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Chair

Mr. Garry Breitkreuz

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● (1140)

[*English*]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to bring this meeting to order.

This is the Standing Committee on Public Safety and National Security, meeting number 41. We are dealing with Bill C-34, an act to amend the Criminal Code and other acts.

We again welcome as witnesses Ms. Mary Campbell, director general of corrections at the criminal justice directorate; and from the Department of Justice, Mr. Douglas Hoover, counsel for the criminal law policy section.

We are continuing clause-by-clause consideration of this bill. Hopefully you remember, from about three or four weeks ago, that we are resuming debate on the subamendment by Mr. MacKenzie.

Mr. MacKenzie, do you want to briefly remind us what that subamendment was?

Mr. Dave MacKenzie (Oxford, CPC): I wish I could.

I believe we were discussing "modus operandi". There was some debate about whether we could use Latin terms or whether we needed to use the two official languages. At that point I think we were suggesting we could change "modus operandi", in English, to the person's "method of operation", which would properly describe what I think Mr. Ménard had.

The Chair: Okay. The question is on the subamendment by Mr. MacKenzie. Are you all clear as to what his subamendment is? He's replacing the words "modus operandi" with "method of operation".

Monsieur Ménard.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Mr. MacKenzie sent his proposal to me in writing, and I agree with what he has. It's their method of operating, is that right?

The Chair: Yes.

Mr. Serge Ménard: That's in relation to the offence or offences. I agree with this. In French, it's

[*Translation*]

"their method of operating in relation to the offence or offences".

The Clerk of the Committee (Mr. Roger Préfontaine): Mr. Ménard, your subamendment says, "the person's method of operation".

Mr. Serge Ménard: I know, but my amendment used the expression "*modus operandi*". Mr. MacKenzie moved a subamendment that seeks to avoid using the Latin words "*modus operandi*" and to use the English words instead,

[*English*]

their "method of operation", in relation to the offence.

[*Translation*]

In French, it says "the person's method of operation".

[*English*]

I agree with the subamendment by Mr. MacKenzie.

The Chair: Very good. I think that's clear.

Mr. Kania.

Mr. Andrew Kania (Brampton West, Lib.): I'm not going to belabour it; I'm simply going to indicate that we agree.

The Chair: Okay.

Mr. MacKenzie.

Mr. Dave MacKenzie: Mr. Chair, I wonder whether we could get a comment from the officials. It's been a little while since we were here. Could either Mr. Hoover or Ms. Campbell give us a comment on it?

The Chair: Are you prepared to do that right now, Ms. Campbell?

Ms. Mary Campbell (Director General, Corrections and Criminal Justice Directorate, Department of Public Safety and Emergency Preparedness): Yes. From a drafting perspective, I think there was additional wording, which Mr. Yumansky has, that refers to "if the information is available". That would address those situations where it wouldn't be an absolute requirement to enter the information if it's not available.

Although it might seem implicit that one would not enter information that is not available, the drafters seem to feel that out of an abundance of caution the words should be there.

[*Translation*]

Mr. Serge Ménard: Mr. Chair....

[*English*]

The Chair: Yes, Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: That is indeed what Mr. MacKenzie sent me in writing. After reading it, I agree. I thought that the addition was there, and I agree with that. I can let Mr. MacKenzie read the subamendment he proposed to me. I noticed that when he recites it from memory, the wording is a bit different.

[*English*]

The Chair: Mr. MacPherson, would you like to make a comment?

Mr. Mike MacPherson (Procedural Clerk): It's just to indicate that what we have received does not include the "if available" portion, so that would have to be submitted and moved.

The Chair: Mr. Davies.

Mr. Don Davies (Vancouver Kingsway, NDP): I have two questions. First, I think there will always be a method of operation, because every sex crime is committed in a certain way. There will always be something to describe what happened.

Second, if I'm not restating the obvious, who would draft that information and how would it get to the registry? Who would summarize it? Would it be summarized through the court decision, or how would one know how to put that in?

The Chair: Mr. Hoover.

Mr. Douglas Hoover (Counsel, Criminal Law Policy Section, Department of Justice): That's primarily the issue we'd be concerned with. Right now the provision states that the person entering the information shall register the information, so there is a mandatory requirement.

We looked at section 17, the offence provision, to ensure that wouldn't apply. We're satisfied for the most part that they wouldn't be exposing themselves to the offence in the provision. But there are other liabilities that might be incurred.

So the issue is how does the RCMP get that at the NSOR centres where this information is entered? In many situations it's possible, but in other situations it may not be possible to get it at all or on a timely basis. You may have to get the recording of the proceedings transcribed. In other instances you may have to somehow get summaries from the files of the prosecutor, which may or may not be available in certain jurisdictions.

Our concern is that if it were mandatory it would present problems. It would also present the problem that they'd have to put something in. It could be bad information, which I think is worse than no information. So this would be an appropriate amendment. In almost all cases, if they have it or can get it easily it will go in. Eventually in the future they'll probably have systems in place that will allow for that information to be obtained where it's not available now.

● (1145)

The Chair: Mr. MacKenzie.

Mr. Dave MacKenzie: Just for procedure, can we pass what we've already done and then make another amendment?

The Chair: I think we have to do the amendment.

Mr. Mike MacPherson: We can deal with the subamendment and then add more to it.

The Chair: Okay, let's vote on the subamendment. I think we've had enough discussion.

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

The Chair: Do we have to change it before we go to the main amendment?

Do you have another copy of what you've given to me, Mr. MacKenzie, or should I just read it into the record?

Mr. Dave MacKenzie: I have a copy of it.

The Chair: Okay.

We're going to add the part after "method of operation" as an amendment, because we have already passed the other part.

Do you want to move that subamendment and read it into the record?

Mr. Dave MacKenzie: We are amending clause 34.1, section 8 of the act, to say:

> in relation to the offence or offences if that information is available to the person who registers information.

The Chair: So we're simply adding that to the part we've already passed.

For clarification, let me explain that we have passed the subamendment so it says "their method of operating" instead of "modus operandi".

We are now going to add to that as follows:

> their method of operating in relation to the offence or offences if that information is available to the person who registers information.

The committee will now decide whether they want to add that last part of the sentence to what we've already passed. Is that clear?

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

● (1150)

The Chair: Now we'll go to clause 35. I have amendment BQ-2, which is on page 3 of your list of amendments.

Monsieur Ménard, when you're ready you can move that amendment to clause 35.

[*Translation*]

Mr. Serge Ménard: It is in order to be consistent with the amendment that we have just adopted. I propose that we add "the person's method of operation". I had already proposed that we add the words "*modus operandi*". I have no objection to changing it to "the person's method of operation". I have no objection to amending it as we have just done with the subamendment to the previous amendment.

[*English*]

The Chair: You've all heard that. It's very similar to what we've just done. Is there any further discussion on that?

Mr. Davies.

Mr. Don Davies: What is the opinion of our counsel? Is it his view that this is just a consequential amendment that is consistent?

The Chair: Mr. Hoover.

Mr. Douglas Hoover: I appreciate that the department is your counsel. I'm not quite there yet.

This is necessary to reflect in these other provisions that are applicable, for example, to the Department of National Defence. So it's to be consistent.

Mr. Don Davies: Thank you.

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

(Clause 35 as amended agreed to)

The Chair: We have a new clause 35.1. It is created by amendment BQ-3, which is on page 4 of your list of amendments.

Monsieur Ménard, when you're ready to move that amendment, please.

[*Translation*]

Mr. Serge Ménard: It still has to do with being consistent with the amendments we have just adopted regarding the expression "the person's method of operation". I propose that it be added to subsection 8.2(1) of the act. After paragraph 8.2(1)(f), there is 8.2(1)(f.1), "the person's method of operation" and, in English,

[*English*]

"the person's method of operation".

[*Translation*]

I do not object to someone logically proposing a subamendment to use the same terms that we used in section 8. Instead of "the person's method of operation", we used "their method of operating". To me, it practically amounts to the same thing. In English, it says:

[*English*]

"their method of operating" *au lieu de* "person's method of operation" .

[*Translation*]

Once again, I do not object to using the same terms to express the same idea, so as not to confuse people.

[*English*]

The Chair: Mr. Hoover or Ms. Campbell, please.

[*Translation*]

Mr. Serge Ménard: Does anyone think we need to add:

[*English*]

—if that information is available to the person who registers information—

[*Translation*]

I do not think so, because I think that after reading it the first time, they will understand that the same conditions apply.

[*English*]

The Chair: Ms. Campbell or—

[*Translation*]

Mr. Serge Ménard: Although he is not nodding, I see that our counsel appears to have some doubts.

● (1155)

[*English*]

The Chair: I would like their comments. I was actually indicating they could comment on this, whether we need to do more.

Mr. Hoover.

Mr. Douglas Hoover: In the first place, if it says it in one provision and not in another, it very clearly would be an intent of Parliament to express two different things, so to be consistent I think you would require it in both, if you want the same thing to happen in both.

I have to confess, I am getting a little mixed up. I'm not sure whether we have everything covered in terms of the consequentials, but I'm trying to keep it straight with the various documents.

We had a few additional minor comments regarding replacement of.... For example, in section 8, I am not sure this was done properly. We wanted to suggest striking out "and" at the end of paragraph 8(1)(a) and then adding the modus operandi or method of operation clause, and then we would make sure that the grammar functions properly and we would be following that same process in all three. It is not clear to me that we were able to accomplish that. I don't know that it would be fatal if we didn't, but I think that's correct. We're trying to figure that out.

The Chair: How could we correct that to ensure there is no doubt?

Mr. Douglas Hoover: We have some proposed wording on that, just to make sure the sections flow, because we're changing some of the subsections. It's hard to follow right now.

The Chair: Would the committee be open to having those tabled here?

Mr. Douglas Hoover: That might be of some assistance.

The Chair: People are nodding. The committee is open to your submitting that, so if you would like to read that into the record or somehow relay that to us here, I'd rather ensure that we get it right than have some doubt.

Mr. Douglas Hoover: It would be unfortunate, for want of a conjunction at the end, that it wouldn't flow properly.

The Chair: I'll tell you what. We will suspend here for a moment while we discuss this and make sure we get it right.

Let's suspend for a moment, then reconvene.

● _____ (Pause) _____ ●

● (1205)

The Chair: We're ready to reconvene here.

I think it's been decided—and Monsieur Ménard, you can confirm this—that you're prepared to withdraw amendment BQ-3.

[*Translation*]

Mr. Serge Ménard: Yes, but on the condition that it is replaced.

[*English*]

The Chair: Yes, okay.

We need the consent of the committee here for him to withdraw that. Does the committee give its consent?

Some hon. members: Agreed.

The Chair: The understanding is that we will now move to clause 36. Mr. MacKenzie will have an amendment that he will put on the record.

(On clause 36—*Registration of information—Canadian Forces*)

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

I move that Bill C-34, in clause 36, be amended by replacing line 11 on page 30 with the following:

> 36(1). Subsection 8.2(1) of the Act is amended by striking out "and" at the end of paragraph (f) and by adding the following after paragraph (f): (f.1) their method of operating in relation to the offence or offences if that information is available to the person who registers information;
>
> 36(2). Subsection 8.2(2) of the Act is amended by striking out "and" at the end of paragraph (g) and by adding the following after paragraph (g): (g.1) their method of operating in relation to the offence or offences if that information is available to the person who registers information;
>
> 36(3). Subsection 8.2(6) of the Act is replaced

The Chair: Are there any questions in regard to this?

This is really making everything consistent with what we've already passed.

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: In short, you have replaced my three amendments, with respect to "*modus operandi*", with the new wording that we all agreed on. Is that right?

[*English*]

Mr. Dave MacKenzie: The law clerk says we have.

[*Translation*]

Mr. Serge Ménard: Thank you. Okay.

[*English*]

The Chair: Are there any further comments?

(Amendment agreed to)

(Clause 36 as amended agreed to)

(Clauses 37 and 38 agreed to)

(On clause 39)

The Chair: I will give an opportunity to the government here to move amendment G-5, which is found on page 5. I think it involves two pages.

Who's going to move it? Mr. MacKenzie.

Mr. Dave MacKenzie: Do you want me to read the amendment?

The Chair: Yes. Well, I'd just move it.

Mr. Dave MacKenzie: Okay. I would move that amendment G-5....

● (1210)

The Chair: That G-5 as contained on our list here be moved.

Mr. Dave MacKenzie: Yes.

The Chair: Okay. Everybody has it in front of them, I hope. I'll now ask if there's any discussion in regard to amendment G-5 as found on the list of amendments in front of you.

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

(Clause 39 as amended agreed to)

(Clauses 40 to 59 inclusive agreed to)

The Chair: Now we have new clause 59.1.

You don't have to read the entire amendment, Mr. Davies, but if you wish to move it, I'll give you the opportunity to do it right now.

Mr. Don Davies: I so move that motion, Mr. Chair.

The Chair: Okay. Is there any discussion on it?

Mr. Davies, I'll give you the first opportunity.

Mr. Don Davies: Thanks, Mr. Chairman. I'll be short about this.

The purpose of this act, as originally conceived by Parliament, was to create a registry to assist our police officers in solving crimes of a sexual nature. One of the underpinnings of the act is that a crime had been committed or was thought to be committed. If you read the first couple of sections of the act, they make it clear that Parliament at that time was very sensitive to balancing the interests of society and the rehabilitation of sex offenders, not necessarily because they were terribly concerned about the privacy interests of sex offenders, although that is an important factor, but because it was recognized by Parliament that ensuring that sex offenders are rehabilitated and reintegrated into society without reoffending is an important societal goal that we all have an interest in. So there was a balancing of those twin interests.

What we've done, I would submit, by our review, and what this bill does, is two things.

I'll back up and say one other thing. The other thing the act did, back when it was passed, was make registration subject to the discretion of the courts. There was obviously a recognition by the parliamentarians of that time that there were certain circumstances in which it was not appropriate for a Canadian to be subject to a registration order.

I also want to underscore, for all committee members as they consider my amendment, that what we're doing in this registry is an important thing but it's also an onerous thing. We are subjecting people who have committed a crime to orders for ten years to life that require them to do a lot of things that are relatively onerous. They have to let the police know when they are leaving their employer; they have to let the police know when they change cars; they have to let the employer know when they go out of the province for periods of time—I can't remember for how long. These are very onerous restrictions on people, and although they may be properly levied, we have to understand the serious incursion into people's privacy that this entails.

Having said that, I think one of the two major changes that this bill before us makes is to add prevention to the act. Prevention is a good thing, and as a word we're all in favour of it, but it does change significantly the original purpose of the act, which was not to prevent a crime but to help the police solve a crime that had already been committed or was thought to have been committed. We really didn't hear any evidence. I think it's fair to say that none of us heard any piercing evidence about what adding prevention to this act would look like. What does it mean? If police can access the registry to prevent a crime, does that mean that police can search the registry and then go visit known sex offenders in their place of work and follow them or surveil them? That might be good or it might be bad. But we didn't really ever consider that, and that's a significant departure from the act as it was originally conceived.

The second major thing this act does is remove discretion from registration. Through my amendments, I suggest that we have a statutory review of just those two aspects of the bill two years from now, so that two years from now we can look and see how automatic registration has worked. Maybe it will be like the Ontario experience has been and it will be fine. Maybe we will find that there have been no real miscarriages of justice. Maybe we'll find that there haven't been any cases of people being registered who ought not to have been. But I'd like to hear from prosecutors and people from the justice department, maybe defence lawyers and police, at that time to see how that is working.

I would also remind everybody on the committee that the automatic registration that we have adopted in this act applies to a wider range of offences—we all know that—than it does in Ontario, including, as I will repeat for I hope the last time, the hybrid offence of sexual assault, which could include sex offences on the more minor scale.

● (1215)

The second aspect of my amendment is that it would ask us to review how the prevention aspect has worked. So two years from now, we can actually see if it's been helpful. How have the police implemented it? Is it working well or is not working well?

That's the purpose of my amendments, Mr. Chairman, to review the bill just for those two particular aspects. I think it would give us a chance to really see how our amendments today are working.

The Chair: I invite any further discussion we may have.

Mr. MacKenzie.

Mr. Dave MacKenzie: Mr. Chair, we will oppose it because it's not necessary. Parliament can review bills at any time, and typically this is a two-year review being done at the fifth year, so it's just not necessary to have it in there.

The Chair: Is there any further discussion?

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: I am not sure that I understood what Mr. MacKenzie said. Personally, I think that the points raised by Mr. Davies are important. It is true that we are imposing a lot of obligations, namely on people who are fairly irresponsible. And that group includes people who are there because of mental illness. I am not sure whether they are the most capable of reporting every time they leave the province, change their vehicle and so forth.

It would be a good idea to review the situation after two years to see if there were any cases that warranted reviewing the legislation. I have always believed that this type of legislation is better than systematically imposing minimum prison terms, which is absolutely pointless. A bill such as this makes it possible to undertake prevention, monitoring and so on.

The fact remains that the bill is somewhat complex. It would be prudent to see if certain judges, when imposing these conditions, indicated in their rulings that they found it unnecessary or if they realized that it imposed an additional burden that was impossible to discharge in absolute terms on people who were not very intelligent, people with insufficient knowledge. It would be interesting to see if certain prosecutors decide not to prosecute in the case of minimal violations.

I think it is new to impose so many obligations on people who are certainly dangerous. When they have sufficient awareness and intelligence, it does not really bother me if their lives are somewhat hindered by such obligations.

What worries me, however, is the lack of realism at times of some people regarding these obligations we are imposing, namely those with mental illnesses. Therefore, I think it is a good idea to review the legislation in two years to see if any amendments are necessary.

● (1220)

[*English*]

The Chair: Are there any other comments?

Mr. Davies.

Mr. Don Davies: I have one quick response.

I hear Mr. MacKenzie's point, and it's a fair one. I suppose Parliament can always review a bill. But two things strike me. One is that this bill, when it was originally passed, contained a requirement for statutory review, so it clearly is done. That's why we're here.

The second thing is that we may or may not undertake a review in two years. This would make it clear that this committee would have to come back and review these things. I would just emphasize again that these are two very significant changes to the original framework of the act. I don't see any harm in parliamentarians reviewing our own work to see how it works in practice. I'm mindful of the fact that it took five years before. I don't know why that happened. I wasn't here. I think we should keep to our calendar, but because it's such a focus-limited inquiry, for those two aspects we should easily be able to do it in two years and do it quite quickly.

Those are my final remarks.

The Chair: Are there any other comments?

(Amendment negatived)

(Clauses 60 to 62 inclusive agreed to)

The Chair: Shall the schedule as amended carry?

Some hon. members: Agreed.

The Chair: Shall clause 1 carry?

Some hon. members: Agreed.

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 I report the bill as amended to the House?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: I would like to thank the committee.

We have completed this bill. I shall report it to the House.

[*Translation*]

Mr. Serge Ménard: Mr. Chair, is there no proposal to renumber the bill?

[*English*]

The Chair: No.

[*Translation*]

Mr. Serge Ménard: It needs to be renumbered.

[*English*]

The Chair: You mean the clauses within the bill?

Mr. Serge Ménard: Yes.

The Chair: That will be done to accommodate the amendments.

We'll suspend for a minute to move in camera to deal with the draft report.

[*Proceedings continue in camera*]

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