House of Commons
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 038 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, November 3, 2009

Chair

Mr. Garry Breitkreuz

Standing Committee on Public Safety and National Security

Tuesday, November 3, 2009

● (1115)

[*English*]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to bring this meeting to order. This is meeting 38 of the Standing Committee on Public Safety and National Security. Pursuant to the order of reference of Monday, June 8, 2009, we are dealing today with Bill C-34, An Act to amend the Criminal Code and other acts.

We'd like to welcome our witnesses, who are here to give us advice as we proceed through this bill. From the Department of Public Safety and Emergency Preparedness, we have Ms. Mary E. Campbell, who is the director general for the corrections and criminal justice directorate; and from the Department of Justice, Mr. Douglas Hoover, counsel in the criminal law policy section.

Welcome to our committee. We appreciate your being here to advise us if at any point we need to ask you questions.

The plan here is to go clause by clause through this bill, and as we get to clauses with amendments we will pause and have the person or party who is introducing those amendments do so.

I don't want to move too quickly. If I'm doing so, please raise your hand and make a point of order, and I will slow down. We will try to move expeditiously; however, we don't want to overlook anything. We want to get it right.

Let's begin.

We're going to stand clause 1, which is the title clause.

(Clause 1 allowed to stand)

(Clause 2 agreed to)

(On clause 3)

The Chair: Do you have a question, Mr. Davies?

Mr. Don Davies (Vancouver Kingsway, NDP): Mr. Chairman, I have just a quick question. I'm a lawyer by training and I refer to these as sections. When you say “clause”, do you mean what I would refer to as section 3? Do you mean clause 3? I just want to make sure I'm on the right track.

The Chair: Bills have clauses, and the clauses each have sections. According to the legislative clerk who is advising me here, we're referring to the Criminal Code, which has sections, and this we deal with clause by clause.

Mr. Don Davies: So your clause would be the number on the far left, number 3. When you say clause 3, you're referring to the paragraph that begins:

> Subparagraph (a)(i) of the definition “primary designated offence”

Is that what you're referring to as clause 3?

The Chair: Yes.

Mr. Don Davies: Thank you.

The Chair: Monsieur Ménard, do you have a question?

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): It's “article” in French.

[*English*]

The Chair: Are you asking the same thing?

[*Translation*]

Mr. Serge Ménard: The word “clause” also exists in French. If I understand correctly, the word “article” covers both. Is that right?

The Clerk of the Committee (Mr. Roger Préfontaine): Yes, Mr. Ménard. If you look at the agenda, “clause by clause” in English is translated as “article par article” in French.

Mr. Serge Ménard: But, normally, “article” in French is translated as “section” in English.

The Clerk: Or “paragraphe”?

Mr. Serge Ménard: No, “paragraphe” is “paragraph” . The same in both.

Mr. Mike MacPherson (Procedural Clerk): You would have to look at the legislation. The bill clearly says “article”, but the act uses “paragraphe”.

Mr. Serge Ménard: No. I guess that's part of the beauty of it. “Part” is “section”, and “section” is “article”. I would have thought that “clause” was “clause”, but you say it's not.

Mr. Mike MacPherson: “Clause” in English is “article” in French.

Mr. Serge Ménard: I see here that everywhere it says “clause”, you translated it as “article”. Let's go with that for today.

Mr. Mike MacPherson: Yes, that's true. But, in the act, the English word “section” is equivalent to “paragraphe” in French.

Mr. Serge Ménard: No, usually, “section” is “article” in French. The word “paragraph” is “paragraphe” in French.

Mr. Mike MacPherson: Perhaps “subsection” is “paragraphe”. In any case, that's how it is.

Mr. Serge Ménard: “Subsection” is “paragraphe” in French.

I understand, from what it says here....

So there is no need to go through all the....

[*English*]

The Chair: If there's any more confusion, just raise your hand if you're not sure what section or paragraph or whatever it is.

Are there any more questions on clause 3?

(Clauses 3 and 4 agreed to)

(On clause 5)

The Chair: For clause 5, the NDP have submitted two amendments. I'll allow Mr. Davies to bring them forward. I will tell him in advance that they are inadmissible because they're contrary to the principle of the bill. But if you would like to discuss them anyway, you have an opportunity to do so.

Do you want to know the reason for their inadmissibility before you submit them, or does that change anything?

● (1120)

Mr. Don Davies: I'm in your hands, Mr. Chairman. I will proceed with discussing my amendments, but of course, I would be most interested in hearing the reasoning behind their inadmissibility. This is the first time I've heard that, and I would like to hear the reasoning and I would, in all likelihood, challenge that ruling.

The Chair: The proper way would be to have you introduce them, so we at least know what we're talking about. Just discuss them briefly and then we'll proceed from there.

Mr. Don Davies: Mr. Chairman, if it's okay with you, I would propose to explain my amendments, and then after I hear your reasoning, I would like a chance to respond to that reasoning.

The Chair: Absolutely.

Mr. Don Davies: Mr. Chairman, we've talked a lot about this issue, so I'm going to try to be as brief as possible on this subject.

The present act sets out that registration for sex offenders occurs upon the prosecutor's application to the court. Once the application is made by the prosecutor, under present circumstances under the law, as it has been for the last several years, the registration is virtually automatic, subject to the defence's having the burden to discharge what I think we all regard as a very heavy onus, which is to show the court that registration under the act would have a grossly disproportionate effect upon the offender's privacy and rehabilitation prospects, as distinct from protecting public safety.

The mischief that I say I heard from all the witnesses who testified at this committee was that prosecutors across the land often did not make that application, for a couple of reasons. The two primary ones I heard were that they were often too busy and overworked, so they would sometimes forget to make such an application; the second was that they might be plea-bargaining with the defence in exchange for guilty pleas and had agreed not to make the application. To be honest, I don't remember actually hearing that from any particular expert; it was the former reason that I heard time and time again.

That being the case, what my amendment would do is cure the mischief that I think this committee heard. That is the aim of my amendments. There are two of them together, but they basically work hand in glove.

You will notice that the bill amends the act to purport to make registration automatic: it says “upon conviction the court shall make the order...”. My amendments would not change that, and it would cure the mischief that I just described, so that no longer would a prosecutor have to make the application before the court. My amendments leave the section in the bill that says that “upon conviction the court shall make an order”, so that no longer do we have to worry about prosecutors forgetting to make an application or pleading away, at least for an indictable offence.

What my first amendment does is leave judicial discretion in place by saying that the court is not required to make that order under subsection (1)—the order that is automatically made— if the defence shows convincingly that the impact upon the convicted offender's “privacy, liberty or prospects for rehabilitation would be grossly disproportionate to the public interest in protecting society through the effective prevention and investigation of crimes of a sexual nature”.

So although the application is made automatically, what I think this does is make a fairer and more sensible approach to the law by moving the burden off the prosecutor to make the application onto the defence. Now the burden is on the defence to make the application to the judge, if they wish.

I want to point out that this is the first positive step of my amendment: it relieves the prosecutor and puts the onus on the defence. Second, it still preserves what I think we all recognize is a very onerous legal test. When you have to show that an effect on the accused is grossly disproportionate to the public interest in protecting society, I think it will be a very rare occurrence for the court to decline to make that order.

● (1125)

The second amendment I've made—

The Chair: Let's deal with the amendments one at a time.

Mr. Don Davies: I'll be really short on the second one. It's just that I think it's important to understand this.

The second one goes a bit further, and this picks up on a statement I made and a comment the other side had. Mr. Rathgeber and I had a bit of a conversation on this.

The first amendment I made relates to indictable offences. The second one is by summary conviction, and it says that the court shall not make the order under subsection (1)—that's automatically applied for—if the conviction is imposed pursuant to a proceeding by way of summary conviction unless the court believes it is in the public interest to do so.

The reason I have split the indictable offences and summary is that this also now allows a little bit of prosecutorial discretion when the charge is laid. So a prosecutor, when laying the charge, can choose to go by way of summary conviction, knowing that if they do that the test for registration will be a little bit less. It will be whether the court believes it's in the public interest to do so.

In summary, I think this fixes the problem we all heard, that applications are automatic, and it preserves judicial and prosecutorial discretion in the appropriate amount. I would urge all committee members to support this, and I point out one last time that the list of offences that we are purporting to make automatic is far longer than Ontario's and we've heard no evidence about the impact that might have on people.

The last point I'll make in speaking in favour of these amendments is that we heard evidence from a number of witnesses that simply opening up the registry to mass registration may be counter-productive in that we will be registering all sorts of people who are not appropriately registered, and this may actually slow down police investigations and make them less efficient in investigating sex offences because they'll be checking out people who there really is no need to check out.

The Chair: Thank you.

Is there any discussion on this?

Mr. Holland, and then Mr. MacKenzie.

Mr. Mark Holland (Ajax—Pickering, Lib.): Thank you, Mr. Chair. I have a quick question.

Is the committee's report on the sex offender registry now public? Has that been tabled in the House?

● (1130)

The Chair: No.

Mr. Mark Holland: Okay. I was about to speak on that, so thank you for letting me know.

On that basis, then, I'll skip a couple of the comments I was going to make and just say that I completely agree with Mr. Davies. It's important to maintain some degree of judicial discretion.

Are we dealing with the first amendment first, Mr. Chair, or are we dealing with both of them?

Okay, on the first amendment, saying that it would be grossly disproportionate to the public interest sets a very high standard for not including somebody on the registry. One of the things we heard from witnesses was the importance of keeping the efficacy of the registry by making sure that the individuals who are on it are people who belong on it. We were all frustrated, I think, because there were certain individuals who weren't being placed on the registry who we wanted to see there. We wanted to have that automatic inclusion. But similarly, we could have a problem on the opposite side, where there would be people included on the list inappropriately.

We have to recognize, as we've modelled a lot of what we're doing after Ontario—to echo Mr. Davies—that this is a longer list. As such, there might be some inclusions that are inappropriate or, in the words of this amendment, "grossly disproportionate".

On that basis, I think it's critical to leave that there, because the public interest clearly isn't served. And this isn't just about the offender. This isn't just about a gross injustice being carried out against an offender who, because of automatic inclusion with no outs, somehow gets trapped in a situation that's unjust or unfair. It's about keeping the efficacy of the registry and making sure that the individuals who go on the registry are people who need to be on there, so that when the police utilize this tool, they're going to places, first and foremost, that are going to have the greatest likelihood of having somebody as a person of interest relative to whatever that crime is. If you overpopulate the registry or start having people on that registry who don't belong there because they've been included even though it was grossly disproportionate to the public interest, you're going to reduce the efficacy of that registry.

It establishes an extremely high bar, but I think it's necessary to leave that small amount of room to make sure that in circumstances that we either cannot foresee or are foreseeable, we don't have a situation where something is simply a miscarriage of justice and not in line with what we're seeking to do as a committee.

The Chair: Thank you, Mr. Holland.

Mr. MacKenzie, Mr. Oliphant, and Mr. Kania.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair.

By way of introduction, I can tell you that the government does not support either one of these proposed amendments. We did take action to move to an automatic inclusion model in order to address concerns that some convicted sex offenders were not being included on the national sex offender registry, and that's certainly the case with both of these amendments. When my colleagues talk about discretion, let me tell you, there's a great deal of discretion all the way through the process, beginning with the police officer who first investigates, who does use a great deal of discretion in these matters. The prosecutors will also use discretion on moving forward with them. Certainly, it doesn't take away the entire discretion of the judiciary. They're ultimately the people who will decide on the guilt or innocence of the people, and they may very well have their own opinions about a variety of things.

To water down the registry by moving to the situation of 'may' or 'may not', I think, is counterproductive to what we heard people asking for. I would agree that it's longer than the Ontario registry. Don't forget, the Ontario registry has been in place for some time. Perhaps if Ontario were to revisit it, they may match ours. I don't know that, but I wouldn't say that we should simply mirror what Ontario has in everything. There are good parts of it, but I do believe this is the proper balance.

What we're talking about are convicted sex offenders. Make no mistake, sex offenders typically do not start at the top of the list of offences, they start at the bottom and typically build. So having lots of information in there, the police community can certainly weed out the wheat from the chaff when it comes time to investigate offences. I think it's so important that we put in these clauses the way they're drafted in order to give that information and those tools to the community at large, but certainly to the investigative authorities and also to the prosecutors.

The Chair: Thank you, Mr. MacKenzie.

Mr. Oliphant, please.

Mr. Robert Oliphant (Don Valley West, Lib.): Thank you.

I'm speaking in favour of the amendment for three reasons. I won't repeat what Mr. Holland or Mr. Davies said—or maybe I will a bit. The first is consistency with what we heard as evidence in our own hearings. Even though they weren't on this bill, they were on our review of the act. I think these amendments are consistent with our evidence, and I like to be consistent with evidence. I think that's part of our process.

The second thing is that while I agree with Mr. Holland in his underlying "grossly disproportionate", when I support it, I would actually underline that but also "public interest". This is not about being somehow in the interest of the offender. You need to leave some discretion in the interest of the public. So that's why I speak in favour of it.

The third reason would be that actually, for the reasons Mr. MacKenzie gave, I would use it the other way. Because there is discretion in the system in earlier places, I think, to be consistent, we need to keep that discretion. The discretion given to police officers, to the crowns, and to the whole system needs to be preserved, and we need to keep that with the judiciary as well.

Thank you.

The Chair: Thank you, Mr. Oliphant.

Mr. Kania, please.

Mr. Andrew Kania (Brampton West, Lib.): Thank you.

I think Mr. Davies makes a good point in that some of the offences should not necessarily be automatically included, but I do not support this particular amendment. If you look at proposed section 490.012, exactly where this would be added, the effect would be to put an onus on the court, so that the court perhaps would not order automatic inclusion for any of these most serious offences.

In paragraph (a), offences in relation to sexual offences against children, you have child pornography, you have aggravated sexual assault. You have, in proposed paragraph (c) rape, attempt to commit rape. Under paragraph (c.1) you have sexual assault, sexual assault with a weapon, aggravated sexual assault. The effect of this amendment would be to not provide automatic mandatory inclusion as a possibility for any of these serious offences if this test could be met.

So I think that's wrong. I think the witnesses spoke to the fact that one of the greatest problems was that we did not have automatic mandatory inclusion. Because these most serious offences are included, I believe this should not be supported.

● (1135)

The Chair: Monsieur Ménard, and then maybe, Mr. Davies, you can make some final comments.

[*Translation*]

Mr. Serge Ménard: Like Mr. Davies, I would like to talk about the two proposed amendments because, the way I see it, they are related. Both amendments follow a certain logic. Some people may not see them as logical because the amendments focus on the most serious offences targeted, but those people should know that that lack of logic is already in the Criminal Code, since it puts more serious offences right alongside less serious ones, such as gross indecency, which I would say is more of a manifestation of.... I will not even say it.

I argued those kinds of cases when I started my practice. I looked like a school kid, and I was working for other people. Squads would patrol men's washrooms to catch people masturbating. I do not believe that, in the case all of those individuals, a somewhat unhealthy behaviour was going to develop into exhibitionism, followed by sexual assault or things of that nature. I think that being dragged before the court a single time was embarrassing enough for them to draw the line there. As for those whose behaviour did develop further, they can always be arrested at some point.

If, in the course of the trial, we see that people who commit offences are disturbing those around them but not really disturbing society any further, I do not see why we would want to add them to the registry of dangerous sex offenders.

What needs to be understood is the distinction between the two amendments. In the first, we are talking about indictable offences. But even then, certain offences are serious, while others are much less so. Because they are indictable offences, the burden—and it is a heavy one—is on the accused or the convicted person to show that they should not be included in the dangerous sex offender registry.

The second clause does not target indictable offences, but summary conviction offences, which cover the least serious offences in the Criminal Code. Federal legislation recognizes only two types of offences: summary conviction offences and indictable offences.

Of course, the majority of laws that do not fall under the Criminal Code use summary conviction offences a lot. In rare instances, as with environmental protection legislation, indictable offences are used in serious cases. The Criminal Code already sets out that fundamental distinction. Summary conviction offences refer to behaviours that are not really punishable by indictment but that are prohibited.

In the majority of cases under the Criminal Code, the crown attorney has the choice at the beginning whether to proceed by indictment or by summary conviction. The reason he opts for summary conviction is that he believes the offence to be among the least serious. So a judgment call is already made.

So, in theory, the thinking is that it is not worth including those individuals in the dangerous sex offender registry. If the crown attorney had deemed them to be dangerous, he would have proceeded by indictment.

That being said, if, in the course of the trial and contrary to the initial assessment, the person is thought to be more dangerous than initially believed, there is nothing stopping the Crown from requesting that the person be added to the dangerous sex offender registry.

● (1140)

I think that all the safeguards are there. These provisions toughen up the act. We have heard witnesses denounce the act as it stands now because, very often, crown attorneys were not requesting that individuals be added to the dangerous sex offender registry.

So these amendments are based on the premise that crown attorneys should not have to make the request, and they allow the convicted individual to make the request himself in rare cases. He must reverse a heavy burden of proof if he is being prosecuted by indictment. That is the first of the proposed amendments. There is a lighter burden, but a burden no less, to show that the judge must believe that it is in the public interest to add the individual to the registry.

So the Crown has the option. It can decide right off the bat that the burden would be too onerous to proceed by indictment. Furthermore, if the Crown proceeds by summary conviction, meaning, the least serious offences in all federal legislation, but during the course of the trial, believes that it should have requested more, the Crown can do so, and the judge can order it.

I think that is well thought out.

[*English*]

The Chair: We have a point of order. Are you finished, Monsieur Ménard?

Okay. We have Mr. Holland on a point of order.

Mr. Mark Holland: I apologize, but perhaps there was some confusion. I didn't realize that it was your determination that these were not receivable, in which case I think that's a matter we should determine before proceeding any further today.

The Chair: I actually had not made that ruling. I was just telegraphing that it would be an issue. I wanted to listen to all the—

Mr. Mark Holland: If I may, Mr. Chair, just because I think we need to expunge that issue before dealing with others, it doesn't make a good deal of sense to debate the matter without knowing whether or not it's receivable. Could we deal with that matter first before proceeding further?

The Chair: It's up to Mr. Davies.

Mr. Davies, you have the final comment here.

Mr. Don Davies: Raising that is a little bit like raising it after the horse has left the barn here. I mean, I started off this morning by asking that very question, and I thought it was your decision to proceed, Mr. Chair, and that we would go with this.

The Chair: It was. I wanted to have a brief discussion. It's actually getting to be a lot longer than I thought it would be.

Mr. Don Davies: Well, in some ways, I think it's helpful to do it the way we're doing it, because it allows all the committee members to hear what the amendments really are, how they work, and what their purpose is before we get into a discussion about whether they're.... I think you've telegraphed that you think it may be contrary to the purpose of the bill. So it's probably six of one, half a dozen of the other.

I'm in your hands, Mr. Chairman, but I would like to respond. Maybe having proceeded in the way we have, I could just finish my comments and then we can get to that.

The Chair: Okay, quickly.

Mr. Don Davies: The first thing I want to do is respond briefly to Mr. Kania directly and then to the committee as a whole.

I applaud Mr. Kania very much for what I think is a really sincere and committed desire on his part to protect his constituents and to protect Canadian citizens. I know that's where he's coming from, but I would say this. The present law allows an application to be made, and once the application is made, there is discretion by the judge on every type of crime. That's the way the law has been for the last four years. Once the application is made, registration is automatic, except the burden goes on the defence. For every single crime you could imagine, not one person appeared before this committee and said that was a problem. Not one person said that mechanism resulted in judges not making orders under SOIRA when they thought they should be made.

On the contrary, I'm going to quote from Mr. Hoover today. This is Mr. Hoover's testimony before this committee:

> We've had a number of Court of Appeal decisions on “grossly disproportionate” to confirm that the onus has to be on the offender. He has to step up. He has to prove this to the court's satisfaction. This is a very strict test. I think the Court of Appeal in an Ontario case used the term “in the rarest of circumstances”, which is similar to the language in a Nova Scotia Court of Appeal decision on the DNA.

> So while there were some early and I guess interesting decisions in the lower courts, we're confident that right now it is working fully as intended, whereby probably 90% of applications that are brought before the courts result in an order of the court for the individual to register.

That's right now, on every single sex offence you can mention, from the most heinous to the least serious, so when Mr. Kania says these amendments would allow the defence to raise an objection to any offence, that's true, but we don't have a whit, a jot, an iota of evidence before us to suggest that our courts would not make the appropriate orders any time that issue comes before the courts.

I am confident that our judges and our prosecutors can continue to do the good job that the evidence before us shows they are doing. While it is an excellent theoretical concern Mr. Kania raises that if we have this process it will allow a defendant to make an application not to be registered in perhaps a very serious crime, we have no evidence before us that this would be successful.

Again, all I will say is that our job here, as parliamentarians, is to make good law. It's very important for us to act on the evidence before us, not just based on politics, and the evidence before us, once again, is not that this country needs automatic registration for the offences that are under the federal jurisdiction; it is that we need a process that will make the application before the judge. Not one witness came before this committee to say they were concerned that a judge would misuse his or her judicial discretion and not give an order when one was warranted. That's what the effect of automatic registration does.

Again, I would urge the committee to consider this seriously, although I am open to other kinds of amendments that would preserve discretion. I certainly don't have a lock on this. If there are other people who have ideas on this, we could look at it. Maybe Mr. Kania's suggestion that you could have automatic registration on the most serious offences and keep discretion on another list of offences is an idea worth exploring. I'm happy to look at that too, but what I will argue against vociferously, based on evidence, is that we go to an Ontario model of automatic registration for a longer list of offences when I don't think the evidence supports that.

● (1145)

The Chair: Thank you very much.

I appreciate the discussion all around, but I don't hear anything that would change the essence of what I have to say.

With the advice that I've received, I will give my ruling.

This bill, Bill C-34, amends the Criminal Code to require that a court shall make an order in form 52 with regard to a person sentenced to a designated offence, or a person found not criminally responsible on account of mental disorder, requiring the person to comply with the Sex Offender Information Registration Act for the applicable period. This amendment proposes to allow the court to exercise discretion and to not make that order if it is satisfied that certain conditions have been met.

Now, if we look at *House of Commons Procedure and Practice*, on page 654 it says, "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 a concept of discretion is contrary to the principle of Bill C-34. Therefore, I rule this inadmissible.

You cannot discuss that. Once the chair has made a ruling, there's—

Mr. Mark Holland: I challenge the chair.

The Chair: Okay. Mr. Holland has challenged the chair.

We'll take a vote on this and see how the committee stands.

● (1150)

Mr. Don Davies: On a point of order, Mr. Chair, is there any debate or discussion on this?

The Chair: Not when someone challenges the chair; we simply vote on that.

I've actually allowed a fair amount, I think, of discussion on this. I tried to clearly indicate the ruling as legislative counsel has analyzed this.

Yes.

Mr. Don Davies: Mr. Chairman, if there's no debate on it as a matter of procedure, I accept that, but you have not allowed any discussion on the issue of ruling it out of order. I mean, that's something that I would address, because I certainly disagree vociferously that these amendments are contrary.

But if it's not debatable—

The Chair: Anyway, you're starting to discuss.

We will have the vote on the ruling of the chair.

(Ruling of the chair overturned)

The Chair: My ruling is overturned.

We will go back to debate on the amendment.

Ms. Glover.

Mrs. Shelly Glover (Saint Boniface, CPC): I want to add that I'm very disappointed to hear some of the commentary from opposition members. I worked for four and a half years with victims of sex crimes, and I can assure you that there have been a number of cases in which I would have loved to have access to a bigger pool that might have left me with an investigation that was successful and might have prevented the occurrence of further sex offences against young children or upon women and men. We're talking about Canadians' safety here, and it's very disappointing to hear the political jargon being used.

This bill is going to address the fact that police officers need tools to prevent these crimes from happening. Providing more discussion in court, more loopholes in court, is not what this bill was about. What the introduction of these two amendments is going to do is lengthen the court proceedings; it's going to bog down the court process even more.

Mr. Holland, with all due respect, I don't know of a single police officer who would ask that you reduce the amount of information he or she has to do their jobs effectively. Not only that, I don't know of a single defence lawyer who would argue that less information should be included. Most often, they want to see a fair and transparent process by which their client has not been focused on. We do not want to see tunnel vision in our investigative process. I would argue that in making this amendment, you're actually negatively impacting the clients who are charged with these crimes.

I also want to address what Mr. Ménard had to say. Nowhere does this sex offender registry, sir, use the word "dangerous".

I'm not sure why Mr. Ménard keeps going back to "only dangerous". This is a sex offender registry. It has nothing to do with what kind of crime. These are convicted criminals who have completed illegal sexual acts upon victims. They've been heard, and a judge has made a ruling. I want that information when I investigate as a police officer. I want to be able to protect potential victims, and the only way I can do that is to ensure that people do not allow even those who are convicted of what some of you call "less severe" crimes.... I need them on that registry. They start with being peeping Toms; they start with masturbating in parks; they progress up to a level where they are committing absolutely heinous crimes against our Canadian people. I want this information absolutely in this registry.

I'm actually begging you to consider our victims here, because we are going to lose some of our ability to successfully complete these investigations if we as a committee do not ensure that every single person who might potentially be responsible for these crimes.... If they are not on that list, you are going to damage the investigation process of all of the police officers involved in these cases.

Thank you, Mr. Chair.

● (1155)

The Chair: Thank you, Ms. Glover.

Mr. Holland, please.

Mr. Mark Holland: Thank you, Mr. Chair.

Ms. Glover, I care as deeply about victims as you do. I care as much about the safety of my children as you care about the safety of your family. I honestly believe the approach you're taking is one you believe is in the best interests of the public, and I would put to you that I believe what I'm doing is in the best interests of the public, so we should start the debate there.

There's no unanimity on this, but more often than not the concern of chiefs of police and different officers I've talked to about the sex offender registry is the number of people left off who shouldn't have been. It's a concern I share; it's why I support this legislation. They also expressed concern that for this list to be effective, it's essential that the people who are on this list are the right people, because time is of the essence when they're going to houses.

One of the things you stated in your comments—and it has been stated by that side—is that you believe in prosecutorial discretion, in discretion by officers, but you don't believe in judicial discretion, and I think there is a contradiction there. If you believe that to make sure mistakes aren't made—and mistakes do happen—you set an extremely high bar that says—and I'm quoting directly from this amendment—"grossly disproportionate to the public interest".

That isn't some giant hoop you can leap through; that is an extremely high bar. You've rightfully made the point that an officer and a prosecutor must have discretion, also with a very high bar, so we should enable our judiciary to have discretion, because things can transpire that we as a committee can't contemplate. To tie the hands of the judiciary, to say you must do this regardless of the evidence before you, regardless of how it does not serve the public interest, doesn't make sense to me.

As a committee, we should establish an extremely high bar, but not put ourselves in a position where we think we can foresee every possible outcome and every possible scenario. The best way of doing that is by saying there's a very small amount of room, but there has to be an overwhelming case for why this isn't used. As I said earlier, that not only serves the interest of the offender, but most importantly, it serves the public interest in ensuring a strong and effective registry.

That's what I'm speaking for, and I believe that furthers the interest of public safety.

The Chair: I have one more person on my list, Mr. McColeman, and then I guess we can proceed to the vote.

Mr. Phil McColeman (Brant, CPC): I would like to reinforce and underscore Mr. Kania's view that this is not an appropriate amendment.

These are convicted people who've had their day in court. I want them on the registry the day after they're convicted. I don't want any more messing around with trying to make another test. I'm going to leave it at that. That keeps my public safe.

The Chair: Thank you.

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

The Chair: Now we've lumped one and two together, and I will give you the same ruling....

Mr. Davies, you will have to officially move your second amendment as well.

● (1200)

Mr. Don Davies: I so move, Mr. Chairman.

The Chair: We've had discussion on these two together. Seeing no more hands being raised, we'll go to the vote.

I could go through this whole procedure again of ruling this out of order, but I won't do that at this point. You know the feeling of the chair on this. Let's simply vote, for expedience's sake, on this second amendment from Mr. Davies, which is NDP-2.

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

The Chair: We've cut a few corners. I hope that doesn't offend anybody.

We are finished with the discussion on clause 5. Shall clause 5 carry? It was not amended.

It is carried.

Yes, Mr. Davies.

Mr. Don Davies: I'm sorry, Mr. Chair, I'm not sure the committee is with you on this. I'd ask to slow you down. I noticed nobody voted on this side.

You're clearly calling the vote on clause 5 in the bill.

The Chair: That's right. The amendments that you proposed were defeated—

Mr. Don Davies: I understand that.

The Chair: —so now we are simply voting on clause 5.

Mr. Don Davies: Would you mind doing that vote so that we can...?

The Chair: Okay, I'll redo the vote at the request of Mr. Davies.

(Clauses 5 to 7 inclusive agreed to)

Mr. Mark Holland: Can we take these as groupings where there aren't amendments that have been tabled?

The Chair: Okay, that's a good suggestion. We'll do clauses 8 and 9.

Mr. Mark Holland: So we would go to clauses 6 through 17, as an example, because there are no amendments.

The Chair: There's an amendment to clause 10.

Mr. Mark Holland: I'm sorry. So perhaps we can just go to groups in between amendments.

The Chair: Clauses 8, 9, and 10 can be done together. We have a new clause 10.1.

Mr. Dave MacKenzie: But that's not what we're talking about here, are we clear?

The Chair: Yes, we're clear. We're just going up to clause 10. We're going to have a new clause 10.1.

(Clauses 8 to 10 inclusive agreed to)

The Chair: We will now move to new clause 10.1.

Mr. MacKenzie, please go ahead with amendment G-1.

Mr. Dave MacKenzie: Mr. Chair, this is a technical amendment that has come from our officials. I believe it has been circulated in both official languages this morning, Mr. Ménard. I would ask the committee to approve it.

Can I speak to the amendment?

The Chair: Yes, go ahead. You can move it and speak to it.

Mr. Dave MacKenzie: Okay. The amendment would ensure that RCMP officials at the national sex offender registry receive a copy of all registration orders directly from the court so they are apprised of all new orders. This is to correct an oversight in drafting. Currently, a copy of the order goes only to local police services and not registry officials. If this amendment is made, a consequential amendment would be required for the Sex Offender Information Registration Act at a proposed new clause 34.1.

The Chair: Okay. Is there any further discussion on that?

Monsieur Ménard, do you wish to discuss it?

● (1205)

[*Translation*]

Mr. Serge Ménard: I do not understand.

I am looking for page 8.

[*English*]

The Chair: I'll paraphrase what I think Mr. MacKenzie said.

There was an oversight in the legislation, and the information would have simply gone to the local police detachment rather than to the central registry of the RCMP. So this corrects that oversight, if I have understood that right.

[*Translation*]

Mr. Serge Ménard: I have the amendment, but I can't find where it goes in the act.

I go to page 8....

[*English*]

The Chair: I guess you would have to have the act in front of you, probably.

[*Translation*]

Mr. Serge Ménard: ....then I go to page 13, and there, the amendment says to add the following after subparagraph (iii), which I cannot find: "(iv) the Commissioner of the Royal Canadian Mounted Police." I do not see subparagraphs (i), (ii) and (iii) in either clauses 10 or 11.

How can we add a subparagraph (iv) when subparagraphs (i) to (iii) don't exist?

[*English*]

The Chair: Okay.

Mr. Dave MacKenzie: Chair, maybe the officials could explain it.

The Chair: Ms. Campbell, are you prepared to discuss this?

Ms. Mary Campbell (Director General, Corrections and Criminal Justice Directorate, Department of Public Safety and Emergency Preparedness): Yes, perhaps I could help out.

I'm not sure where you're looking, Mr. Ménard. If you're looking at Bill C-34, you are correct, it is a motion that would affect page 8 just after clause 10. It is of course not there, and this may be something the chair will be commenting on. It is an amendment to the Criminal Code provisions as they currently exist outside of Bill C-34.

The way it works right now, I'm told, is that the order is given to the local police force, who, of course, in turn forward it to RCMP officials. Out of an abundance of caution, this would simply ensure that it goes to both locations at the same time, to local police and to the RCMP officials at the registry. So it's no change in principle.

[*Translation*]

Mr. Serge Ménard: Okay, I understand. I found it, thank you.

[*English*]

The Chair: Okay, that has been clarified. Is there any further discussion?

(Amendment agreed to)

(Clauses 11 to 17 inclusive agreed to)

(On clause 18)

The Chair: We have an amendment NDP-3.

Mr. Davies, when you are ready, you can move that amendment and discuss it.

Mr. Don Davies: Thank you, Mr. Chairman.

I move that amendment. Would you like me to explain it?

The Chair: Yes, please. Go ahead.

Mr. Don Davies: In short, Mr. Chairman, part of the amendment to this bill is to allow the registration of people convicted abroad for equivalent offences. You and the committee may remember that I had some questions to make sure that the offences we're registering in Canada are in fact equivalent offences to offences here, because there are certain offences in other countries, in third world countries, that are criminal there that may not be here. For instance, homosexuality is one.

So what this does is clarify that the equivalent offences are on an objective standard. I think the bill, as it currently reads, speaks in terms of that determination being made in the opinion of the minister. I've changed that to say "that is equivalent to an offence referred to in". It makes it clear that any offence committed in a foreign jurisdiction has to be objectively related to an offence in Canada and then registration would be automatic.

It takes out the subjective discretion, which I'm hearing on the other side is not something they're generally in favour of. So I think they would support an objective standard in this regard as well.

● (1210)

The Chair: Any further discussion on this?

Mr. MacKenzie.

Mr. Dave MacKenzie: Mr. Chair, thank you.

The government does not support the proposed amendment. Bill C-34 includes provisions to ensure that an international sex offence conviction is equivalent to Canadian law when someone is ordered to comply with the Sex Offender Information Registration Act. So it's already there. This would only lead to clouding the issue. I think it's properly drafted and it should remain as it is.

The Chair: Are there any further comments or discussion on this amendment to clause 18?

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: I understand perfectly well that the amendment seeks to establish that an offence committed abroad and which may have a different name than it does in Canada is equivalent to an offence included in the list. That should be an objective criterion.

In practice, however, as we are doing with the much stronger antiterrorism provisions, we would want that equivalence to be consistent and to first be studied by the Department of Justice, so that the attorney general can make a decision after reviewing it. That would prevent contradictory court decisions.

I am more inclined to oppose the amendment. I realize that there is a need for a certain level of consistency and that an objective criterion, as assessed by various people, can sometimes be interpreted differently by those people, even when they are acting in good faith. I would opt for consistency by not supporting the amendment, which I understand perfectly well and which is very well-meaning in its intent to put objectivity over subjectivity.

But we are talking about offences that have a certain label in foreign countries, on a very diverse planet. I will tell you that I have always thought that the expression “sexual assault” was a good example of the genius of the English language, but that is not the case in French with “agression sexuelle”. A lot of sexual assaults do not involve any violence. Indeed, they are sexual acts that may not involve any violence but that French calls “agressions sexuelles” in order to show just how unacceptable the crime is.

The French take a more rational approach to labelling. I suppose that it is different in Spanish, Arabic, Chinese and so forth. My preference is for there to be only one interpretation that an offence committed in another country is equivalent to an offence in our Criminal Code and for that interpretation to come from the Department of Justice, as expressed by the Attorney General.

● (1215)

[*English*]

The Chair: Thank you.

Is there some more discussion?

Mr. Davies, you can wrap it up.

Mr. Don Davies: Yes, Mr. Chairman.

I'd like to thank Mr. Ménard for his usual astute observations, but the reason he's opposing my amendment is one of the very reasons I made it, because the section says:

> The Attorney General of a province, or the minister of justice of a territory, may serve a person with a notice in Form 54 only...that is, in the opinion of the Attorney General or minister of justice, equivalent to an offence...

This refers to provincial attorneys general. You could have the attorney general of every province of this country making a different determination of what an equivalent offence is. Now, I didn't say that in my original opening, but that's another reason not to have this. We shouldn't have political interpretations of what an equivalent offence is, because you build in legislation like this and it's basically unappealable, because the act itself says that it's the attorney general whose opinion matters. There should be an objective legal standard, so that if someone comes to this country and we want to have them registered because we consider them to have committed an equivalent offence abroad, and someone wants to challenge that because they disagree with that decision, the test shouldn't be whether an attorney general's opinion was the case.... I don't know how you would challenge that. It should be on whether or not the offence is an equivalent.

So the purpose of my amendment is twofold: one, it does provide an objective standard, and not that I imagine this would happen very often, but it could happen; and two, for the very reason Mr. Ménard said, you don't want attorneys general of the different provinces coming to different conclusions in this regard.

The Chair: Ms. Campbell, you've indicated you have a comment, and then Mr. Rathgeber is next.

Ms. Mary Campbell: I have just a clarification, Mr. Chair.

There are two situations where the Canadian has committed the offence abroad. There is of course the situation where the person is coming back under the International Transfer of Offenders Act. In those situations, the scheme is that the Minister of Public Safety, who is responsible for the administration of that act, is the authority under law to make the decision about whether the offence is equivalent or not. So the Minister of Public Safety makes that determination in an international transfer case.

Where the situation is a Canadian returning free and clear, if I can put it that way, not under any sentence but simply arriving back in Canada from a trip abroad or living abroad, this scheme provides that where there is information brought to the attention of authorities that they did commit a sex offence abroad, the attorney general or minister of justice in a territory can serve them, because they're the people who do administer that part of the registration process.

The way it's structured here is to say, in those situations, therefore the relevant or appropriate minister would be the decision-maker about equivalency of the offence simply because they're the decision-maker who's serving the person with this notice. That's why it has been structured that way.

There's also provision in Bill C-34, a little further on, that if the offender feels it is not an equivalent offence after the order has been made, they can apply for an exemption order on that basis. That is further along in clause 18.

The Chair: Okay, you're done? Thank you very much.

Mr. Rathgeber, have you any further comments?

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): It's more of a question than a comment, Mr. Chair. It's a question to Mr. Davies.

I'm unclear as to what possible objective standard exists to determine these equivalencies. Our Criminal Code uses specific language, for example, sexual assault. Other jurisdictions, most notably the United States of America, use specific language, like rape. I don't know that there is any objective standard as to how you determine those equivalencies. How are you going to determine these equivalencies if you don't put it in the discretion of an attorney general?

The Chair: Do you wish to respond, Mr. Davies.

Mr. Don Davies: I know my friend is a lawyer with long-standing experience, and I guess the difference between a subjective standard and an objective one is that ultimately someone has to make the decision. The only question is whether or not you build into legislation a text that is in the opinion of someone, which is unchallengeable, or whether you build into the legislation an objective standard. But I think the more trenchant observation is the one by Ms. Campbell where she points out, much to my chagrin and embarrassment, that there is a section later on that does provide for a way for a person to get an exemption. Although it doesn't really deal with the matter that I was bringing before the committee, it does give me some comfort.

I'm happy to withdraw that amendment on the basis that there is an exemption process and someone could make that application.

● (1220)

The Chair: Does Mr. Davies have the consent of this committee to withdraw that amendment? It has to be unanimous. All those in favour of allowing him to do that, please raise your hand. Opposed? I don't see any opposed.

(Amendment withdrawn)

The Chair: So now we're going to vote on clause 18. Actually, we can go from 18 to 26 because we have no amendments anymore to deal with.

I will lump clauses 18 to 26 together.

(Clauses 18 to 26 inclusive agreed to)

(On clause 27)

The Chair: Mr. Davies, you have an amendment known as NDP-4.

Would you like to move that and then discuss it.

Mr. Don Davies: Yes, I so move, Mr. Chairman.

The Chair: Go ahead and discuss it.

Mr. Don Davies: A major change in the act that, in my opinion, was not adequately explored by this committee was the introduction of the word “prevention” into the act.

The purpose of this act is very clearly set out. I'll paraphrase the original purpose of this act when it was introduced only a few years ago; it was to give police the tools they need to investigate crimes of a sexual nature. The precondition, of course, of searching the registry is that they have reasonable belief to suspect that a crime of a sexual nature has been committed.

We heard evidence in this committee, at least by my recollection, that we needed to loosen that test because it was problematic for police in a number of different circumstances. One circumstance was that they might have the belief that a crime has been committed, but they might not know it's sexual in nature. One of the examples was a parent phoning the police station to say a child has gone missing; the police may think a crime has been committed, but they would have no real reasonable belief to think it is sexual.

I don't want to speak for everybody, but I think we were all sympathetic to that and we thought we should widen it, particularly in light of the statistics showing that speed is of the ultimate essence, particularly when you're dealing with a missing child. We wanted police to be able to access the registry more quickly and in circumstances that aren't bureaucratic for them, but what we have done, as I think we've done in a number of cases with this act, is kill ants with sledgehammers. We're saying that we'll just use prevention as the goal.

Who isn't for prevention of sexual crimes? Everybody is in favour of that. But when this act was brought in, the very purpose wasn't just to help police investigate crimes of a sexual nature; it also recognized society's interest in protecting the privacy and rehabilitation of sex offenders. That's not a bleeding-heart liberal position; it's one that recognizes that we all have an interest in making sure sex offenders do not reoffend, and many do not.

Contrary to some of the statements Ms. Glover puts forward as ultimate statements of fact, my research indicates that some of these statements are actually not true. For instance, one of them was that most sex offenders actually know their victims. She said it is most of them. She said most are family members or they're people who know them, and that it's actually the exception for a stranger to commit a sexual assault on a stranger. Second, she keeps referring to peeping Toms going up a hierarchy of sex offences. My information and research indicate that some peeping Toms do. Those who are peeping in order to scout out committing a sexual crime certainly do, but those who are simply peeping for voyeurism actually do not generally commit sexual acts.

My point is that Parliament envisioned several years ago that in some cases registration can have a negative effect on the rehabilitation of a sex offender, and we don't want that. We want to make sure that people are registered and we want to make sure that police can investigate quickly, but we also have to remember that we want these sex offenders to rehabilitate and reintegrate into society whenever possible, and some do. Some do not, but some do.

When we say “prevention”, we change the act to say that the purpose of this act is now prevention. We heard no evidence, beyond the evidence that I talked about, about what opening up the whole purpose of the act to prevention might look like. If police can now search the registry for preventive purposes, what does that mean? Does it mean they can search the registry and then just go out and gratuitously visit sex offenders in their workplaces? Does it mean they can put sex offenders under surveillance in their homes and their communities? We're not exactly sure what this means, because it changes the basis of the act; the act was originally predicated upon a crime being committed, and then they would leap into action.

Having said all that, on balance I am prepared to support the concept of prevention on the assumption that some of these more dramatic and, I think negative aspects of prevention will not come to pass.

● (1225)

I'm prepared to support the introduction of prevention into this act, but my amendment would add “while exercising the powers conferred by this act in a reasonable manner”.

Subclause 27(1) replaces subsection 2(1) with the following:The purpose of this act is to help police services prevent and investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders.

Then subclause 27(2) replaces paragraph 2(2)(a) with the following:

(a) in the interest of protecting society through the effective prevention and investigation of crimes of a sexual nature, police services must have rapid access to certain information relating to sex offenders

And my amendment would add:

while exercising the powers conferred by this act in a reasonable manner

I think it's important that we have some legislative basis in the act that would act as some sort of break or limit on untrammelled use of the registry for prevention generally. I would hope that nobody in this committee would be opposed to this, because I don't think anybody is in favour of police exercising these rights in an unreasonable manner. Hopefully everybody in this committee can support that amendment. Because I do think we all are on the same page in this, that we did want to open up the ability for police to access the registry for prevention purposes, but in limited circumstances or circumstances...not meaning that the police would have completely untrammelled use of this registry for all purposes.

The Chair: Thank you.

Is there any further discussion?

Mr. MacKenzie, please.

Mr. Dave MacKenzie: I do appreciate Mr. Davies' explanation of his amendment, but the government does not support the proposed amendment as Bill C-34 establishes parameters so the police may access the national sex offender registry for prevention or investigation of crimes of a sexual nature.

Going back, I appreciate what his comments were with respect to the witnesses who appeared before us, but we did hear beyond that. It was a bit expanded. Parts of what I think he is talking about we did hear, certainly, from some witnesses. But I think we heard from Superintendent Lines from Ontario, who is in charge of the sex offender registry in Ontario and is a criminal profiler. I think she told us quite clearly about instances where they've used this in a crime prevention manner with people who have somehow gotten through the system and ended up either working with children or working in seniors homes and are somewhat of a danger to the people in those environments. For that reason alone, I believe the prevention part is crucial.

The other part is that I hope Mr. Davies would understand that the police community are not going to use the registry to go out holus bolus and tell everybody all of these nasty things, if that's what's perceived. There are other rules that do apply, and the responsibility would be on them, certainly in civil actions, in actions dealing with privacy.

Although I understand it, I believe what he is attempting to do here is not really in the vein of where the act is and the intention of the act. So for that reason, the government does not support that amendment.

● (1230)

The Chair: Mr. Oliphant.

Mr. Robert Oliphant: I will simply speak in favour of the amendment, for many of the same reasons. I think there's a lack of consistency on that side, because I think they're asking for some discretion on this part, whereas this is tightening it up. Either you're going to tighten it up or give discretion.

I am still in favour of a variety of things that are maybe equally inconsistent, but I will support this amendment.

The Chair: Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: We are going to support this amendment for basically the same reasons. I see that there is a huge difference of opinion. I do not think that people who go out and commit very low-level sexual offences will necessarily commit much more serious sexual offences down the line. I do not buy into that, just as I do not buy into the idea that people who have smoked a few joints will necessarily develop a drug problem later or that someone who starts drinking beer will end up becoming an alcoholic.

I was aware of hundreds of charges involving minor sexual offences. When I started practising, there was a public washroom squad in Montreal. It no doubt arrested a good hundred or so people a day. Senior counsel at my law firm had connections in the police force and would have those cases referred to him. I cannot believe that, after being arrested and arraigned in court, all those people became sexual predators.

What's worse, I have always believed that people with the exact opposite opinion, that is, those who think the most minor offence will necessarily lead to a major one, were engaging in demagoguery. I still respect their opinion, but if we look at other types of crime, we see that it does not apply in those cases, either. Just consider cases that involve drugs, alcohol and even theft. Therefore, it seems to me that one of the provisions put forward by Mr. Davies—not the only one, for that matter—with a view to bringing the act more in line with reality, does more to achieve the true objective behind creating a sex offender registry.

Furthermore, I am not sure where I picked up the idea of "dangerous". I did a lot of reading to prepare, and I had it in my head that the registry was for dangerous sex offenders. Even though that is not the case, the purpose of the registry is to protect the public and potential victims of serious crimes. If we fill the registry with the names of individuals who have committed minor sex offences....

When I began working in private practice in Montreal in 1968, after being a crown attorney for two years, there was a court that dealt solely with minor sex offences. It handled approximately 100 to 150 cases per day. I find it hard to believe that those individuals were dangerous because they gave in to a certain temptation in a public washroom one time. If everyone arraigned in that court became a dangerous sex offender, Montreal's streets would have become extremely dangerous a long time ago. That court may no longer be around because since then, we implemented a smart measure: we separated urinals. That helped to bring the situation under control, as compared with the late 1960s and early 1970s.

In any case, I want to say again that I quite like this kind of provision. It encourages police officers to use their judgment, which they have, in my opinion.

● (1235)

[*English*]

The Chair: Okay, thank you.

Is there further discussion? We're ready for the vote, then.

I'm sorry, Ms. Glover, please. I didn't see your hand up.

Mrs. Shelly Glover: I just want to make a clarification. I appreciate the conversation that's going on in committee, but I'm a little fearful that there may have been some misunderstanding by opposition members on what I said earlier.

I did not say that all peeping Toms become grave sexual offenders, but that many grave sexual offenders have in fact started off as peeping Toms. As Monsieur Ménard indicated, most alcoholics start one beer at a time, but not all beer drinkers are alcoholics. I just want to clarify that so that everyone understands.

The Chair: Thank you.

We're ready for the vote on NDP-4.

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

The Chair: We will group clauses 27 to 32 together.

(Clauses 27 to 32 inclusive agreed to)

(On clause 33)

The Chair: We now come to clause 33. Mr. Davies, you can move your amendment.

I will advise the committee that G-2 is very similar to NDP-5. There are subtle differences. Look at them carefully. If you approve NDP-5, you cannot approve G-2. You can't do both.

There's a little procedural thing here. I am referring in G-2 to e033-027-23a regularly.xml. It's easier to simply say G-2.

Do you understand what I said about these two amendments being similar, and if you approve one, then you can't do the other one?

Mr. Mark Holland: Can we offer to Mr. Davies the opportunity, if he's seen the other one and feels that one or the other is superior, to deal with only one?

The Chair: We can give a moment for him to—

Yes?

Mr. Dave MacKenzie: I'm wondering if Mr. Davies and I could have one minute. We can discuss that and we might come up with a solution.

The Chair: Sure, we'll wait for a minute here.

● _____ (Pause) _____

●

● (1240)

The Chair: Mr. Davies, you are allowed to either move or withdraw your amendment, as you wish.

Mr. Don Davies: Mr. Chairman, I'm going to move my motion, please.

The Chair: You're going to move your amendment.

Mr. Don Davies: I am, yes.

The Chair: Go ahead, sir.

Mr. Don Davies: Thanks, Mr. Chairman. I'm batting zero, so hopefully this one will get passed.

This is, I think, something that we all recognize as a deficiency in the current act. We all heard evidence before this committee that the registry should include information about sex offenders' vehicles.

In my opinion, it was an inexplicable deficiency on the minister's part to draft legislation that did not have that. In fact, I'm still quite perplexed by the fact that his officials and he testified before this committee that they specifically addressed their minds to adding vehicle information of sex offenders to the registry and chose not to do that. I'm hoping this committee will rectify this.

In fairness to the minister, when he appeared before this committee he indicated a receptiveness, which I think is positive.

My amendment would add the requirement that a sex offender would have to disgorge to the registry

> (d.01) the make, model, year, colour and licence plate number of any motor vehicle that they own, lease or use on a regular basis;

I did have a brief discussion with the government side, and in my view, the amendment the government side put in after this is, I think, identical to mine. I don't believe it adds anything different from what I've already put forward.

So I would move my amendment and urge all committee members to support it.

The Chair: Mr. MacKenzie, is there further discussion?

Mr. Dave MacKenzie: Yes.

Actually, I do appreciate Mr. Davies' thoughtfulness on this amendment. However, there are a couple of subtle differences, I do believe, and I would prefer that we don't pass his amendment.

First, the lease vehicle is collected already in the registration. When you lease a vehicle, it is registered. The plates are registered to the individual. So it's registered back there.

There's one important ingredient that I think is also missing in Mr. Davies' amendment. It's one that I forgot to mention to him when we just had our short discussion. It doesn't include the body type. Sometimes the body type is even more important to police officers when they're trying to locate vehicles. The simple part of missing the body type is probably pretty crucial, maybe more crucial, in some ways, than a licence plate number. You could have a Ford truck, but it could be a van, or it could be a pickup truck, or it could be a variety of things. The body type is crucial.

For that reason, I would prefer that we not pass Mr. Davies' amendment and that we pass the government amendment.

● (1245)

Mr. Don Davies: Mr. Chairman, I would consider that a friendly amendment.

If you want to add “body type” to my amendment, I would consider that a friendly amendment and not oppose it.

The Chair: Procedurally, I don't believe there is such a thing as a friendly amendment. We would actually have to amend yours or else defeat it and choose the government amendment.

Mr. Don Davies: Well, I would entertain an amendment to mine, if they want.

I just want to say too, with respect, that my language says “of any motor vehicle that they own, lease or use on a regular basis”. The government amendment is, “vehicles that are registered in their name or that they use regularly”.

So “use” is there and “registered” is there. As my friend has told me, whether you own or lease a car, it's registered in your name. There's absolutely no difference with respect to the leasing or the registration of it, in my view.

The Chair: Okay. If there's no more discussion, we'll vote on NDP amendment 5.

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

The Chair: I will now allow the government to introduce their G-2.

Mr. Dave MacKenzie: Thank you, Chair.

I move to amend clause 33 of the act by adding:

> (h) the licence plate number, make, model, body type, year of manufacture and colour of the motor vehicles that are registered in their name or that they use regularly.

The Chair: Is there any further discussion on this? I think we've discussed it.

(Amendment agreed to)

The Chair: Now we will go to NDP-6.

Mr. Davies, please go ahead and introduce it.

Mr. Don Davies: I so move, Mr. Chairman.

The Chair: Does anybody have any comments with regard to this?

Mr. MacKenzie.

Mr. Dave MacKenzie: Again, Mr. Chairman, the government does not support the proposed amendment. The Sex Offender Information Registration Act already requires registered sex offenders to report name or address changes within 15 days of the change, which would be amended to seven days in Bill C-34, clause 30. Changes to other information are required at annual reporting.

The Chair: Okay.

Mr. Davies.

Mr. Don Davies: Mr. Chairman, I always stand to be corrected when reading legislation like this, but maybe I could ask Ms. Campbell to let me know. When I first read through the bill, it was my understanding that there was an omission here. My amendment would require a sex offender, within seven days of any change to information, to report that change to a person who collects information at a registration centre.

If I hear my colleague on the other side correctly, he's telling me that the general obligation exists somewhere else. If that's the case, then my amendment is not necessary. Perhaps Ms. Campbell could help with that.

Ms. Mary Campbell: The obligation with respect to name and address is amended in Bill C-34 from 15 days to seven days to tighten up the timeframe.

The NDP-6 motion would require that all the information that is collected would have to be reported within that timeframe if it changed. The list of information in the Sex Offender Information Registration Act includes tattoos, other identifying marks, a range of items of information that police want to know have changed, but it's on an annual basis.

The most important elements, the name and address, would have to be reported within seven days. I think the way it's worded now doesn't exclude having to report on those changes but simply provides a longer framework. If you had to report within seven days every time you got a new tattoo, for example, or a hair colour change or what have you.... Again, it's a balancing act, and that's why it has been framed this way in the bill.

● (1250)

The Chair: Mr. Davies.

Mr. Don Davies: Mr. Chairman, my specific amendment is under clause 33, which speaks only of the address of every place at which they are employed or retained or engaged on a volunteer basis or, if there is no address or location of that place, the name of their employer or the person who engages them on a volunteer basis and the type of work they do.

My amendment would require that information. It says:

> (2.1) A sex offender shall, within seven days of any change in the information that they have provided under subsection (1), report that change to a person who collects information at a registration centre.

It was the employer that I had in my mind. What's not in subsection (1) is all the other bits of information, because I only see proposed paragraph 5(1)(d) there. If we are improving this registry, I don't think we want a person to just notify of a change of name or address; I think they should at the very least notify of their place of employment.

Ms. Mary Campbell: Just to clarify, Mr. Chair, Bill C-34, being an amendment bill, on page 27 does amend just paragraph 5(1)(d) to add the reference to name of employer, but the effect of adding a new proposed subsection (2.1), referring to subsection 5(1)...only (d) is replicated there. But if you then look at SOIRA subsection 5(1), there you do find all of the information listed, things like height and weight. So it's a question of, if your weight changed substantially, whether you would be required to report that within seven days or whether it is sufficient to report it annually. It's the same with physically distinguishing marks and phone numbers. Simply to explain, it would in fact affect all of subsection 5(1).

Mr. Don Davies: Mr. Chairman, what I want to say as well is that if my height changes annually, I'd be pleased to report that.

The Chair: Mine changes annually.

Mr. Don Davies: If I can have the consent of the committee, what I was meaning—it was probably poor drafting on our part—was to amend paragraph 5(1)(d), not all the information in subsection 5(1), so that if you changed employers you'd have to notify the registry within seven days. That was the intent of our drafting. If the committee thinks that's a good idea, then I would ask that my amendment be changed to make that a reference to paragraph 5(1)(d) of the act.

The Chair: I've got two more people on my list, Ms. Glover and then Ms. Mourani.

Mrs. Shelly Glover: Thank you, Mr. Chair, and I want to thank Mr. Davies for proposing this amendment.

What I'd like to ask is perhaps of Ms. Campbell. I'm wondering about the administrative burden, because I know my weight changes depending sometimes on the month, because of celebrations like Christmas. What administrative challenges would come into effect if we were to adopt this amendment? Do you have some insight into that, Ms. Campbell?

● (1255)

Ms. Mary Campbell: I think it's clear that it would add to the workloads of local police and of the registry itself if all of the elements in subsection 5(1) had to be reported on within seven days of any change. It's quite a thorough list. If it were with respect to reporting name, address, and the paragraph (d) in Bill C-34 within seven days, it would be less onerous or of less administrative difficulty. I would say that if it were the full list it would be a significant administrative impact.

Mrs. Shelly Glover: Thank you.

Mr. Hoover, it appears you may have some comments.

Mr. Douglas Hoover (Counsel, Criminal Law Policy Section, Department of Justice): One of the interesting things here is how far that goes. For example, you do have to report your weight. I don't know how often you'd have to change that. We anticipate that within 10 years there'll be a total of 50,000 offenders on the registry reporting on an annual basis. That's a significant number. It would be difficult to suggest exactly how many people would be re-registering under that model as opposed to this model, but there's a potential for a significant increase.

Mr. Don Davies: Mr. Chairman, I have a point of order.

The Chair: Yes.

Mr. Don Davies: I'm sorry, maybe we can speed this up. I think I've already made it clear that the purpose of my amendment is only to add the change of employer within seven days. I don't understand the point of the discussion going on about height or weight when I've already made clear that was not the purpose of my amendment. I just wanted to make a clerical change to make it clear that my amendment is simply to add the requirement of reporting a change of your employer within seven days.

The Chair: I think, though, that's not what it effectively does. Would somebody with more legal expertise...because it says under subsection (1) that they have to report that. So I don't think it says just employer.

Mr. Don Davies: No, it doesn't, Mr. Chairman. But again if you read the act, it says subsection 33(1), and then it says paragraph 5(1)(d) of the act is replaced by the following, which was just about the location of the employer. When I drafted my amendment, it was either my error or the error of the drafter—something got lost—but I was referring to this paragraph. What it should say is “under paragraph 5(1)(d)”, not “under subsection (1)”. That was my intent.

So rather than engage in a long discussion about the ridiculousness of reporting your weight change every seven days, when I'm telling you that's not what I was intending, I'll withdraw the amendment if people want to insist on talking about something that I'm trying repeatedly to say that I'm not trying to amend. Or, I'd like to hear from everybody on the committee whether they're opposed or not to simply changing my amendment to refer to 5(1)(d), as I originally intended, to make it clear that you have to report a change of your employer within seven days. If people are opposed to that, they can let me know.

The Chair: Well, you have actually proposed two things: to withdraw your amendment, or to get the consent of the committee to amend yours to refer simply to paragraph 5(1)(d).

Is that what I understand you to say?

Mr. Don Davies: Yes, Mr. Chairman. I think I would prefer to do that first.

The Chair: This situation is similar to a previous one I ruled on. You can't amend your own amendment, but someone else on the committee can do so, or you can withdraw it and propose a new amendment.

Mr. Holland.

Mr. Mark Holland: I'll make the subamendment.

The Chair: Okay, Mr. Holland has moved the subamendment. Let's be clear now on what we're doing.

Oh, I'm sorry, Ms. Mourani. You have been on my list for some time. My apologies. Go ahead.

[*Translation*]

Mrs. Maria Mourani (Ahuntsic, BQ): Thank you, Mr. Chair. I just have one question for Ms. Campbell in order to get a better sense of the proposed amendments.

In the current legislation, what information does an offender have to provide with seven days? What additional information does the bill require them to provide?

● (1300)

[*English*]

Ms. Mary Campbell: In Bill C-34, clauses 29, 30, and 32 contain changes to the reporting time requirement. They refer to when the person has to report the first time, and if they are changing their given name or surname. It really all relates to name and residence, where it's tightening up the 15 days to seven days.

So they were already captured under a separate scheme, by the 15-day reporting requirement in the existing SOIRA, whilst other elements are subject to annual reporting. So Bill C-34 takes that 15-day period and changes it to a seven-day reporting period, for various reasons that I can explain if you wish. It doesn't touch the existing reporting requirements in relation to the longer list that's found in current subsection 5(1), which refers obviously to some things that might not change so easily, a telephone number, and things like that.

[*Translation*]

Mrs. Maria Mourani: The employer's address....

[*English*]

The Chair: Are you almost finished? We actually have to end the meeting here.

I will take it that Mr. Holland has moved an amendment. Instead of subsection 5(1), it'll be paragraph 5(1)(d). We'll vote on that the next day.

My apologies, but we have to get out of here.

This meeting stands adjourned.

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

SPEAKER'S PERMISSION

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

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

PERMISSION DU PRÉSIDENT

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca