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Chair

Mr. Art Hanger

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• (1530)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I would like to call the Standing Committee on Justice and Human Rights to order. Our agenda should be before all members here.

Pursuant to the order of reference of Tuesday, October 16, 2007, Bill C-428, an act to amend the Controlled Drugs and Substances Act on methamphetamine, is still under review, under debate. It's a private member's bill, of course.

Mr. Chris Warkentin, I believe you will be making an opening statement.

I know, committee members, there was a desire for more information, specifically from the police. Representing the Royal Canadian Mounted Police, we have Michel Aubin, acting director general, drugs and organized crime, and Mr. Culver. Welcome to the committee. And from the Department of Justice we have Greg Yost, counsel, criminal law policy section. Welcome.

Mr. Warkentin, the floor is yours.

Mr. Chris Warkentin (Peace River, CPC): Thank you very much, Mr. Chair.

I wish a happy new year to everyone around the table. I'm happy to be back, and I hope today to be able to clarify some of the questions and some of the issues that folks had with my private member's bill. I'm here today first to walk through and resolve some of those questions and then to give you additional information as well.

I'm not sure the clerk has been able to get a translation yet, so I won't table it at this moment, but I want to give each member the opportunity to know that this morning we put out press releases from our office notifying Canadians that the FCM, the Federation of Canadian Municipalities, has given its unequivocal support for this private member's bill. This was an unsolicited support, and we're very pleased to do that.

There may be people contacting you, because we informed the media that today was the day we would be bringing this again to committee. This press release may be available later on in the meeting, if they're able to make the translations available.

Today I'm here to clarify some of the issues people had around the table when I was here in the last part of last year. There were questions on some of the aspects of the private member's bill.

I'd be the first person in this room to admit, as a new member of Parliament, that there are opportunities wherein we don't get everything right. I've been working quite a bit with my colleagues from the government side, and two amendments will be or have been brought forward to this committee that I think address many of the concerns committee members had.

It is my hope to address questions that came from the NDP today. There were questions that Libby Davies brought to me regarding the way crystal meth is dealt with in this country. With this bill she had hoped to see that there would be funding attached.

Of course, as all of you are aware, a private member's bill does not have an opportunity to include funding for any type of treatment or any type of measure to combat crystal meth. But I want to assure you that I believe this private member's bill is set in place and walks lockstep with the national drug strategy. Of that national drug strategy and the money that was allocated for it, two-thirds of the funding is dedicated to prevention and treatment options. That, I believe, along with this private member's bill, this legislation, will address her concerns about those issues.

I also wanted to address the concerns she had with respect to a report she quoted from; it's from the City of Vancouver. I guess the impression may have been left for committee members that there seemed from this report not to be a necessity to advocate for stricter regulations.

I want to just read recommendation 27 from that report, which she quoted from. It says in recommendation 27:

That the City of Vancouver advocate for stricter regulation of precursor chemicals that are necessary for the manufacturing of large quantities of methamphetamine and for increased capacity by the federal and provincial governments to enforce these regulations

I think it's important for all of us to hear and understand that not only are the FCM and other organizations and communities across this country calling for this type of regulation, but the City of Vancouver is walking lockstep with this initiative as well.

I'm not sure people in this room have had the opportunity to see the particular document that was put forward by the federal-provincial-territorial ministers responsible for justice. It's their methamphetamine report. The methamphetamine report basically endorses this private member's bill. I'll read a little bit from my notes about what is being called for.

This report called for amendments to the CDSA to establish new offences for the possession of class A precursors for the purpose of producing methamphetamine: prohibiting the production and trafficking of class A precursors; prohibiting the possession of equipment, chemicals, and other materials for the purpose of the production of methamphetamine; and prohibiting the sale of equipment, chemicals, and other material for the purpose of producing methamphetamine.

● (1535)

This bill fulfills these recommendations, and I really urge the committee, if they haven't had the opportunity, to take a look at this report, because it clearly demonstrates the necessity for this type of legislation that's been moved forward with this private member's bill.

This committee has also had the opportunity to hear witnesses from the Office of Controlled Substances at Health Canada. Ms. Bouchard was here and she testified on December 13, 2007:

If we were to find a person in possession of those substances, and that person were not authorized to possess them, meaning they did not have a licence allowing their possession of those substances, it would not be an offence at the level of the act or statute but a violation of a regulation requiring that the person be in possession of a licence.

There was some discussion in this committee if these regulations did what this private member's bill is calling for, and what she clarifies here in her statement was:

However, the penalties associated with those offences are not very high. They're related to section 46 of the CDSA act and are for a maximum of up to two years. So they are very low penalties, but they are violations of a regulation.

There were questions. I'm hoping that today we're going to be able to resolve many of the questions people had with regard to the private member's bill in terms of its effectiveness, in terms of its ability to truly combat the harmful effects of crystal meth in our communities.

All of us have seen the news reports, we've heard the stories of people who have been drastically affected by crystal meth, and I think everyone around this table does not want to see this harm continued.

I don't know if any of you had the opportunity, but I believe on January 9 of this past year CTV brought forward a story that outlined the story of a lady from Saskatchewan who felt she had to sue her crystal meth dealer. She was successful in that, but when she was questioned as to why she felt she needed to do that, she said the federal and provincial governments had let them down on this issue. "With the criminal justice system there wasn't much of an investigation, so me and my family were frustrated. We found a different way to hold them responsible, through the civil justice system."

I think it's important for us to step up to the plate, to do what the provincial ministers are asking us to do, what the City of Vancouver has asked us to do and what the FCM would hope we would do.

I thank you for this opportunity. I'm hoping that as we move through today we will have this opportunity to have additional clarity on this issue, and we can work together and combat this horrible drug in our communities.

● (1540)

The Chair: Thank you, Mr. Warkentin.

Mr. Aubin.

Inspector Michel Aubin (Acting Director General, Drugs and Organized Crime, Royal Canadian Mounted Police): Sir, it's a pleasure being before you again today.

Since our last appearance in December, the RCMP has had a chance to review the proposed bill with its amendments and is able to provide a recommendation as requested last time.

Since that time, the RCMP has released its 2006 drug situation report, which shows that within a two-year period Canada has reversed its methamphetamine supply pattern status from an importer and consumer country to that of a producer and exporter country. Those who traffic in illicit drugs, including methamphetamine, destroy lives, homes, and communities, and the RCMP remains fully committed to enforcing the laws against illicit drugs to the fullest extent.

As stated in our previous testimony, the RCMP's concern with the current methamphetamine situation in Canada is twofold. First, the current legislation requires investigations to be maintained until the very final stages of a chemical synthesis operation. Consequently, law enforcement often has to wait until a lab is set up and functioning, with suspects active in the final stages of the drug production. Organized crime groups know this all too well, and that's why the accumulation of chemicals and materials often occurs well before production.

Second, clandestine labs pose significant safety threats to the public and first responders from fire, explosions, and groundwater contamination due to hazardous byproducts resulting from production. Labs also pose significant environmental dangers as chemicals are dumped down drains, toilets, or in the bush.

The RCMP feels that the proposed legislative amendments do move the yardstick forward in this case. By introducing the offence of possession, it provides law enforcement with the ability to effectively disrupt these operations prior to the actual production by having the ability to arrest those involved and seize the materials. This has the potential to not only increase our efficiency in the fight against organized crime but also to ensure safer communities by reducing health risks and limiting long-term environmental hazards associated with clandestine drug labs.

I look forward to answering your questions.

The Chair: Thank you, Monsieur Aubin.

Mr. Yost, do you have any comments to make?

Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice): No. I'm just here in case there are some technical questions people want to ask.

The Chair: Fair enough.

Mr. Lee.

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

I absolutely understand the intent of the legislation, which is to try to get out in front of those who produce crystal meth.

I'm just wondering, if I could ask Mr. Yost, if we do this for any other prohibited drug. Do we do it for heroin? Do we do it for cocaine? Do we do it for ecstasy?

Mr. Greg Yost: No, we do not. This would be the only drug that would be mentioned.

Mr. Derek Lee: Okay, then I'll ask Mr. Warkentin, why are we focusing on one drug? Are we going to get another bill next month from one of your other colleagues focusing on heroin and then another later focusing on...? Is this like a supermarket, off-the-shelf, anti-crime policy in the making, or what?

Mr. Chris Warkentin: The difference between heroin and crystal meth is that in fact heroin has to be imported or grown. It's not something that can be produced from legal products. Crystal meth is unique. It's maybe not the only drug in the world of its kind, but it's unique from other drugs in that it doesn't have to be imported or grown.

There are opportunities for law enforcement organizations to combat the importation of illegal drugs or to stop the grow operations. But basically what we don't have with crystal meth is that opportunity to nip this in the bud. So whereas the police have the opportunity to go into a grow operation and shut it down before it becomes a drug, they don't have that opportunity with crystal meth.

This is giving them, effectively, the same tools as they have for other drugs in stopping the importation or the growth of those drugs.

• (1545)

Mr. Derek Lee: The statute itself is targeted on controlled drugs and substances. Your bill focuses on the equipment.

Mr. Chris Warkentin: It includes the equipment, that's right.

Mr. Derek Lee: It focuses on the equipment. The drug is already prohibited.

Mr. Chris Warkentin: It includes the equipment and the precursors, Mr. Lee, because currently the precursors—

Mr. Derek Lee: All of which are already regulated or prohibited currently.

Mr. Chris Warkentin: Some of them are regulated. This would bring them into legislation and would have a harsher penalty than currently.

I think we have to put this into a scenario. Maybe the RCMP would be able to give us a clearer picture of how this might work from an operational sense.

My understanding is that currently if the RCMP have information that would indicate that legal substances were to be converted into crystal meth, and they could prove intent because of information provided, there would be no opportunity for intervention until they could see that legal product being converted into the crystal meth. So there's no intervention—

Mr. Derek Lee: Unless—

Mr. Chris Warkentin: —unless there's a regulatory—

Mr. Derek Lee: No, unless they decided to deal with it by way of conspiracy.

Mr. Chris Warkentin: I suspect that is possible.

Mr. Derek Lee: That would be true for any operation. For conspiracy to rob a bank, you don't bust them and charge them with bank robbery or attempted robbery until they get into it.

I suppose I'm really just trying to get you to accept what you may not, that the current law already covers almost all of this, except you've packaged it to focus on pre-empting a crystal meth production, a crystal meth lab, before it actually produces the first bit of crystal meth.

You also include the pickup truck here. If the pickup truck is part of the operation, it's included in your bill. A pickup truck is a pickup truck. At what point in time do you intend to apply the intention component? At what point in time is it necessary to attach the intention to use the pickup truck in the crystal meth operation, and what if it has two owners?

I get confused, legally, as to when your bill is intended to apply. Whose intention, and at what time?

Mr. Chris Warkentin: Anybody who is involved in the criminal activity.

Mr. Derek Lee: In the planning.

Mr. Chris Warkentin: In planning or in—

Mr. Derek Lee: Because they haven't produced anything yet, in our scenario. They're planning to produce.

Mr. Chris Warkentin: That's right.

I might draw attention to the fact that Australia has similar laws, actually very similar laws, but the penalties are extremely—

Mr. Derek Lee: Good on the Aussies. I'm just asking you when you intend that the requirement for intention be attached to all this equipment, all of which is very normal equipment: tubes, pipes, tanks. I don't know how to make crystal meth, but I assume it involves some hardware from the local hardware store, and some heat, and some cooling or whatever, but some very ordinary stuff.

Mr. Chris Warkentin: Maybe you know more than you're letting on.

Mr. Derek Lee: High school chemistry is as good as I can do here.

But at what time? If intention is a component, and surely it must be in criminal law—

Mr. Chris Warkentin: Yes.

Mr. Derek Lee: —at what time in process do you expect the police are going to look for the essential component of intention to make all of these very ordinary pieces of equipment become criminal?

Mr. Chris Warkentin: Intention would have to be proved before criminality could be proven. So as soon as intention is established, then confiscation could go forward. But until intention is established, the RCMP aren't going to jeopardize their case.

Mr. Derek Lee: So intention then would be established by circumstantial evidence or by—

Mr. Chris Warkentin: Confessions.

Mr. Derek Lee: —confessions, or electronic surveillance, phone conversations, other conversations, all of which could of course be used for a conspiracy charge, but that's beside the point. Is that what you're thinking?

• (1550)

Mr. Chris Warkentin: My thought is that I guess in terms of how they would conduct the seizure or that type of thing, it would be left up to the RCMP to make that determination.

If you feel there's something that needs to be clarified in terms of this law, I'd be happy to—

Mr. Derek Lee: And there may be an amendment coming too. I do understand that there may be an amendment coming. Is there an amendment coming?

Mr. Chris Warkentin: There is an amendment, yes.

Mr. Derek Lee: Which may clarify some of that.

I was wondering if the RCMP could comment on whether they believe it really is moving the goalposts a bit closer to the football if you still have to go through this establishing intention to make use of what is pretty much ordinary equipment to use crystal meth when none has been produced. Can you explain to me how that might be of help?

Insp Michel Aubin: My answer is going to be limited to the investigative capacity and I'll defer to Mr. Yost for any legal interpretation of it.

From an investigative capacity, I would say that in the opportunities where police are in possession of intention to produce, it does move the yardsticks forward for us. Right now, as I previously testified, there are many ways by which, or many circumstances in which, intention can be established at an earlier stage. But under our current legislation our understanding is that we have to conduct our investigation in a more protracted fashion in order to meet the demands of the current legislation.

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

The Chair: Thank you, Mr. Lee.

Monsieur Ménard.

[Translation]

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

Thank you for providing us with the report of the federal, provincial and territorial ministers. Of course, it would have been useful to read it in advance, but we will read it this evening.

You stated that the ministers of justice recommended this legislative initiative. I can understand your supporting the amendment tabled by Mr. Moore, that is the government amendment. I also understand that this amendment encapsulates in some respects recommendations 15, 16 and 17 made by the Working Group.

Moreover, the nature of this amendment is understandable, but from an operational standpoint, it poses a problem, in my opinion. First of all, in terms of *mens rea*, it is very important. In law, culpable intent is never an easy question to determine. In fact, it is always very difficult to ascertain, more difficult even that *actus reus*. Could you be more explicit? I appreciate that the department supports the

amendment. If you have not already done so, I would appreciate it if you could clearly state your reasons for doing so.

You maintain that with this amendment, it will be possible to intervene before the final phase of production. Preemptive action could prove interesting. However, I am curious as to how many substances can be used in the production of methamphetamine and what action will be taken if a person is found in possession of one of these substances. How far will we go to determine culpable intent? I would like some reassurance from you about the scope of the bill. You seem certain, which means that technically, Quebec's Minister of Justice supported this amendment. I am working on the assumption that the federal Minister of Justice supported the operational nature of the amendment.

I want to start with the Department of Justice. After that, we will get back to you.

Mr. Aubin, could you tell us how this amendment will facilitate the investigation process? Last time, you were somewhat dubious, but perhaps your opinion changed over the holidays. After all, people's opinion can change.

Let's start with you, Mr. Yost.

Mr. Greg Yost: By all means.

The first thing I would like to say is that the department supports the amendment. It is no secret that the department worked on this amendment in an effort to help the committee. If the committee wishes to pursue...

Mr. Réal Ménard: Everyone knows about the extremely close connection between the department and private members' bills.

Mr. Greg Yost: Perhaps that is normal in a minority government situation where bills can...

Mr. Réal Ménard: This is not the time for a class in administrative law, but at one time, the connection was even closer.

Mr. Greg Yost: That is right.

I worked with the committee that formulated the recommendations. Here is the type of scenario presented to us at the time. Suppose that one evening, all of the equipment and chemicals needed to produce methamphetamine are discovered in the trunk of a person's vehicle. It is impossible to establish whether one or more individuals are involved. There is no doubt about what purpose this equipment and chemicals found under rather interesting circumstances are to serve. As a rule, large companies do not transport products from one location to another in this manner.

Normally, under these circumstances, we would look today to subsection 4(7) of the Act. Pursuant to this provision, if the substance found is listed in Schedule III, then possession constitutes an offence liable to a term of imprisonment of no more than three years. That did not seem adequate to us. We were very much aware of the fact that it would be difficult to institute proceedings in such cases on a regular basis. In many instances, the courts must establish the individual's intent. They must ascertain if that individual knew that the products were related to crime, for example. In English, we say the individual "knew or ought to have known".

• (1555)

Mr. Réal Ménard: I know that you are not a consumer of the product, but could you tell me how many chemical substances are used in the production of methamphetamine?

Mr. Greg Yost: I recall seeing the list of chemical substances used in the production of methamphetamine. I should have re-read it this morning. Regardless, let me read your recommendation 16 in our report:

The main disadvantage of creating such an offence would be the need to prove knowledge of the future use of the equipment or the intent that the equipment be used to produce a drug.

Mr. Réal Ménard: On what page is that recommendation?

Mr. Greg Yost: I'm in the middle of page 45, just before recommendation 17.

We realize that this is not the solution to all of our problems. It is a merely a tool that can assist us from time to time. It is a step forward, but it is not the be all and end all.

Mr. Réal Ménard: I would like to clarify one point before turning the floor over to the sponsor of the bill.

If I understand correctly, this is a unanimous report. Therefore, we can assume that Quebec's Department of Justice supported this recommendation.

Mr. Greg Yost: Correct.

Mr. Réal Ménard: When was this report presented?

Mr. Greg Yost: I believe it was in July 2007.

Mr. Réal Ménard: I see. So then, we can tell our constituents that the Canadian Federation of Municipalities supports Chris' bill. As a lobby group, the Federation is rather...

[English]

Mr. Chris Warkentin: Yes, absolutely.

[Translation]

Mr. Réal Ménard: In so far as conducting investigations is concerned, an area of interest to Mr. Aubin, this means that it will be possible to intervene at the start of the process, before chemical synthesis occurs and the substance is produced.

I believe "en amont" means at the start, or beginning. Is that right, Ms. Jennings?

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): I think we understood that you meant to say at the start of the process.

Mr. Réal Ménard: If the bill has any merit from the standpoint of the administration of justice, surely this is it.

We will think about it. We will suspend the proceedings for two minutes a little later to find out where our Bloc Québécois colleagues stand. You have persevered in your efforts. We appreciate how important this is for ordinary MPs. You do not appear to me to be the biggest redneck in the caucus. Therefore, I tend to look favourably upon this initiative.

Mrs. Carole Freeman: What was that you said?

Mr. Réal Ménard: Perhaps I should not have used the word "redneck". Maybe I should have said "the most conservative" instead. I'm not trying to embarrass you.

I have no further questions, Mr. Chairman.

[English]

The Chair: Monsieur Ménard, you must have had lots of time to reflect over the Christmas season.

I would like to ask a question of Mr. Culver. Are the precursors in crystal meth designated under class A?

Sergeant Doug Culver (Chemical Diversion Unit, Royal Canadian Mounted Police): Most of them, yes.

The Chair: But so is ecstasy. Then there are combinations of LSD, PCP, and maybe even heroin and cocaine.

Sgt Doug Culver: Absolutely, yes.

The Chair: But this particular bill only specifies methamphetamine.

Sgt Doug Culver: Yes, it does.

The Chair: Is there a problem here?

Sgt Doug Culver: I don't think there's a problem to that extent. Canada doesn't actually have a problem with cocaine production or heroin production. Certainly we have ecstasy production in the country and some other synthetic drugs, but methamphetamine certainly stands out at the forefront of some of the problems we're having. It's not just how that drug is used to make money for organized crime, but also how it affects the children in our communities, the addictiveness of it. We need to take into account the drug-endangered children associated with some of these clandestine labs.

I think what has to be realized is that class A precursors are only a finite group of chemicals, which are very prevalent in the manufacturing of some synthetic drugs. A variety of chemicals used to manufacture methamphetamine are class B precursors, and quite a few do not exist in any legislation whatsoever. Some of the very common household products, such as iodine, are yet to be legislated, but are a crucial component of manufacturing methamphetamine in some recipes.

• (1600)

The Chair: You were at a crystal meth conference in Florida. The U.S. Justice Department made it very clear that as they cracked down on the super-labs along the west coast, some of them moved farther north and ended up in B.C.

Sgt Doug Culver: Yes.

The Chair: And some of these operations, of course, are presently running out of there, I would assume.

Sgt Doug Culver: I would assume so, yes.

The Chair: They also stated in effect—and I can't remember if it was you who mentioned this specifically—that crystal meth was being mixed with MDMA, which is ecstasy, in some sort of combination.

Sgt Doug Culver: We are finding some of that in Canada. We're also seeing methamphetamine put into tablet form to mimic ecstasy, as well, and being sold on the street as an ecstasy product, whereas in fact it is not.

The Chair: With all of these combinations and different scenarios in manufacturing, is this bill actually going to assist in enforcement of the law when it comes to the possession of the precursors? Is it actually going to assist if, for instance, many of the precursors are not really designated towards methamphetamine specifically, but maybe towards ecstasy?

Sgt Doug Culver: I believe it is.

There certainly is going to be a burden of proof on the police in collecting evidence, and on the crown, to prove the intent. Many of these chemicals and apparatuses have dual purposes. They have perfectly legitimate purposes, but under certain sets of circumstances where people are known to accumulate chemicals known to be used for methamphetamine production and specific types of apparatuses that police commonly encounter in clandestine labs, such as 22-litre round-bottomed flasks, heating mantles that go along with them, and condensing columns, there is going to be a culmination of evidence brought together, along with whether or not there's an admittance from an accused, or overheard conversations, that would go to prove intent.

As for the simple fact of having a can of solvent at home or some of these other chemicals that a lot of us have at home right now, it's going to be a matter of the circumstances surrounding why they're in possession of those products and in what kind of state.

The Chair: Thank you, Mr. Culver.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Chair, and thank you, Mr. Warkentin, for appearing again at the committee.

Since your last appearance, you've made us aware of the Federation of Canadian Municipalities. We did hear testimony from one mayor, via teleconference, from a town in Alberta, but I would be interested to hear this.

I also wasn't aware, until today, of the switch Canada has made in the last couple of years, which was mentioned, from being a net importer to being an exporter of methamphetamine. I would like your comment on what you're hearing from police forces, municipalities, and the Federation of Canadian Municipalities. I think it's pretty significant that they're endorsing your private member's bill. Actually, I'll congratulate you on that, because to have that federation, which is pretty representative across the country, endorse your private member's bill I think is pretty significant.

I did want to take this opportunity to mention the government amendment, which you're aware of. You can add any comment you like. But I should say, for the committee, that what the government amendment does is simply add importation, and it clarifies the issue that had been raised by committee members, and rightfully so, of *mens rea*—that the individual must know of the future illegal use of the substances—being captured by this change in the legislation. Obviously, it's important that the individual know.

Could you comment, kind of broadly, perhaps, on some of the support your bill's been receiving, and also perhaps specifically on your response to the government amendments?

• (1605)

Mr. Chris Warkentin: Thank you very much.

I'll start with the government's amendments. I appreciate the government's amendments, because I think they clarify, and in law clarity is essential. So I thank the government for the work on this in terms of establishing and ensuring that *mens rea* is included in the bill so there's a burden of proof on law enforcement to ensure that intent is there. Let it be my testimony that my intent was never to go after people who are innocent and would be found in a compromising position because they happened to have bleach and cold medication and a few other things in their trunk. I think what we want to do is ensure that intent can be proven. So I appreciate the amendments, and I think that's fantastic.

What I think is important for us to recognize is that even within the regulation that oversees the precursor material, there are some problems in terms of....There's a harsher penalty for exporting these precursors without a permit than there is for being in possession of these chemicals domestically without a permit. So there's some conflict there.

We need to understand, as was noted, that we have moved from being an importing country to being an exporting country. Certainly we're manufacturing crystal meth here for domestic consumption, which is something that has changed over the last number of years, and we want to see that stopped.

Mayor McQueen did testify before this committee through teleconference. Her community has been affected to an extreme extent by crystal meth, and the areas around her community have absolutely seen the horrors of crystal meth. I guess that's what inspired me to become an advocate for this change, because I saw the effects on the ground. I saw the families that were being torn apart as a result of this drug.

Certainly that has been my experience as I met with RCMP officers from my own community. But since I brought this private member's bill forward, and as the media have drawn attention to it, I've had calls from around this country from families that are desperately trying to bring awareness to their communities.

One thing I mentioned when I was here last was that one of the side benefits of my bringing this forward has been my public advocacy among young people in terms of explaining to them the dangers of this drug and the fact that this can be sold to them as something else, such as ecstasy or some other type of product. I've had that opportunity, and I certainly hope, as we work together, we can protect our communities from this harmful drug.

Mr. Rob Moore: Do I have some time, Mr. Chair?

The Chair: Yes, you do.

Mr. Rob Moore: This is to the RCMP. I don't think Canadians are fully aware of the impact of crystal meth or of how addictive and dangerous it is. We heard some testimony about that, but could you tell us a bit about your challenges in combating what seems to be a growing problem with crystal meth? Also, the question was raised about some other drugs that we are more familiar with, whereas this is mostly synthetic, and a lot of the precursor material is perfectly legal and normally used by most people. Could you tell us what kinds of challenges that presents for you?

●(1610)

Insp Michel Aubin: Keep in mind that for the most part we are looking at economy-based labs; those are the labs that have a high yield. What we are looking at is organized crime, which is behind them. They are well aware of what our legislation is and of our investigative capacities. The way they are set up, we are seeing some instances where the tasks are being split amongst the members of the organization. Whereas some individuals are there to collect the precursors and stash them for long periods of time, other individuals have their own roles. Because we have this breakdown of roles, these investigations become very protracted. The breakdown is meant purposely to counter what law enforcement can do.

It is not uncommon for us to hear or understand through the evidence that the precursors and the material were stashed for a significant period of time to purposely deter or counter law enforcement. Those are some of the realities we face.

The production of chemical drugs is an opportunity for organized crime. There is a demand on the street. Methamphetamine has been recognized as a highly addictive drug by some organizations. The demand is there, and as per the 2006 drug situation report, which was recently released, we have unfortunately moved from being a consumer nation to being a producer and an exporting nation.

Mr. Rob Moore: That's interesting. I don't think we've heard that testimony before; at least I don't recall it. Obviously we are aware that organized crime knows the law as well as or better than anybody else. They know the loopholes and how to get around things; it is in their best interest. But they're actually, as I see it, exploiting what this bill seeks to address. They are exploiting that gap in the law, if you will, whereby if they were in possession of cocaine, for example, then they have a problem; if they are distributing, then they have a problem. But earlier on in the process, they have a problem if the police catch them with cocaine, but with methamphetamine they're actually splitting responsibility, as you said, and exploiting the fact that our laws currently don't address the scenario that this private member's bill seeks to address; that is, nailing people with the precursors before they have a chance to synthetically create the methamphetamine in the lab.

I guess your testimony today illustrates even further in my mind the need for this type of legislation.

The Chair: You are out of time, Mr. Moore. Thank you.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you, Mr. Chair.

Congratulations on bringing your bill forward. I think everyone in the committee agrees we would like to cut down methamphetamine use, and we are just working out the best way to do it.

I have a question for Mr. Yost. The department's responsibility is quite often to create legislation. It creates lots of legislation, actually, and brings it forward to deal with improvements in the justice system. I am curious as to why you haven't done a bill like this or a similar bill to it, if you have seen this problem.

If you were to attack this problem, is this the way you would do it, or would you, as some committee members have suggested, include

a larger, comprehensive list of precursors that might be used in creating other drugs as well?

Mr. Greg Yost: There are two issues. I will start with the second one, which was about precursors.

If there are new precursor drugs that are used in making illicit drugs, then they can be added to the schedules by cabinet. The Governor in Council can make regulations putting things there, so we can respond fairly quickly if there is a new precursor drug that has to be controlled.

Hon. Larry Bagnell: Are you talking about the Controlled Drugs and Substances Act?

Mr. Greg Yost: Yes, that is under the Controlled Drugs and Substances Act.

With respect to the other question, federal, provincial, and territorial officials and governments have been working for quite some time on various drug issues. There is a bill in front of the House now to amend the Controlled Drugs and Substances Act to deal with mandatory minimum penalties and such.

This is a part of one report that has a number of recommendations federally and provincially. There are other things that are always being considered and may come forward at some time. But this amendment proposed by the government members, respecting methamphetamine in particular, would respond to what we've been working on with the meth report. Because of the harm of meth, that particular drug was referred to federal, provincial, territorial officials: what can we do about meth?

The Criminal Code is one part. There are things in the report about education, etc., that can be done in community action, so it requires more, but this responds directly to the recommendation for CDSA amendments made within that report last July.

●(1615)

Hon. Larry Bagnell: As you were saying, the precursors have already been dealt with in the Controlled Drugs and Substances Act through precursor control regulations.

My question was, why treat these precursors as special and up it into a law, if you can already deal with them? More importantly, if it's important to do it, why wouldn't you do it with the precursors to all drugs? Someone might try to get out of a court case by saying it's not constitutional; that they're not being treated equally, because you can get the precursors for these other drugs—ecstasy or whatever—and not face the same charge: it's not illegal.

Mr. Greg Yost: That reflects some of the comments made by the chair.

The report was specifically on methamphetamine. I don't think anybody on this committee would be particularly thrilled if, on a charge of having all the precursors to produce methamphetamine, the person was able to get off by saying no, it was another schedule 1 drug I was going to make—phenyl-something-or-other. I'm not a chemist, and I don't know what's put together or how.

If the committee is so inclined, you can catch methamphetamine but also catch other schedule 1 drugs by transforming the offence into one whereby it is "possession of materials for the production of a schedule 1 drug". It would accomplish that and it would be available, should there be other schedule 1 drugs that they start putting together in labs, etc. It is for the committee to decide whether it considers that appropriate.

Hon. Larry Bagnell: In the way this is written, could we catch those other drugs?

Mr. Greg Yost: In the way it is written now and with the amendment we were asked to help with, which was aimed specifically at methamphetamine, you would not catch any of the other drugs in schedule 1; it's only that one. It refers to item 18 in the amendment we've put forward. A person who could make the argument, "No, I was actually producing something in item 17" would presumably be found not guilty. They might be guilty of possession of the precursors and face three years, as opposed to being guilty of this offence for which, under the proposed amendment, the maximum would be ten years. That would be the big difference.

Hon. Larry Bagnell: That was my exact point about including the others.

I don't know what the limit on penalties and regulations is. Could you solve the same problem by increasing the penalty, if they were caught under precursor control regulations? Or is there a limit on those penalties?

Mr. Greg Yost: There is a limit in the act right now, and there's certainly no legislation coming forward that I'm aware of that deals with raising the penalties for precursor chemicals. Until they are put together into other things, precursors are not as dangerous; therefore, if you just happen to have too much of one of them kicking around for some reason, you face the lower penalty.

In this legislation, if you have it, or three or four precursor chemicals plus the necessary equipment to cook it together, etc., you're facing ten years, because presumably the court would be able to assume that you got all of this stuff together and that your intention then was to produce methamphetamine.

The Chair: Thank you, Mr. Bagnell.

Madame Freeman.

[Translation]

Mrs. Carole Freeman: I have a question concerning the penalty of 10 years' imprisonment.

Mention is made of this penalty in your proposed amendment. You started to talk about it. Subsection 4(3)(a) of the Controlled Drugs and Substances Act provides for a term of imprisonment of seven years for simple possession. Where no provision is made for a specific penalty, a fine of \$5,000 applies, along with a term of imprisonment of three years.

Why the reference to 10 years' imprisonment? Could you clarify this for me?

Mr. Greg Yost: You are referring to section 4 which concerns possession. However, other sections deal with trafficking or importation.

•(1620)

Mrs. Carole Freeman: These offences carry much harsher penalties.

Mr. Greg Yost: Yes. The punishment is much more severe.

Mrs. Carole Freeman: Indeed.

Mr. Greg Yost: You were wondering how...

Mrs. Carole Freeman: Why did you settle on 10 years?

Mr. Greg Yost: ...we decided on a term of 10 years.

Mrs. Carole Freeman: It was an arbitrary decision.

Mr. Greg Yost: To some extent, every decision made is arbitrary.

Mrs. Carole Freeman: There is no justification for this punishment. A person convicted of possession is liable to imprisonment for three years or seven years...

Mr. Greg Yost: The penalty is seven years. However, trafficking or production are rather more serious offences.

Mrs. Carole Freeman: I understand. I have nothing further. Thank you.

[English]

The Chair: Thank you, Madame Freeman.

It's your turn, Ms. Davies.

Ms. Libby Davies (Vancouver East, NDP): Has Madame Freeman finished?

The Chair: I think she's finished, yes.

Ms. Libby Davies: Okay.

Actually, my question also was about the proposed government amendment that has to do with the penalty.

One of the concerns I have is that we're dealing with a private member's bill that deals with one aspect of the Controlled Drug and Substances Act and one substance, in effect, or with a number of chemicals. So we're going from three years to ten years, and it's not clear to me what the rationale is for pulling that out.

It seems to me that taking one element is sort of a boutique approach. If we're going to change the Criminal Code, we need to have a rationale for whatever changes are being brought forward. I think it needs to be explained, maybe by the member whose bill it is. I would also like the counsel to comment on that, as well.

If it's just arbitrary, well then, it could be anything. There has to be some rationale about why we do these things in a bill and what's behind it. It can't just be political motivation. There has to be a rationale and a basis in law.

I do know that there's a Department of Justice report. I think it's from 2002. For example, I know that minimum mandatory sentencing for drug crimes is not shown to be particularly effective. Now, we're not dealing with that here, but I think there has to be some evidence that increasing the penalty to this extent is actually going to produce something. I wonder if the member has that or has anything from the justice department that would provide us with that information.

Mr. Greg Yost: I'll respond to the first part of the question, which is where we got this from. I apologize for suggesting that things are arbitrary. There are categories.

This punishment reflects what you would find under paragraph 5 (3)(b) of the Controlled Drugs and Substances Act, which is trafficking in a substance, and then it divides it by schedules. And it says for schedule 1 or 2 substances, you're indictable for life. But it says that where the subject matter of the offence is a substance included in schedule 3, it's an indictable offence liable to a term not exceeding ten years.

So we have the same intention to traffic in this one as is there. That's where the ten years seems—

Ms. Libby Davies: But currently it is three.

Mr. Greg Yost: Possession is three, trafficking is ten for a schedule 3 drug under paragraph 5(3)(b).

Ms. Libby Davies: But this was not in the bill originally, so—

Mr. Greg Yost: Yes, because the current bill has nothing. It's section 46, which says that if nothing else is provided, it's three years. So three years is for the intention to traffic. We suggested that ten years better reflects section 5 now.

Mr. Chris Warkentin: My original intent was that it would be in line with trafficking the drug, effectively bringing the components together. What I believe, in fact, is that the creation of the drug is as reprehensible as actually trafficking it and handing it out to young people, because in fact without the manufacturing of it, young people wouldn't be affected by it.

Now, you weren't here for my original statement, and being a new member, this was one of the mistakes I made. I had received some advice from the Library of Parliament that led me to the belief that by not including penalties, I would be falling under the ten years, but in fact it was actually the three years. So it was absolutely my original intent to bring this legislation in line with trafficking. Unfortunately, that was a mistake I made. I'm hoping that through this amendment we can rectify that.

The Chair: Thank you, Ms. Davies.

Madam Jennings.

• (1625)

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

Mr. Warkentin, I apologize for not having arrived at the beginning of the meeting. I think you saw my slow progress. It took a little while for me to get from Centre Block to here.

I have read your bill. From the time it was first tabled, I participated actively in discussions with my own caucus on your bill and I'm supportive of your bill, in particular now that the questions that were raised have been addressed with the government amendment.

I have a question, though, and Mr. Yost, you're probably the best person to answer it.

The amendment would capture someone who knowingly possesses, produces, sells, or imports anything knowing that it will be used to produce or traffic in a substance referred to in item 18 of

the schedule. Would that capture a company that produces one element that absolutely has to be used in the production of crystal meth and, because they are so lax in their internal controls and security that it is very easy for their employees to steal significant quantities, is then sold to produce? Would that capture a company?

Mr. Greg Yost: In fact, I believe it would, strangely enough.

Hon. Marlene Jennings: Oh, tell me how.

Mr. Greg Yost: The first bill I brought forward that I was the officer on dealt with the amendments to corporate criminal liability, back in 2003. The section for dealing with corporate liability—"organizations", they're called—for offences requiring intention envisions there being somebody in the corporation who, with the intention to profit the corporation, does something that's forbidden, and the responsible senior officer of the corporation either colluding in it or turning a blind eye to it or being so negligent that they allowed it to happen.

So yes, I believe a corporation that happily shipped off huge barrels of stuff that can be used to manufacture meth or other drugs could be found to know that it's going to be so used, and I think a charge could be made against them. They'd almost undoubtedly be in violation of various regulations as well. There's no reason on earth why a corporation could not be caught on this.

Hon. Marlene Jennings: Okay. That was my question. Thank you.

Thank God for the government for you, right? Your bill wouldn't have captured that, I don't think.

Mr. Chris Warkentin: I hope you're feeling better.

Hon. Marlene Jennings: Oh, I am feeling better, thank you.

Enough of the chit-chat; we go back to serious matters.

The Chair: You're finished, Madam Jennings?

Hon. Marlene Jennings: I am, on this particular issue.

The Chair: Yes, that's understood.

Going back to a comment made by Mr. Yost, with the amendment designating item 18 of schedule 1 and those substances that relate to item 18, if it were LSD or PCP or ecstasy, then they wouldn't be captured?

Mr. Greg Yost: Under the amendment that has been put forward, that is correct, because they aren't under item 18.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: Thank you, Mr. Chair.

I'm just curious to know something from the police while we have you here. Right now you can deal with the precursors under the precursor control regulations. Under the new system, you'll be able to deal with them under this act. So you can deal with them in two different ways.

Leaving apart the fact that there would be an increased penalty—we see that benefit, obviously—I'm curious as to the police experience in dealing with crimes under the regulations or dealing with the crime under the act. We're proposing just a different way of dealing with it. I'm curious as to the police experience with dealing with crimes under those two different mechanisms.

Sgt Doug Culver: I'm not sure I understand the question fully. Are you talking about the two different mechanisms as between the regulations and the CDSA?

Hon. Larry Bagnell: Yes. You can deal with the precursors for meth right now under the Controlled Drugs and Substances Act's precursor control regulations.

Sgt Doug Culver: Yes.

Hon. Larry Bagnell: Assuming the penalty was the same once we put it under this act—I know this increases the penalty, but assuming the penalty was the same—is there any benefit to having it under the act, or are you just as successful using the precursor control regulations under the Controlled Drugs and Substances Act?

• (1630)

Sgt Doug Culver: The proposal in the bill deals with a much broader set of circumstances. Once again, the precursor control regulations only control a very specific list of chemicals among class A and class B chemicals. There are six or seven in class B and approximately twenty or so in class A. There are many chemicals that we commonly encounter in clandestine lab operations nowadays that fit into neither of these two categories. Once again, organized crime has become very adept at understanding what chemicals are legislated and in finding alternative chemicals for these recipes—not to mention, once again, all of the equipment, the tabulating machines, the pill presses, the heating mantles that we see coming into this country through the U.S. and other foreign countries, which are going into private residences.

Hon. Larry Bagnell: So would it help to include all of those chemicals you just mentioned that we're not catching now?

Sgt Doug Culver: It would be helpful to include the chemicals that are not currently among the class A precursors. There's a fine balance with the class A precursors, in that all of these chemicals are legitimate chemicals and are used throughout industry. So there's a fine balance between putting a burden on industry versus criminal intent in the use of these products.

Quite honestly, even if certain chemicals were legislated, there would still be other or alternative chemicals that organized crime could easily jump to. Some chemicals are very specific to manufacturing methamphetamine. There are a lot of chemicals involved in that process that can be switched off with other things.

Hon. Larry Bagnell: This is my last question for you and Mr. Yost.

Based on what we have discussed today, wouldn't it be better, a good step forward, if we included in this act the precursors for some of these other drugs you're mentioning, plus the ones for other drugs, which I think the chair was talking about—ecstasy, etc.? Wouldn't it be better if we included those precursors and expanded this act so that someone couldn't get off, as Mr. Yost was saying, by stating, well, we're just making this other drug? Wouldn't that be a more comprehensive tool for both the police and the justice department?

Mr. Greg Yost: Well, the amendment put forward right now is about selling or importing anything, and would cover any chemical there is. If you could establish that a chemical wasn't a precursor drug, and you haven't got around to putting it on the list yet, but know that it is one of the ingredients put together into meth—which

we'll stick to right now, because that's what this says here—you would be able to bring the prosecution under those circumstances.

Obviously, we or the government rely upon Health Canada to tell us which drugs should be put into the various schedules, so I can't comment on how difficult it would be to come up with an exhaustive list of chemicals. I suspect that an exhaustive list of chemicals today would not be an exhaustive list of chemicals two months from now, given the chemical ingenuity of some of the organized crime people, as I understand them.

Hon. Larry Bagnell: Does that include the precursors for ecstasy or these other drugs, to catch them, too?

Mr. Greg Yost: I rather suspect those precursors are already listed, but I'm not the expert on how you put together ecstasy and which are the precursor drugs and whether they're listed. It would be Health Canada that would tell us which drugs ought to be on the list and which schedule they should be in.

Hon. Larry Bagnell: I don't mean the schedules, though; I'm talking about in this new act, so we can catch ecstasy with this new act too, and any other drugs.

Mr. Greg Yost: The act itself contains schedules already; the schedules of drugs are already set out. The precursors are listed in the various schedules.

The Chair: I think what Mr. Bagnell is trying to say is that the precursors or the methamphetamines fall under schedule 1, whereas ecstasy, LSD, and PCP fall under schedule 3. I believe Mr. Bagnell is saying that the bill limits the investigation, if you will, to item 18 only on schedule 1. That's what it says in the amendment.

• (1635)

Mr. Greg Yost: That's correct, yes.

I don't actually know what are the various precursors used in the making of ecstasy and what schedules they appear in and how many of them are fairly normal chemicals that have a lot of other uses. Perhaps the RCMP can comment on that. There are an awful lot of drugs listed on a whole bunch of schedules.

The Chair: Mr. Aubin or Mr. Culver.

Insp Michel Aubin: We'll split the answer, sir.

From an investigative standpoint, there are two issues at play. The issue of what chemicals are found, Mr. Culver can address more specifically. The other portion of the answer would be that at times in investigations, evidence is there other than the chemicals that would tend to indicate what type of drug is intended to be produced. But as Mr. Culver will explain, many times when we show up at the lab and we see what's there, we're able to understand that. It gives us a clearer picture of what's going on.

Sgt Doug Culver: Most of the equipment has cross uses on production of any type of synthetic drug. Some of the chemicals are very specific starting points, whether you're working your way toward methamphetamine or one of the other synthetic drugs.

To answer Mr. Bagnell's question, in Canada the majority of synthetic drug labs that the police officers investigate are producing methamphetamine or ecstasy-based drugs. So that will include methamphetamine, as listed in the new bill under schedule I, but as it's written now it does not include a lot of the synthetic drugs that we still encounter under schedule III.

The Chair: Ms. Davies.

Ms. Libby Davies: Again, I apologize as well that I wasn't here at the beginning. I was at the House leaders meeting, so I didn't hear the presentations.

I just want to clarify what these amendments are that have come from the government. The first amendment says, "knowing that it will be used to produce or traffic in a substance referred to in item 18 of schedule 1". I want to clarify that item 18 applies only to those chemicals or substances that would be in the formation of crystal meth. Or is it much broader than that?

Clearly the scope of this bill is addressing crystal meth, and I think we need to know if it's now going beyond the intent of the bill as it was presented to the committee. Perhaps you would clarify again what is in item 18 of schedule 1.

In fact, does somebody have a list of that?

Mr. Greg Yost: If I may, we suggest saying item 18 because it refers to "Methamphetamine (N,a-dimethylbenzeneethanamine), its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues". It's sort of like methamphetamine and anything else that's pretty darn close to methamphetamine and does the same stuff, to put it in the kind of language I understand, as opposed to these various lists of drugs.

We didn't want a person to be able to say, "I wasn't producing methamphetamine, N,a-dimethylbenzeneethanamine; I added one little molecule of something else, so it wasn't quite meth." That would be a salt or derivative or analogue.

So that's all it's doing.

Ms. Libby Davies: Okay.

The Chair: No other questions?

Mr. Lee.

Mr. Derek Lee: I want to go on the record before we go to clause-by-clause, if I may.

There seems to be a kind of general acceptance around the committee table that the bill is well intentioned and ready to go forward or go back to the House, but I'm wondering if Mr. Warkentin or Mr. Yost would comment on my perception that with all the good intentions on the part of the mover of the bill and everything, the amendments that haven't been moved....

I take it everybody knows what the amendments are, Mr. Chairman? I can speak about them?

The Chair: I will be calling on Mr. Moore to present those amendments and then we will be debating them.

•(1640)

Mr. Derek Lee: You know, we've been discussing it here as though the amendment has been moved. And I believe it will be moved, but....

The original bill as it came to us from the House, approved by the House at second reading, did not have any provision involving importing. That has been added in. I raise that because that's a scope of the bill issue. I'm just going to say it now and leave it. It can dangle out there as we move forward.

The new subsection 7.1(2) proposed in the amendment has specifically to do with sentencing, and the original bill had no sentencing provision. The House as it adopted the bill did not advert to sentencing, nor did it advert to importing. I accept that the reference to item 18 in schedule 1 comprehends the same concept as to what crystal meth is known to be or thought of to be now.

I suppose I'm asking for the mover—not so much Mr. Yost, but the mover—to say, "Yes, I think this is within the scope of the bill."

Mr. Chris Warkentin: This is in terms of the amendments?

Mr. Derek Lee: Yes.

Mr. Chris Warkentin: Yes, they are. I don't know if you were in the House when this was originally debated, but I know that your critic at the time, as well as Mr. Comartin, and I'm not sure if there was representation from the Bloc...but there was a sense that these amendments would be necessary. By the time it moved to the House, the necessity was clear.

There was an implied penalty that I had misunderstood; I understand that three-year is the way it would happen if it moved forward as currently written. With an amendment of ten years, that would clarify my original intention.

In terms of the importation—

Mr. Derek Lee: You're saying your original intention was to be really tough, whereas the bill that the House saw was not really tough.

Mr. Chris Warkentin: My intention was to be—

Mr. Derek Lee: You're a ten-year-max guy, whereas the House got to see nothing. I mean, that's a bit of a problem.

At any rate, you've referred back to comments in the House. I think most of those had to do with the need for the mens rea intention amendment.

Mr. Chris Warkentin: Yes, absolutely.

Mr. Derek Lee: I agree with you fully. It was spotted, and the amendment does address that very clearly. I'm really talking about—

Mr. Chris Warkentin: The ten-year.

Mr. Derek Lee: —the add-ons, yes.

Mr. Chris Warkentin: In terms of the ten-year, if you feel that is...and absolutely that was my intention. My intention was to bring this process in line with the trafficking, at ten years. I think that was explicit in terms of any conversations I had with people, but if that was lost in terms of the process....

I'm hoping that people will see it this way, but I guess we'll see.

Mr. Derek Lee: I'm just trying to get the record to buttress what we may do here. Anyway, thank you.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Lee.

Now we'll go to clause-by-clause consideration.

I would first like to thank the witnesses for their attention to the committee's concerns. We appreciate your appearance here again today. I'll certainly excuse you all. Again, we appreciate your comments.

(On clause 1)

The Chair: Clause 1 is a government amendment—

Mr. Derek Lee: I have a point of order there.

The Chair: Yes, Mr. Lee.

Mr. Derek Lee: Mr. Chairman, I'm sorry if I'm wrong about this, but this is absolutely not a government amendment. We're dealing with a private member's bill. The government has no role in this at all. If there's a member of the committee who wishes to input, move an amendment, vote, or not vote, that's fine, but I must insist that this procedure—

The Chair: We'll look at—

Mr. Derek Lee: I'm asking you to acknowledge this.

The Chair: I'm acknowledging what you're saying.

Mr. Derek Lee: We're in a different ballpark here now. We're Parliament, sitting as a committee of Parliament, and there is no government at the switch here. There's no government bill.

Am I right about that?

The Chair: Fair enough, Mr. Lee.

Mr. Derek Lee: Thank you.

The Chair: But the parliamentary secretary will be presenting an amendment.

Mr. Derek Lee: As is his absolute, unfettered right.

• (1645)

The Chair: Mr. Moore.

Mr. Rob Moore: Mr. Chair, I'm moving government amendment 1.

Mr. Derek Lee: Mr. Chairman, we've got to get this record—

Mr. Rob Moore: Sorry, I'm moving amendment 1.

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

Mr. Rob Moore: There's been a lot of discussion. As Mr. Lee had said, I hadn't formally moved the amendment, but there has been a lot of discussion.

I think members have seen the amendment, and I gather from the discussions we've had today that members also understand the amendment. It does flow from debate that took place on this bill. I think it was recognized by all parties that there was some support for the intent of the bill. It was acknowledged by the member who moved the bill as well as by all parties that there would be required some amendments. I think the concerns that were reflected in testimony have been addressed by this amendment.

If there are any questions about the amendment, I'd be happy to answer them. The amendment adds importation and clarifies the concern that was raised about mens rea, that an individual would have to know that the materials they had would be used in the production of methamphetamines.

So the amendment is moved.

The Chair: Is there any debate?

Ms. Davies.

Ms. Libby Davies: Mr. Chairperson, in the original information we got from the government, there was amendment 1. So we're only dealing with the one amendment that would replace lines 7 to 13. Is it clear, then, that the lines that are currently in the bill—about any equipment or other material that is intended for use in trafficking—are all gone?

Basically, this bill has now been in effect superseded by this government amendment that's now being moved by a committee member.

Mr. Derek Lee: Again, on a point of order, it's not a government amendment.

Ms. Libby Davies: That's what it said on the paper.

Mr. Derek Lee: No, it didn't. The paper would be out of order if it said that.

Ms. Libby Davies: That's what I have on my paper, "Government amendments on C-428".

Mr. Derek Lee: I don't have that. Obviously the paper's in gross error.

Ms. Libby Davies: What I want to clarify is that the amendment before us—there's only one amendment—is basically changing everything in the bill from line 7 on. The bill as originally written by the member is now gone by this amendment that is being put forward.

This says "lines 7 to 13", and there are only 13 lines. Presumably lines 1 to 7 are fine, but everything after that has been replaced by this amendment. Is that correct?

The Chair: It does change maybe the specific lines, but the content and words are still referred to in both, from the original even to the amendment—for instance, "produce, possess or sell"—but in this case, there's an added word, "import". As well, "trafficking" is in the original, and that's certainly reflected in the amendment.

Ms. Libby Davies: Let me ask another way then. Does that mean that proposed paragraphs 7.1(a) and (b) in the bill as originally presented by the member are still there?

The Chair: No, (a) and (b) are actually replaced by new proposed subsection 7.1(1).

Ms. Libby Davies: Right. That's what I thought.

The Chair: Mr. Yost, I wonder if you could come to the table. I don't want to see you leave before we finish this discussion.

Ms. Libby Davies: This whole bill has been changed by what was a government amendment, and that is now not a government amendment, put forward by a committee member. I think that is rather unusual.

We're told it was the member's original intent, but it wasn't in the bill in terms of trafficking, in terms of the penalty. So I do find it rather unusual. The whole bill is changed.

Mr. Rob Moore: No, it's not. The member put forward a bill with certain intentions. It's a very short bill, as you can see. It's on one page. Obviously any amendment to the bill would also be very short.

The amendment I've moved just puts this into proper language to reflect the intent of the bill and to actually address some of the concerns with the wording in this very short bill, which was only proposed paragraphs 7.1(a) and (b). In this very short bill, there were some concerns addressed. So of course when an amendment is moved, the amendment, if it replaces anything, is going to replace most of the words. But all of the intent of the bill is left intact. The change in the language reflects the concerns that were raised.

So I don't see anything too alarming here. I'd be alarmed if the amendment went on for 12 pages, but this simply replaces words that would not have accomplished the intent appropriately with words that will accomplish that intent.

• (1650)

The Chair: Mr. Yost.

Mr. Greg Yost: One day I'm going to ask Paul Saint-Denis how he gets to be in Bali when this comes up and I have to substitute.

This is not a government motion, obviously. It is, however, not unusual, I would imagine, for a government and the minister responsible to ask, if this thing becomes law, are there weaknesses that should be addressed in committee, and if so, what are they and how might they be fixed? And that's this process here.

The standing committee can certainly do with the amendment as it wills. Among the issues that were identified within the Department of Justice, a simple one, which was already talked about, concerns being too tight with methamphetamine; you'd want to have every salt and derivative. The legislation as it stands now has sections dealing with production, import-export, trafficking, etc., and import had been missed. That was something that seemed to be missing in the bill. Then there was the question of the penalty, and what penalty would fit in more with the structure. I addressed that earlier in response to some questions. The current penalty for schedule 3 trafficking, production, etc., is ten years max, and therefore, if you're putting everything together with the intention to do it, it would seem to be an appropriate level.

The Chair: Thank you, Mr. Yost.

Madam Davies.

Ms. Libby Davies: I actually don't think I'm wrong. If you look at the original bill, the only thing that is the same is that no person "shall possess, produce, sell". Everything after that, other than referring to controlled drugs and substances, is changed.

In the original bill, it talked about "any substance or any equipment"—remember, we had a lot of debate about equipment and what that is—"or other material that is intended for use in the production of methamphetamine". That's all gone. Now it says "or import"—so it's adding a new concept—"anything knowing that it will be used to produce or traffic". That is being introduced as well.

So in effect we have completely different wording from the original bill.

The Chair: Personally, I have a problem understanding where you see the difficulty when it comes to the intent. For instance, in the production of methamphetamine—

Ms. Libby Davies: Then why wasn't that in the bill in the first place?

The Chair: Pardon?

Ms. Libby Davies: We have a private member's bill that went through the House and now comes to committee. There clearly was an intention of what it was about. If it's now changed, why wasn't that in the bill originally—in terms of importation, for example, or referring to item 18 of schedule 1?

The Chair: Mr. Yost.

Mr. Greg Yost: If I may just address what you said, the normal drafting procedures used when you're dealing with a relatively small section—and this is a small section—would be to replace it all and then underline what is new. It makes it a heck of a lot easier to read than to say, "adding, after the ninth word in line seven, these things", and then deleting some other lines. This makes it possible to read it, see what the new provisions will look like, without any scissors and paste. But the underlining is the new thing.

With respect to the question of why these things were not in the bill originally, it's because it is not a government bill. Clearly the Department of Justice was not consulted with respect to drafting this bill. It was brought forward by a private member. After the bill is tabled, then it's a normal process, when the House shows an interest in adopting a bill, to ask the department whether the bill will actually be as effective in reaching the goal that parliamentarians seem to wish to reach, and if not, what would be the things that would make it better.

• (1655)

The Chair: Thank you, Mr. Yost.

Mr. Lee.

Mr. Derek Lee: I'm going to support the amendment, but I can't pass on this opportunity to ask the chair to rule that the inclusion of the concept of trafficking, the inclusion of the concept of importing, and the addition of new sentencing provisions are all within the scope of the bill.

I know that the chair will want to be very careful, because this, I'm sure, will become a useful precedent for the committee in dealing with private member and government bills in the future.

So I'll leave it in the chair's hands. I'm sure he'll make the right decision and we can get to a vote.

The Chair: Thank you, Mr. Lee.

First, when it comes to the issue of trafficking, trafficking is clearly pointed out in the original bill. Even if you were to look under the definition of trafficking, what does that mean? It means transport, it means deliver, it means sell, it means a number of things under the definition of trafficking, and certainly import.

So are we stretching things to a point where we have to define the precise words of what we're faced with in this particular bill? I would have to suggest to the committee that import and trafficking really are part and parcel of the same thing.

When it comes to the sentencing aspect, under the broader section where penalties have been assigned, section 46, sanctions are covered. So yes, there is a specific sanction here, but that is in keeping with section 46 already.

This is my ruling on the particular amendment, that it's acceptable.

Monsieur Ménard.

[Translation]

Mr. Réal Ménard: Fundamentally, Mr. Chairman, I think you did well to rule on the scope of the bill. I also think that we need to be flexible when dealing with a private members' bill. We may have less flexibility when it comes to matters of government policies since clearly, we work from the assumption that a member does not have the same resources at his disposal as the government. However, I must say that one thing bothers me. I say this with all due respect and without any animosity whatsoever, because we do plan to support the bill, and I do think the member has rightly singled out a problem that warrants our attention. I've been an MP for 14 years. I'm coming up on 15 years next year. The Justice Department and drafters of legislation have always enjoyed a very close relationship. That relationship must be safeguarded for the sake of equality. All MPs who are not ministers must benefit from the same equal treatment.

Often, Justice Department officials have given expert testimony on the substance of a bill. Clearly, we are dealing with something different this time around. I'm not saying this to embarrass our witness. Clearly, his objective is to serve the committee well, and nothing more.

I'm tempted to put a question to the government. Mr. Lee is quite right to say that this is not a government amendment. However, at the same time, any member of Parliament can propose an amendment to a private members' bill. That is not a problem. Who is the drafter of the amendment? Is it the Department of Justice or the legislative drafters at the House? I hope it is the latter, because we need to safeguard the principle whereby the government should not be intervening in the drafting of private members' bills. At the same time, all MPs must have access to the same resources. I simply want some assurances that this principle will be safeguarded, and I hope that Mr. Yost and the parliamentary secretary can assure the committee that the amendment was crafted by House legislative drafters. This is an important principle.

As for everything else, Mr. Chairman, I think the Member should be proud of the fine work that he has done.

• (1700)

[English]

The Chair: Before Mr. Yost and Mr. Moore make statements, we'll call upon the crafter of the original bill, Mr. Warkentin, to respond to that particular question.

Mr. Chris Warkentin: I can assure you that in terms of the original drafting of this bill, I worked with the Library of Parliament and my office. We were the constructors of the original bill.

[Translation]

Mr. Réal Ménard: The proposed amendment originates with the department? Was it drafted by the legislative drafters at the Library of Parliament or by the department?

[English]

Mr. Chris Warkentin: In terms of that, I don't know. All I know is that the original bill was drafted by me and the Library of Parliament.

[Translation]

Mr. Réal Ménard: Who can answer the question. Mr. Moore? Are you responsible for drafting the amendment?

[English]

Mr. Rob Moore: On that point, I fail to see the problem, actually. We have a lot of private members' bills, and I think it's helpful that we have amendments to them. Otherwise we end up with a product at the end of the day that's not what we want. Any one of us, opposition or government, any party on any side of the table, can move an amendment.

This is my amendment. I don't know exactly who drafted the amendment, but it was put forward as "G-1", so it's a government amendment. I assume the government drafted the amendment. I have the rationale for the amendment.

I think it's good that we can move amendments. It's constructive. And we're free to support or oppose these amendments.

[Translation]

Mr. Réal Ménard: You understand the principle, Mr. Moore. Let's wrap up the debate. You understand the principle whereby in spite of all of good will we may have for the sponsor of the amendment—and we requested the amendments, mindful that the initial version of the bill had its shortcomings—it is important that the very close relationship be maintained between the department and House staff. For example, when I table a bill, I will not have access to the House resources because I'm not a government member. That is the last thing I would wish to happen to me, Mr. Chairman. I say this with all due respect for the government caucus. However, everyone should have equal access to the same resources. I trust this principle is clearly understood.

[English]

Mr. Rob Moore: Mr. Chair, I have to comment on that. I agree 100% with what Mr. Ménard is saying. I have been in opposition before, as well. Any one of us who does a private member's bill has the resources of the Library of Parliament and drafters. But as I see it, this bill could have been moved by Mr. Ménard and there would have been the same amendment. It has nothing to do with the mover.

[Translation]

Mr. Réal Ménard: I understand.

[English]

Mr. Rob Moore: This could have been an NDP or a Bloc bill, and I would still have had the same advice given to me and probably would have moved the same amendments. So I don't see the difference.

[Translation]

Mr. Réal Ménard: I understand.

[English]

The Chair: I think that is clarified now.

We'll go to Ms. Jennings. You have no point? Okay.

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): You are a [Editor's note: inaudible].

Mr. Réal Ménard: I am a great proponent of democracy, Mr. Petit. I believe in the independent spirit of members. That independent spirit can at times serve you well, and at other times, not so well.

[English]

The Chair: Shall the amendment carry?

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

(Clause 1 as amended agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: The meeting is adjourned.

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