold. If we're going to go with five years, are we really protecting the public if we're going to limit it that greatly to someone who's committed offences where they've already been convicted twice and sentenced to five years? The two-year provision does not capture, in my opinion, what Mr. Comartin has termed petty criminals. This is definitely geared towards more serious cases.

● (1020)

The Chair: Madam Jennings.

Hon. Marlene Jennings: I just want to make sure, in my own mind, how this will operate.

Given that we have just defeated the NDP-8 amendment, then should clause 41 be adopted without amendment, in a case where an offender who is convicted a third time of a serious personal offence that is also a designated offence, and for which the sentence for the two previous convictions were a minimum of two years, the crown would have the discretion to look at the actual case and determine that, for instance, this is a petty criminal.

Yes, they were convicted, for instance, for assault, and possibly assault of a police officer, and received two years on the first conviction. But the actual assault was a barroom brawl and the bodily harm was, let's say, a broken nose. In the assault on the police officer, let's say someone standing on the corner hailing a cab, actually in the street, got stopped by a police officer. The police officer wanted to identify them to issue a ticket, because according to municipal regulations, one is not allowed to be in the street, as one is interfering with circulation, even if it's two o'clock in the morning and there's not a car on the road. The individual began arguing with the police officer and the argument escalated. The police officer decided to put that individual under arrest, the individual was not complying and was moving around, and in that moving around possibly hit the police officer. That's assault. But because they had previous convictions of a variety of sorts, including one that was two years, or got, again, a two-year or a 30-month sentence, and now, sometime later, they are convicted a third time of a serious personal injury offence that is also a designated offence, the prosecution will still have the opportunity to look at the facts of the previous conviction and say, okay, I have the power to make an application to advise the court that I will indeed be seeking an application for remand and assessment. But the actual facts of this case do not show that this particular offender, notwithstanding the fact that he—and I'll say it's a male—has been convicted three times now of serious personal injury that is also a designated offence and has received a minimum of two years on each of those convictions.... In fact, most reasonable Canadians, good heads of family, would look at that and say this is not a dangerous offender. This may be a habitual offender, but this is not someone who represents a high risk of dangerousness to the public health and safety of the community.

So by virtue of the fact that the government, in all its wisdom, has left the discretion to the crown, the prosecutor, to seek that application or not, the NDP-9 amendment is not required.

● (1025)

Mr. Rob Moore: Your last sentence was what I was going to say.

Hon. Marlene Jennings: So you agree with me.

Mr. Rob Moore: I agree that there is—

Hon. Marlene Jennings: Oh, my God!

Mr. Rob Moore: I don't agree with everything you've said all day, but I do agree on the point that there is the discretion. As a matter of fact, that discretion is required under section 9 of the charter, as per the Lyons case. So it's required that prosecutors have that discretion, and I think your fears should be addressed by that fact.

So there is discretion in place there. We can all contemplate, as Ms. Jennings just did, those types of scenarios, but the fact remains that the prosecutor would still have that discretion.

I think that addresses your comments.

The Chair: Mr. Keddy.

Mr. Gerald Keddy: Thank you, Mr. Chair.

Mr. Chair, I wasn't sure where Ms. Jennings was headed with her intervention. I was listening carefully to her intervention, and when she finally did get to the end, I was there with her. So now that I know where she's headed with that....

The Chair: The love is in the room.

Some hon. members: Oh, oh!

The Chair: I apologize. The chair shouldn't do that, I know.

All those in favour of amendment NDP-9?

(Amendment negatived)

(Clause 41 agreed to on division)

(On clause 42)

The Chair: We now have Liberal amendment 1.

Mr. Lee.

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

Throughout the hearings we have raised the issue of charter-proofing and the charter acceptability of this, and while I believe there are very serious reservations under the charter in terms of principles of fundamental justice—the right to remain silent and the shifting of the burden here with the presumption—I do accept that the government has viable arguments that they would put forward to uphold the section as compliant with the charter.

However, that is the substantive part. There's a procedural piece here, which I may have identified that causes me concern in this section, and that pertains to what happens when the presumption is used. Up until now, in a dangerous offender hearing, the crown—and protocols have been developed to do this—provides the whole chapter and verse, and there's an assessment that the offender has access to. If we adopt this presumption, what happens if the procedure that's used adapts to the new provision with the presumption so that as the application is made, the crown simply says, “Because of the presumption, you are a dangerous offender because you've been convicted of serious crimes three times”? We therefore are relying on a presumption that you are a dangerous offender without specifying which of the four subclauses, which of the four criteria, that list the threshold of dangerousness apply.

The crown may do it now and the government may say we do that routinely, but we are about to adopt a new provision that allows a presumption, imposes a presumption, without providing that the offender will be clearly provided with the particulars of what aspect of dangerousness would apply to him or her.

My amendment merely adds a provision that says the presumption will apply, and, to use my words, "after the prosecutor has informed the offender in writing of the criteria to be used by the court in making its finding, unless the contrary is proved", etc., continuing with the wording. So my amendment does not alter what would happen, except that it does explicitly require the prosecutor to particularize, itemize, and inform in writing what component of dangerousness—which of the four, any of the four, or two or three of the four—will apply to the offender so that the offender will have the ability then to rebut the presumption. Don't forget we're dealing with a presumption. They have to be able to rebut, and you can't expect the offender to rebut all four. He or she has to know with precision what in their past conduct has given rise to the allegation of, in this case a presumption, of dangerousness, and I don't think the court will accept that a prosecutor can say, "You've been convicted of one, two, three, four offences. We have a presumption. You're dangerous. You've got to be. You're dangerous because the Criminal Code says you are. Now you have a chance to rebut it." Where does the offender work from there?

So could I ask for a comment from the department or from the parliamentary secretary?

● (1030)

The Chair: Mr. Comartin.

Mr. Joe Comartin: Before we proceed on this, quite frankly I would be supportive of this, but given your ruling on what's within the scope of this bill, I'd like to know if in fact you have looked at this as to its admissibility in terms of its scope.

It seems to me to be completely contrary to the reverse onus or the presumption that we've built into the legislation. As I see it, all the prosecutor has to do is say, "You've committed one of these three offences that have these penalties; it's up to you now to prove why you shouldn't be a dangerous offender." This is imposing a duty on the prosecutor that flies in the face of that.

The Chair: To your point of order, I have in fact reviewed and taken a very close look at this, and it is in order.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I would have liked...

[*English*]

The Chair: Sorry, Monsieur Ménard, I don't mean to interrupt. Mr. Lee did ask a question to the officials, so I would like to give them an opportunity to respond and then turn the floor over to you.

Mr. Douglas Hoover (Counsel, Criminal Law Policy Section, Department of Justice): I appreciate the nature of the motion, and I think I understand fully what you're attempting to do.

Again, with something like that, prior to the Department of Justice advocating such an approach, I think we'd want to consult fully with stakeholders who are on the front line of the administration of justice, to ensure that it worked as intended. My concern at first, with the limited time I've had to look at this, would be that, for example, in the substantive body of subsection 753(1), this type of codification of what I believe is already occurring under the common law and requirements under the charter as well might better be placed, if it were required, in the more procedural sections preceding section 753, or, for example, in the AG consent section, which is after section 753.

But overall, I would suggest that in fact there are current requirements on the crown, required in common law and by charter jurisprudence, for full disclosure prior to the hearing actually occurring. Typically, this occurs with the seven-day notice and AG consent being filed with the court. Again, typically we're confident that if that didn't occur, defence would have a strong case to force the crown to disclose prior to any argument on section 753 merit.

So, again, I do appreciate the intent here, but I would suggest, number one, that before being confident that this worked as intended, we would have to fully consult, and number two, it's most likely that this is already required, for the most part, by common and charter law.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: First of all, Mr. Chairman, I take it the government will not be supporting our colleague's amendment. Secondly, I thought this amendment was sanctioning a practice that had become accepted through use. I can't imagine that once the psychiatric report is available and the time comes to declare someone a dangerous offender, no written notice will be given. I don't quite understand. In my opinion, this amendment is formally acknowledging a common practice. Am I wrong to say that? Am I wrong to think the government has no intention of supporting this amendment?

● (1035)

[*English*]

Mr. Rob Moore: Mr. Chair, the government is not going to be supporting amendment LIB-1 for some of the reasons that have already been laid out, including the fact that if it were to be included, it would be certainly in a different part of the bill. It's in the substantive section. There are already constitutional requirements on disclosure. This is happening in practice. So the government will not be supporting Mr. Lee's amendment.

The Chair: Madam Jennings.

Hon. Marlene Jennings: I'm cognizant of the information Mr. Hoover has just given us. While he appreciates what Mr. Lee is attempting to do, and notwithstanding the lack of consultations with the stakeholders, the most effective way to achieve what Mr. Lee is attempting to do would be under subsection 754(1), the hearing of the application.

It states that:

> Where an application under this Part has been made, the court shall hear and determine the application except that no such application shall be heard unless
>
> (a) the Attorney General of the province in which the offender was tried has, either before or after the making of the application, consented to the application;
>
> (b) at least seven days notice has been given to the offender by the prosecutor, following the making of the application, outlining the basis on which it is intended to found the application

My question is this. To achieve what Mr. Lee is attempting to achieve, if I follow you correctly, Mr. Hoover, the line that says "outlining the basis" would be amended to say something to the effect of "outlining the basis on which it is intended to found the application, including the criteria to be used by the court in making its finding", or making a reference back to subsection 753(1), where it lists the pattern of repetitive behaviour, the pattern of persistent aggressive behaviour, behaviour of such a brutal nature, etc. That's where one would do it.

Mr. Douglas Hoover: I suppose that's the most logical spot, if you were going to pursue that type of amendment. But I would reiterate that there has been no analysis done by the department and there has been no consultation. I think it would be premature to provide departmental support or an opinion on that one because it's not available.

Hon. Marlene Jennings: I'm not asking for departmental support. I'm just asking whether, if any member wished to go forward with the objective of Mr. Lee's amendment, the most appropriate section wherein that objective would be met would be an amended subsection 754(1) of the Criminal Code. If I'm not mistaken, it is already being amended by clause 48 of Bill C-2, and therefore a proposed amendment to section 48 would be in order.

I'm not asking for a ruling; I'm just making a statement, so the chair is saved by that.

My other question is whether, should an attempt be made for a friendly amendment from the floor—which the rules of this legislative committee permit—to section 48 in order to ensure that the criteria found under subsection 753(1) would be provided as part of outlining the basis, etc., it would not impede or diminish in any way the amendments the government is bringing to the Criminal Code that create the reverse presumption. This is the case where, once there has been a third conviction for a serious personal injury offence that is also a designated offence and for which the offender received a minimum of two years on each of the prior convictions, should the prosecutor in his or her wisdom decide to use discretionary authority and actually file an application, the reverse presumption that the offender is indeed a dangerous offender would obtain, unless the offender can rebut it through balance of probability. My question is whether this doesn't diminish and doesn't in any way attack the government's desire to create the reverse presumption that an offender is indeed a dangerous offender, which is rebuttable.

● (1040)

Mr. Rob Moore: Mr. Chair, Ms. Jennings is asking—

Hon. Marlene Jennings: I asked my question of Mr. Hoover.

Mr. Rob Moore: Actually, you're asking about the government's position.

Hon. Marlene Jennings: No, I'm not. I'm asking—

Mr. Rob Moore: You're asking about some hypothetical—

The Chair: Mr. Moore has the floor.

Hon. Marlene Jennings: No, I have the floor.

The Chair: Madam Jennings, you've asked a question. I will allow Mr. Moore to respond. You can certainly have a follow-up to Mr. Hoover as well. You asked the question to the group. It isn't specific to one person.

Hon. Marlene Jennings: Thank you.

Mr. Rob Moore: Without consultation, the government is not going to support the amendment Ms. Jennings is talking about, or maybe trying to flesh out. Obviously in the future there could be some consideration. The minister is always engaged with his provincial colleagues on these things. But if someone comes up with an amendment to a bill, without any consultation with our provincial counterparts, the government wouldn't accept that amendment.

The Chair: Mr. Hoover.

Mr. Douglas Hoover: I can only reiterate what I have already said, and that is that we're not in a position to provide any explanation as to what the potential impact of the amendment would be, whether it be in subsection 753(1) or in section 754.

Again, clearly section 754 provides guidance to the court regarding disclosure. I think crowns take that very seriously. As they do in a regular trial, they would want to provide full disclosure to avoid any ramifications for possible appeals. That being said, all I can suggest is that we can continue to look at this down the road, but at this time I can't really provide any conclusion to it.

Hon. Marlene Jennings: So you're not able to say whether an amendment such as Mr. Lee is proposing, which would be an amendment to clause 48 of Bill C-2, would in any way reverse or come into conflict with the provisions of Bill C-2 that create the reverse presumption. You're not in a position to answer that question.

Mr. Rob Moore: Chair, Ms. Jennings is asking the witnesses to follow the rabbit trail she's on with her hypothetical question as to whether it would in any way, shape, or form impact on what we're doing. I wouldn't expect that anyone would be prepared to answer that when it comes up on the fly and off the floor.

On top of that, because of the nature in which it's coming forward, the government won't be supporting it anyway.

It's something Ms. Jennings might want to pursue in the future, but right now I think we should move on.

Hon. Marlene Jennings: May I continue?

The Chair: You certainly may.

Hon. Marlene Jennings: I will simply conclude by saying that Mr. Lee's amendment is clearly not on the fly. And nothing Mr. Hoover has said—I mean, he's here to provide advice to this committee and to answer questions—would lead me to conclude that the Justice officials believe Mr. Lee's amendment was on the fly.

I understood Mr. Hoover to say that given that Justice has not been able to consult with the stakeholders, he is not in a position to say whether this would be agreeable or create any difficulties to the stakeholders—the provinces—in the prosecution of dangerous offender applications. That's number one.

Second, Mr. Hoover also stated that the objective Mr. Lee is attempting to achieve would be better achieved under subsection 754 (1), which is already captured in Bill C-2 under clause 48. But at the same time, he also said that given that there has been no consultation —

● (1045)

Mr. Daryl Kramp (Prince Edward—Hastings, CPC): I have a point of order.

The Chair: A point of order, Mr. Kramp.

Mr. Daryl Kramp: With all respect to the honourable member, we have heard the same argument for the third time.

You're making the same point again and again, and we've had the same answer. Are you going to go through it four, five, and six times, with a repetition of the same—

The Chair: Mr. Kramp, thank you. That's not a point of order. Madam Jennings did indicate that she was concluding.

Hon. Marlene Jennings: Thank you, Chair.

I was going to remind Mr. Kramp that perhaps he did not hear my opening words, which were, “To conclude”.

I do not agree with the characterization that Mr. Moore has given to my comments and I do not believe that anything Mr. Hoover stated would give grounds to Mr. Moore's characterization of my comments. I do, however, take note of both Mr. Moore's statements, twice now, that the objective that Mr. Lee is attempting to achieve through his amendment, Liberal-1, is something the government is more than open to taking under consideration and to going back to their provincial counterparts to discuss with them as to whether or not they would be supportive of the objective that is being attempted to achieve in the Liberal-1 amendment.

Thank you.

The Chair: Thank you, Madam Jennings.

Mr. Bagnell.

Hon. Larry Bagnell: Thank you.

I have another question for Mr. Hoover.

In that you can be determined a dangerous offender in four different ways, and, Mr. Hoover, you said you couldn't proceed with this because there's a lack of consultation, could you please let us know what consultation you've done, particularly with defence attorneys, as to how they're going to defend someone if they don't know which of the four criteria...because of the reverse onus provision that the defendant is being charged under as a dangerous offender? Would you outline for us the consultation you've done on that?

Mr. Douglas Hoover: We meet regularly with the Canadian Bar Association, which provides us with feedback, and did so on former Bill C-27, which is again, as you are aware, replicated in Bill C-2. There are also perhaps more informal consultations.

I attempt to familiarize myself with case law, points of view of both defence and crown. The mandate of Justice Canada is not restricted to the position of crown; it is also to ensure that all aspects of the justice system work fairly and evenly for both sides. We're not necessarily an adversary in development of legislation. I think we've had this in mind in developing these procedures. We're confident that the current procedures in regard to disclosure are adequately safeguarded in these provisions.

Again, I would reiterate one final time that the suggestion by members of the committee regarding additional disclosure is something that, by raising it in this committee, we will take a more serious look at in the time we have in the future to do so.

Hon. Larry Bagnell: Are you saying no defence attorneys, no one, raised any concern that they wouldn't know what they're defending their client on when there are four categories and the reverse onus makes their client automatically guilty and they don't have an understanding of which category? You had no complaints about that?

Mr. Douglas Hoover: I think there's always a concern that new provisions based on interpretation could result in unintended consequences. We always try to look carefully at that. I can suggest, based on the comments in committee on Bill C-27 by the Canadian Bar Association, that we have taken full consideration of all comments regarding procedure and substantive aspects of the bill. Again, we're confident that disclosure is in fact fully covered in the case of the presumption on a third conviction.

The Chair: Thank you.

Mr. Murphy.

Mr. Brian Murphy: Briefly, I was struck that the parliamentary secretary said that this amendment might tread, I guess, on provincial attorneys general with respect to what they might have to say about it and that there hasn't been time for consultation.

Obviously, that's a very good idea in general, and I respect that. But in this case, as Mr. Lee said in his preamble, the guts of his amendment are to charter-proof it, make it a more watertight boat, if you like. I gather Mr. Hoover has canvassed, not on his own but on behalf of the DOJ, the requirements of Stinchcombe and other cases with respect to disclosure. I will ask Mr. Hoover what aspect of this amendment would require the attorneys general general consensus, as opposed to your own internal review, which I think you've done with respect to the adequacy of disclosure.

● (1050)

Mr. Douglas Hoover: I'm not sure about the nature of the question. Are you asking whether a consensus is required before we bring in legislation?

Mr. Brian Murphy: I'll just make it very clear. Mr. Moore said that this amendment wouldn't work; it's from the floor, it's on the fly—whatever he said. The thrust of Mr. Moore's comments—I may have gotten them wrong, Mr. Moore—was that the attorneys general would not have been consulted on this amendment, clearly, and that would be a major reason why the government would not support it.

This appears, by what Mr. Lee said, to be an effort at charter-proofing it, the whole provision. It also touches upon how you answer the question, quite logically, I might add, about the disclosure requirements, which is something you would look at as the Department of Justice, I suggest, without necessarily fully consulting attorneys general on the impact of this section.

Mr. Douglas Hoover: Again, our objective in consultation with all stakeholders, not just with attorneys general, is to ensure that we have full knowledge of how it will work throughout the country. I think it's important to understand, for example, that there are 13 jurisdictions, and within each of those jurisdictions there are different ways of doing things. The objective of full consultation is to ensure that what we propose to do will work as intended in all those jurisdictions. I think it's difficult to forecast with 100% certainty how any provision, procedural or otherwise, is going to impact on those jurisdictions. In terms of this type of amendment that is being proposed by motion, while on its face it may appear fairly straightforward, again, without full consultation we are not going to be anywhere close to 100% sure that it's going to work as intended.

So I think if the nature of your question is how I understand it, I can tell you that we would think it absolutely fundamental to discuss this with attorneys general, as with other stakeholders who are involved in the administration of justice, to ensure that in fact it would work as we intended. I can tell you that for the current provisions those consultations did occur. We are confident that as regards disclosure requirements, they will be adequate.

The Chair: Mr. Kramp.

Mr. Daryl Kramp: Thank you, Chair.

I think the simplest explanation that I can try to reason with here is a statement made by Mr. Hoover in that full disclosure by the crown is mandated by both charter and common law. To not have full disclosure would be detrimental to the crown's case and would obviously give grounds for appeal. So absolutely it would be against the crown's purpose not to have disclosure. In other words, it would have to be an obvious attempt to subvert the course of justice in order to validate Mr. Lee's point. I just don't understand. That does not seem to me to be the manner that justice is carried out in Canada. Our legal people follow the rules of law. Our crowns follow the rules of law.

I understand Mr. Lee's point of view, but to me it's almost overkill in that it is not necessary when it's already mandated through full disclosure by crown through the charter and through common law.

● (1055)

The Chair: Thank you, Mr. Kramp.

(Amendment negatived)

The Chair: On the same clause 42, NDP amendment 10, Mr. Comartin.

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

The amendment's purpose is to deal with the factual type of situation we had in the Callow case this summer.

What I'm doing here with this amendment is combining the existing (a) and (b) in that section. I'm not taking away from that at all. We're just combining it into one subsection and then introducing a new paragraph in the form of the (b) that's in NDP-10.

Mr. Chair, what these sections deal with is when the prosecutor can bring an application for a dangerous offender designation. Basically, the first paragraph in my amendment would provide for two opportunities. The first is within six months of the conviction on the most recent offence that's triggering the application, or at a later period, if new evidence that was not available to the crown comes forward. That's the (a) part and that's already in the legislation. They're in the Criminal Code.

The second part would introduce the authority, the mandate, to the prosecutor to be able to bring an application at any time after the individual was in custody, having been sentenced, and in federal prison, if two criteria are met. The first is that the individual had shown that he—and I'm going to say “he” because it's almost always a “he”—has refused and continues to refuse treatment that is available. The second criteria would be that the offender continues to constitute a threat to society.

In the Callow type of situation, this would have allowed the prosecutor to have moved to bring that designation when it became obvious that Mr. Callow was not responding to any attempts at rehabilitation that were being provided to him by the correction officials.

That factual situation has occurred more than once, although the Callow case is the most recent and I think probably the most high profile one.

Those are my comments, Mr. Chair. Thank you.

The Chair: Thank you, Mr. Comartin.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I would like to know if the government supports this amendment?

[*English*]

Mr. Rob Moore: Thanks for the question.

No, the government is not going to be supporting Mr. Comartin's amendment. I've seen what Mr. Comartin is proposing, and it goes in a direction that our bill is not going in. It would require, again, significantly more analysis before the government could support it. If I understand what Mr. Comartin is proposing, it would permit the DO application to be made later than six months or even after a previous one has failed, on the basis that the offender has refused treatment.

This bill does some major things, even with regard to long-term offenders who breach their conditions. But the specific provisions Mr. Comartin has put forward would require much further analysis because they're offering some new triggers that do not currently exist in the bill, and for that reason we're not going to be supporting it.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I would like to ask Mr. Comartin if, after the six-month period, he would like a court, or the crown, to be able to bring an application and to initiate the process? Why has he tabled this amendment? What inspired him to do so?

[*English*]

Mr. Joe Comartin: Clearly it was inspired by the Callow case, although that's not the only time this has occurred. We've heard from a number of witnesses—Mr. Hoover in particular—about the difficulty that crowns have in bringing these applications at the time of conviction, whether it be the third one under this legislation or because of concerns that this person is not rehabilitative. We have missed a number of opportunities. The Callow case is a classic case of bringing the application within the six-month time period and then not being able to do so after that. It may be a failure of the system because of the costs involved or a misapprehension of the facts by the prosecutor. Perhaps the application was brought and denied because of a judicial assessment of the facts. But we are left with the situation where we do not have the ability.

If you paid close attention to Mr. Hoover when he was testifying, he said the Corrections Services people have the greatest opportunity to make the assessment as to whether the offender is no longer a threat to society and is receiving treatment that's beneficial. Often the best evidence in support of a dangerous offender comes after the person has been incarcerated, because the experts and the officials who are treating him are the best ones to make that assessment in that period of time. It's a flaw in the legislation right now that we cannot do that. If you don't meet that six-month requirement—and it's very hard to get around that by arguing new evidence—you're stuck.

Although it's somewhat addressed in the recognizance section of this bill, it also allows us a greater opportunity to deal with individuals over a much longer period of time.

● (1100)

The Chair: Thank you, Mr. Comartin and Monsieur Ménard.

Madam Jennings.

Hon. Marlene Jennings: I have a difficulty with Mr. Comartin's amendment NDP-10, new proposed paragraph 753(2)(b). Mr. Comartin's explanation and the case he uses confuse me. It states in the last six lines:

> and it can be shown that the offender has refused and continues to refuse any treatment available to the offender while in custody and that the offender continues to constitute a threat to society.

But Mr. Comartin uses the example of Mr. Callow. Had he consulted the documents, an independent analysis that was done of the Callow case clearly demonstrated that Mr. Callow did not refuse treatment through his years of incarceration. He went through numerous treatment programs. Initially the assessments following the completion of the treatment programs showed they did not have much of an impact on the level of danger he represented, but in further years they showed that his level of risk diminished.

There was a great deal of media coverage when Mr. Callow was released. Incorrect information was given out by Corrections Canada, which then corrected it. Corrections Canada initially mistakenly said that Mr. Callow had consistently refused to accept any treatment available to him in close to 20 years of incarceration. Corrections Canada then had to correct that because it was not factual. I want to put that on the record.

I'm not sure if Mr. Comartin's amendment would do what it's seeking to do; therefore I would like to hear from the officials on this amendment.

● (1105)

Ms. Catherine Kane: I'll just say a few words, and then my colleague Mr. Hoover may want to elaborate.

It's always difficult for us, as officials, because we don't get the motions very far in advance, and I realize that. So we don't have an opportunity to fully explore them, but on our first reading of this, it did seem that this would extend the period indefinitely for which an application could be brought, and it would subject a person who was otherwise receiving a determinate sentence in a penitentiary to have this—that a dangerous offender application could be brought—hanging over their head, so to speak, for the duration of their sentence. If there were further consideration of this in the future, we would need to do a very careful charter analysis of this provision, because this could be putting us in the sphere of that which is unconstitutional and not justifiable. It would have to be looked at in the whole context of the rights available to an offender who is incarcerated.

The sentence is the sentence. This would be something else that could occur later. There is no obligation on a person to undergo treatment. We know that is a concern for a variety of reasons, but there is no way to compel them to undergo treatment while they are in an institution. At least, that is our understanding. The threat of a dangerous offender application if they refused would appear to compel them to take treatment. Officials from Correctional Service of Canada would definitely be better placed to advise on the programs currently in penitentiaries and the types of treatment that are available, because some people apparently are not suitable for treatment in any event.

Hon. Marlene Jennings: I have a question for clarification.

Under our criminal justice system we have a system of probation that is available to the sentencing judge when the offender is sentenced to a maximum of two years less a day, but there is no such authority available, if I'm correct. All I want to know is yes or no. Am I correct in believing that there is no system of probation that exists for sentences that are two years and more?

Ms. Catherine Kane: That's correct. There is, obviously, parole.

Hon. Marlene Jennings: Thank you.

Yes, but there's also parole under two years less a day. Under two years less a day, under what we call provincial sentences, meaning that they are less than two years, the judge has at his or her disposal a sentence of incarceration, for instance, plus a sentence of probation, which is added on once the sentence is served out. Parole is the Correctional Service of Canada's or the parole boards'—provincial or federal—measure that can allow for release while someone is serving out a sentence. There is no such system of probation available to a judge at the sentencing if the judge imposes a sentence that is two years or more.

Ms. Catherine Kane: That is my understanding.

Hon. Marlene Jennings: Thank you.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: I'd just like to ask the officials whether the fact that this hearing could be brought at any time offends the principle of requiring that a person be charged within a reasonable time and not hanging over their head constantly.

Ms. Catherine Kane: This provision, as we read it, is related to a dangerous offender application, which could be brought while they are serving their sentence, so it would necessarily be a new charge. It's not characterized as a new charge or failure to comply with the treatment. It's extending the length of time that the dangerous offender application could be brought. Similar concerns are raised about a person not knowing what they face.

The Chair: Mr. Comartin has requested a recorded vote, so I call the question on amendment number NDP-10 on clause 42.

(Amendment negatived: nays 11; yeas 1)

(Clause 42 agreed to on division)

(On clause 43)

● (1110)

The Chair: NDP amendment number 11.

Mr. Comartin.

Mr. Joe Comartin: Mr. Chair, NDP-11, 12, 13, and 14 are all amendments that were recommended by Mr. Cooper. He is the crown attorney who is responsible for the dangerous offender applications for the Ottawa region.

I had a discussion with Mr. Moore at the end of last week indicating that I was bringing these motions in response to the request from Mr. Cooper. I recognize that with the exception of NDP-11, the other three would be inadmissible, unless there was unanimous support that they be allowed. The last three address sections that are not part of C-2. NDP-11 does deal with proposed section 753.02, which is part of C-2.

I suggested to Mr. Moore that if we couldn't get unanimous consent, I would not proceed. I do not have that unanimous consent from the government, so subject to the consent of the committee I will be withdrawing, NDP-12, 13, and 14. I would like to proceed with NDP-11, though.

The Chair: Is there unanimous consent?

Some hon. members: Agreed.

The Chair: Continue, Mr. Comartin, with NDP-11.

Mr. Joe Comartin: Both NDP-11 and the ones I've just withdrawn were recommendations from Mr. Cooper to deal with the very practical aspects of problems of prosecuting these cases to a successful conclusion. I think it was the best evidence we've had with regard to the difficulties of prosecuting these cases. It was interesting. He said twice—once when he was giving his original testimony and then in response to a question—that he really wasn't intending to change his practice if the dangerous offender part of C-2 went through. I thought that was pretty telling about the usefulness of the amendments we brought forward. But he was saying that we could help him and the prosecutors across this country by getting them access to better evidence so the judge can make better informed and higher-quality decisions, because all of the evidence with regard to the person's history, behaviour, conduct, and criminal activity would be before the court.

I am disappointed that the government was not prepared to support those amendments. I would hope they would at least support proposed section 753.02. As it is written now, the only evidence that is recorded and kept for the purpose of these applications, and then applied to the applications subsequently, is the evidence of the victim of the crime. The effect of the amendment would be to expand that so any evidence under these provisions, whether it's from expert witnesses, eyewitnesses, family members of the victim, or family members and friends of the offender, could be used in the subsequent applications under paragraph 753(5)(a) or subsections 753.01(5) or (6).

It's a practical, fairly straightforward amendment. We're moving the evidence, not just the victim's evidence but all of the evidence that has been put before a court and has been found admissible in those court proceedings. It's a wise, practical, simple solution to the problems the prosecutors have across the country. I'd urge all committee members to support it.

● (1115)

The Chair: Thank you, Mr. Comartin.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: I put the question to the parliamentary secretary. Since the other three amendments have been withdrawn, all that remains is for us to dispense with amendment NDP 11. Has Mr. Comartin indicated to the committee that the government would not support broadening its definition of admissible evidence to include evidence other than the testimony of the victim? If the government does not support this amendment despite the testimony given to the committee, then can it give the reason or rationale for its position?

[*English*]

Mr. Rob Moore: I understand NDP-12, NDP-13, and NDP-14 have already been withdrawn.

On NDP-11, this is narrowly allowed under the provisions that we've put forward, to avoid revictimizing the victim. A victim has given testimony, so we allow that testimony to be used in a subsequent hearing. The reason that's done is to avoid having a victim revictimized.

As to the vast amount of other evidence that would come into a hearing of this nature, that does not involve revictimizing someone. In order to move in that direction, we would have to have consultations with the provinces, with the bar, with other stakeholders. I think there's a sound reason for the one we are allowing, which is that the victim or the narrow group of people who have maybe been very seriously abused by an offender and who have mustered up the courage to give testimony will avoid having to give testimony again. I think this is a worthwhile effort, but if we're going to have a hearing, we want to err on the side of hearing that evidence in its original format.

[*Translation*]

Mr. Réal Ménard: Mr. Moore, if I understood correctly, this would allow evidence other than the victim's testimony to be deemed admissible. Therefore, I don't understand your answer. It does not seem logical, given what the amendment is proposing.

With your permission, Mr. Chairman, perhaps Mr. Comartin could explain the aim of the amendment once again. As I see it, the purpose of this amendment is to allow evidence other than the victim's testimony to be deemed admissible. Therefore, I fail to see the rationale behind the government's position. I'm missing something here.

Would you be open to letting Mr. Comartin clarify the aim of the amendment? The parliamentary secretary's answer is not logical given the motion on the table. The parliamentary secretary has two fine qualities: he is very rational and very loyal. He possesses these two qualities, although I can't say which is more important to him in terms of his set of values.

[*English*]

The Chair: I will allow Mr. Comartin to re-explain, but perhaps we should allow him to speak last so we can get through a couple more questions or points.

Madam Jennings.

Hon. Marlene Jennings: Thank you, Chair. I have a question about Mr. Comartin's NDP-11 amendment. If my reading of this is correct, then it would allow any evidence adduced during a hearing for an application made under subsection 753(1) to also be deemed to have been adduced. So we're talking not just the narrow opening that the government's amendment would seek, which is the actual physical victim of the criminal act. The government's amendment would not include, in a case in which the victim was murdered, or was suspected to have been murdered, or had disappeared, and the charges were abduction, etc., the evidence provided by the families of the victims. The evidence that they might have provided at the initial application would not be considered to be or deemed to have been adduced in this particular instance, under the government's amendment.

Am I correct?

● (1120)

Mr. Rob Moore: Right. It's just the victims themselves who had to give testimony.

Hon. Marlene Jennings: It's just the victims themselves.

So in fact, if we are to show sensitivity, not just to the individual victim who is still living and breathing, or who may be living and breathing but is unable because of a vegetative state, because of severe physical injury done to them, to testify on their own behalf, but to the families of these victims who are called upon to testify.... Under the government's amendments, those witnesses would still be open to being called to testify.

Ms. Catherine Kane: As you know, in the Criminal Code there is a definition of "victim", but it's for the purpose of victim impact statements, and it's quite an expansive definition. It indicates that it's not just the primary victim—that is, the dead, ill, or otherwise incapacitated victim; it can be the representative of the victim, a dependant, or a family member. Although that's only for the victim impact statements, the courts have often given a fairly liberal interpretation to "victim" in other contexts. To an extent that's been an evolution in the law: you're recognized as a primary victim if one of your loved ones has been murdered or can't be there on their own.

We would expect that the provision now in Bill C-2 that provides that the victims' evidence be deemed to be adduced would be interpreted in the same liberal way, but there isn't a provision in the Criminal Code that makes that crystal clear; it's only with respect to victim impact statements.

Hon. Marlene Jennings: I was asking because I do understand that with victim impact statements, the definition of "victim" does broaden from the actual primary victim, if one wants to use that term. Families of victims have been called in the past to testify because they may possess some information pertinent to the case being mounted by the crown. My concern was that given that there's not a broad definition of "victim" codified in the Criminal Code, except for the victim impact, the government's amendment would not cover and exempt the members and families of victims. You're telling me that even if it's not codified, jurisprudence has now established a much broader definition of the term "victim", and therefore the government's amendment would in fact protect these individuals from the pain of having to give evidence again.

Ms. Catherine Kane: That's correct, and in the case-by-case analysis of who the victim is, it may not be your neighbour down the street, but judges are certainly taking notice of who the victim is and who has suffered.

The Chair: Go ahead, Mr. Murphy.

Mr. Brian Murphy: I'm just trying to understand this.

The intention of this——not the amendment, but section 753.02, as it was in the bill—was to prevent the victim from having to give testimony again, thus revictimizing the victim. I understood the parliamentary secretary when he said that, and I think we all would agree with it.

The amendment, however, doesn't affect that at all. It doesn't move from that first principle. If I understand it, the last time I supported Mr. Comartin in an amendment, he criticized my logic, but I'll try it again in support of him and see how it works out—

Some hon. members: Oh, oh!

Mr. Brian Murphy: As I understand it—perhaps putting it with some clarity, Mr. Comartin—Mr. Cooper, who frequently is an agent of the Ontario crown in these types of cases, makes it clear in his brief that he is also a practitioner in this area of law and he's trying to be even-handed. I think he's trying to say what the unintended consequence is. We know what the intention was, but—and I'll read it—the unintended consequence was that:

> —a specific statutory reference to the admissibility of victim evidence, may be to suggest that other evidence tendered—is not admissible in a similar fashion.

In other words, he thinks that as it is drafted it would be harmful to the outcome to specifically mention the victim's verbal testimony and not mention all the evidence; someday down the road it might be possible to attack the method by which the evidence was given. In other words, I do think that Mr. Comartin is correct in suggesting this is a valid amendment. It doesn't detract from the intention, which is not to revictimize the victim. He also adds what seems to me to be the very sensible wording that evidence given and evidence adduced are two different meanings, and all your original wording intended was the verbal testimony. What the amendment suggests is that all evidence shall be adduced.

Maybe Mr. Hoover can answer this. If the floodgate argument is in play here—that you don't necessarily want to give a buy to all evidence—Mr. Cooper seems to say that at the Supreme Court level, hearsay and conjecture evidence is often very much acceptable at sentencing; it's not a trial of innocence or guilt.

Maybe Mr. Hoover would be best to answer this. I suppose you're going to throw out the consultation thing, but what are the real, concrete legal objections to the amendment?

● (1125)

Mr. Douglas Hoover: Consultations aside, the first thing to note is that this particular provision replicates an intent for the rehearing —and I'm talking not about the motion but about the original Bill C-2 provision—what already exists in subsection 753(6). That section has been around since the mid-1970s. There is abundant case law on the ability of crown and defence to not be restricted to evidentiary rules that are in place during trial. They have more latitude as it stands.

I think the issue here is, from the perspective of the motion, what its impact might be. It is clearly quite broad. I think it deserves significant analysis. On the face of it, I would agree it would probably be supported by many crowns. I'm not so sure it could be supported in the same manner by defence counsel. It may give an advantage beyond what, on its face, is apparent. I would also suggest you may need to consider ability to challenge that as it stands. While there's good rationale for victims, I think because we know what that rationale is, when we go beyond victims you have to ask yourself, is it proper for the state to be able to, for example, table evidence introduced at a prior hearing for a current hearing and suggest that there is no opportunity for cross or for examination of what has already been determined?

So it's not just broad on its face. I think it also has significant impacts that we haven't really been able to consider yet. It is clearly something that is out there, is being considered, but I don't think we're prepared at this time to suggest it will work as fully as intended and without some unintended consequence.

The Chair: Thank you.

Mr. Comartin, Monsieur Ménard had a point, and I'll certainly allow you to speak and to clarify anything that may have been misinterpreted over the last few minutes.

Mr. Joe Comartin: I wanted to start in my summary response, Mr. Chair, by acknowledging Mr. Murphy's brilliant comments. They showed a great deal of intelligence and introduced several additional points that were all valid. So I just want to get that on the record. Although that was all said a bit facetiously, it is accurate. He brought forward several additional points. In particular, the different terminology from using "given" to "adduced".

I think that raises the point that we're not just talking here—and I think I can safely say this about Mr. Cooper: he probably is more interested in the psychological, psychiatric, medical evidence that would have been adduced at a prior hearing than the oral testimony. So I wouldn't say "exclusively", but I think that's what he was primarily wanting to have on record and to be able to be reused. Part of the point you have to make in that regard is that witnesses get lost. They move out of the country, they're in ill health or even die, and are not available on the rehearing.

To limit it to just a victim, I understand why they do that. Again, as Mr. Murphy said, we would all support that. But why limit it to that? Mr. Hoover has suggested you limit it because you don't have the opportunity to cross-examine, but there would have been a cross-examination of that evidence on the prior hearing, so I don't think that's a valid argument.

With regard to the point Mr. Hoover made about subsection 753 (6), that subsection also limits the evidence coming in from the victim of the offence only, and we really are looking to expand beyond that.

I'm sorry, I haven't answered Mr. Ménard's inquiry. Could I ask, Mr. Chair, if he could repeat it?

● (1130)

The Chair: Very briefly. We're getting into a—

[*Translation*]

Mr. Réal Ménard: You have already answered the question clearly. I have all the information I need.

Thank you.

[*English*]

Mr. Joe Comartin: Those are all my comments. Thank you, Chair.

The Chair: Okay. Thank you.

The question is on amendment NDP-11 to clause 43.

(Amendment negatived)

(Clause 43 agreed to on division)

The Chair: Based on the withdrawal of NDP-12, NDP-13, and NDP-14, I would ask that clauses 44 to 56 inclusive carry.

(Clauses 44 to 56 inclusive agreed to on division)

The Chair: As we move into an ostensible new clause 56.1 set of amendments, it appears that the next group of amendments, BQ-6 to BQ-13, are consequential amendments, and they're originating from BQ-5; therefore I want to point out that any decision or ruling I make on BQ-5 will apply to BQ-6 to BQ-13. I would allow you, Mr. Ménard, to speak to these on an individual basis, but I certainly would offer up the opportunity for you to speak to these amendments as a group.

[*Translation*]

Mr. Réal Ménard: I have a single comment to make which covers amendments BQ-5 to BQ-13.

Our aim was two-fold. First, we wanted to do away with the accelerated parole review provision pursuant to which an inmate could be eligible for parole after serving one-sixth of his sentence. To our way of thinking, this was too soon to release someone.

If there is something illogical about the government's justice initiative, or something we don't understand, it is the fact that it did not focus its attention on the parole system. Minimum sentencing provisions are not, in our opinion, the first step needed to make our communities safer places. We believe that preventing the early, and at times unwarranted, release of offenders into the community is the first step to achieving that aim.

Therefore, we had two objectives in mind when putting forward these amendments: first, doing away with the accelerated parole review process provided for in the Corrections and Conditional Release Act. Second, regarding the automatic review process, the Bloc Québécois would have liked to see the merit principle recognized in the act so that a true review is conducted before a decision is made.

I understand that you are deeming our amendments inadmissible and we respect your decision. That was the point we wanted to make. I believe the government, like all members of this committee, understands that the Bloc Québécois has a different vision of the justice system which clearly deserves to be supported.

I am very hopeful that one day, the Bloc Québécois will have an opportunity to bring forward these proposals, either in a private member's bill or motion, or through some other means. And I am greatly looking forward to having the support of the government and of my other colleagues.

[*English*]

The Chair: Thank you, Mr. Ménard.

The ruling I have for amendment BQ-5 is that it seeks to amend subsection 93(3.1) of the Corrections and Conditional Release Act. Since subsection 93(3.1) of the Corrections and Conditional Release Act is not being amended by Bill C-2, it is inadmissible to propose such an amendment; therefore the amendment is inadmissible, and I will use that same ruling to apply to amendments BQ-6 to BQ-13 . So they are inadmissible.

Mr. Ménard.

● (1135)

[*Translation*]

Mr. Réal Ménard: As there are no further amendments, could you verify if the committee is amenable to adopting clauses 57 to 64 as one item?

[*English*]

The Chair: I'll accept that, if it's unanimously agreed.

Mr. Comartin. I'm sorry, I spoke too soon.

Mr. Joe Comartin: I have a question on clause 64.

The Chair: Can I go up to clause 63?

Mr. Joe Comartin: That's fine.

The Chair: Okay.

(Clauses 57 to 63 inclusive agreed to on division)

(On clause 64—*Order in council*)

The Chair: Mr. Comartin, the floor is yours.

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

As you know, there has been a good deal of friction and conflict over this bill concerning delay. I'm wondering whether—and I'm addressing this to the parliamentary secretary—any consideration was given or could be given to fixing a timeline for these sections or the whole bill. I understand there may be some problem with the impaired driving part of this bill.

Could we not have fixed dates—say thirty days or ten days or two days after it clears the Senate—when the sections would come into effect? Was that considered, or would it be considered?

Mr. Rob Moore: Mr. Comartin's question is a good one. The Minister of Justice has raised this with his counterparts at the FPT meetings, and he has encouraged them to provide him with submissions as to an appropriate proclamation date.

Mr. Joe Comartin: The government doesn't have a position on its own?

Mr. Rob Moore: We're always open to input from our provincial colleagues.

Mr. Joe Comartin: Do you have any idea when we're going to get a response?

Ms. Catherine Kane: I could add that the various coming into force dates of the previous bills were the subject of ongoing discussion, because provincial and territorial attorneys general always remind the government that they need a reasonable time to prepare, and because of the uncertainty of when a bill will get royal assent, they sometimes don't put all their efforts into the preparation until they have a better idea of when that will occur.

In the context of Bill C-2, because so many of the bills were merged together, they have reiterated that concern that they want some reasonable period of time, usually three to six months, and the minister has indicated that he will consider reasonable submissions from them. However, he did also note that because the bills were out in the public domain for a while and they have had time to turn their minds to how to implement, he wants to move ahead as quickly as possible. So we would expect that provincial attorneys general would be providing some advice or some suggestions to him within the next month or so.

Mr. Joe Comartin: So are we likely to see different time periods for the actual royal assent and implementation?

Ms. Catherine Kane: The bill provides for that option, so that if some provisions should come into force immediately, they would come into force immediately, and others within a matter of a few months. Or they could all come into force at the same time. There are various combinations and permutations.

Mr. Joe Comartin: Let me just leave it, Mr. Chair. I'm not very comfortable with that, but I understand the problems with the provincial governments, in spite of the fact that they are the lead ones who are screaming for some of these provisions. I would have thought they all would have been ready to implement. I may deal with this when it gets back to the House.

Thank you.

The Chair: Thank you, Mr. Comartin.

(Clause 64 agreed to on division)

The Chair: We're getting close here, folks.

Shall the preamble carry?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall the title carry?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall the short title carry?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall I report the bill to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill? There are no amendments to the bill, so there is no need to order a reprint of the bill.

Let me just say in conclusion that while we don't all necessarily have agreement around the table on everything in the House, I want to congratulate each member of this committee for the work they've put into working on this bill. I've appreciated the collegiality with which all of us have worked together. Despite the differences we may have, I think we have worked extremely well to move this forward in the time that was allocated to us from the House, and I'll be happy to report this bill to the House as soon as we're allowed to, which will be tomorrow.

Again, congratulations to each of you for the work you've done on this committee. I think we've done some good work here.

Thank you. Lunch is waiting.

The meeting is adjourned.

● (1140)

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