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# Standing Committee on Justice and Human Rights

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EVIDENCE

**Tuesday, March 16, 2010**

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**Chair**

**Mr. Ed Fast**



## Standing Committee on Justice and Human Rights

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•(1110)

[English]

**The Chair (Mr. Ed Fast (Abbotsford, CPC)):** Good morning. I call the meeting to order.

This is meeting number 2 of the Standing Committee on Justice and Human Rights. For the record, today is Tuesday, March 16, 2010.

You have before you the agenda for today. Today we are considering private member's bill, Bill C-464, An Act to amend the Criminal Code (justification for detention in custody).

With us to introduce the bill is MP Scott Andrews. Welcome here, Scott.

We also have with us a number of additional witnesses to assist in our review. First of all, representing the Canadian Resource Centre for Victims of Crime, we have Krista Gray-Donald. We also have Heidi Illingworth, who is the executive director.

As individuals, we have David and Kathleen Bagby. Welcome here.

Once we've heard from the witnesses, we are prepared to move to clause-by-clause on this bill. We have with us justice officials who can provide us with advice on clause-by-clause, Anouk Desaulniers and Laura Hodgson.

As is our customary process, Mr. Andrews, you'll have up to 10 minutes to present. Then we'll also give the Canadian Resource Centre for Victims of Crime 10 minutes.

Mrs. and Mr. Bagby, we have 10 minutes for you as well.

Mr. Andrews, you may start. You have 10 minutes.

**Mr. Scott Andrews (Avalon, Lib.):** Good morning, Mr. Chairman and members of the justice committee.

First of all, let me thank the committee for advancing the discussion on my private member's bill, Bill C-464, An Act to amend the Criminal Code (justification for detention in custody). It was introduced on October 23, 2009, followed by second reading on December 4. I look forward to the discussion and your support as we move this important piece of legislation forward.

All of us in Newfoundland and Labrador and many across the country heard the terrible story concerning the murder of a young, upcoming doctor in 2001. Dr. Andrew Bagby was murdered in a Pennsylvania park, and at the time, the police in the United States

questioned Dr. Shirley Turner of St. John's, Newfoundland, in connection with the murder.

Soon after, Dr. Turner returned to Newfoundland and made her pregnancy known, with her child of the late Dr. Bagby. Court proceedings followed, and Dr. Turner fought to stay in Canada during an extradition process.

Soon after, Zachary was born to the grandparents Kate and David Bagby, and they moved to Newfoundland to file for custody of their grandson. During the court proceedings, Dr. Turner was granted bail, and Zachary remained in her custody, with the grandparents given supervised visitations.

On August 18, 2003, Dr. Turner took her own life and the life of 13-month-old baby Zachary. While on bail, Dr. Turner jumped into the Atlantic Ocean in Conception Bay South with Zachary, and both died.

Since that time, Kate and David Bagby have been presenting their story and seeking the reform of bail legislation in Canada. In addition, I would be remiss if I didn't acknowledge the efforts of our friend, Kurt Kuenne. Kurt is the producer of a documentary called *Dear Zachary: A Letter to a Son About His Father* that played throughout Canada and across the national media. I can assure you that this is near and dear to Kurt's heart. He used his talents to have this story told and to promote legislative reform.

Just a year ago, shortly after I was elected, I received an invitation to attend a special screening of the documentary *Dear Zachary* for senators and members of Parliament in Ottawa. At that time, I had the pleasure to meet and talk with Kate and David and Kurt for the first time.

Watching this documentary and listening to their personal stories had a profound impact. It was shortly after this that I knew my first ever private member's bill would try to advance the efforts of bail reform in Canada. Obviously, I had to come quickly up to speed on the procedures of private members' bills and options for amendments to the Criminal Code of Canada pertaining to bail.

We have to balance the Charter of Rights and Freedoms and we need to have a court system to reflect the requirement to protect the safety of minors while those accused of serious crimes are being considered for bail.

After consultation with Kate and David and discussion of my intentions with my colleagues and lawyers, and working with the legislative branch of the House of Commons, I introduced Bill C-464 on October 23.

In summary, this bill when enacted will amend the Criminal Code to provide that the detention of the accused in custody may be justified where it is necessary for the protection and safety of the accused's minor children.

Bill C-464 is not about me. MPs create a private member's bill for two reasons: to make a political statement, knowing it will go nowhere; and, secondly, if you believe a realistic change can be made and it's possible to make a difference, then you will have success.

Bill C-464 is an accomplishment that reflects the strength and determination of David and Kate Bagby, parents and grandparents of the late Andrew and Zachary. I am delighted that Kate and David have joined us here today. These two amazing people have used their strength and determination to attract the attention of decision-makers and have had them focus upon the need to bring about change to our current bail legislation in Canada.

It is in the memory of Andrew and Zachary that we move this bill forward and do everything in our power to prevent this from happening to another family.

I have pledged my support to the Bagbys and to all Canadians wanting legislative reform within the Criminal Code that will hopefully strengthen bail requirements and achieve a common goal, so that no one has to witness or live through the devastation of losing loved ones in circumstances that are later determined to have been preventable.

Following this tragedy, the Government of Newfoundland and Labrador reviewed and investigated the circumstances surrounding the death of Zachary.

• (1115)

Dr. Peter Markesteyn was appointed to conduct the review and report findings to the provincial government. Dr. Markesteyn has had extensive experience in the conduct of children and adult health death reviews and has been a consultant to the Department of Justice federally. His professional experience includes many years of teaching in the faculties of medicine in several Canadian universities, including the University of Alberta, the University of Manitoba, and Memorial University in Newfoundland. He has also been trained as a consultant by the RCMP training division in Regina, the Atlantic Police Academy in Charlottetown, and the Canadian Police College here in Ontario.

Dr. Markesteyn conducted an exhaustive investigation over a 15-month period, and at the end of his research there were two distinct conclusions: one, Zachary Turner's death was preventable; two, Zachary was in his mother's care when he should not have been.

Although Dr. Markesteyn's mandate did not include a review of federal legislation concerning bail conditions, the provincial minister of justice at the time did bring these findings to the attention of the federal government.

From a tragic ending, we bring this new beginning of bail reform so that no other family has to go through this devastation that Kate and David have gone through so far. During the past short while, we have made considerable progress with the bill. It is my hope that such progress can continue so that we can move my private

member's bill through the committee stage and into the House for third reading with minimal required legislative timelines.

Senator Tommy Banks has been part of the debate and the progress of Bill C-464. He has pledged his support and is ready to sponsor this bill for approval through the Senate.

Once again, I would like to thank the committee members for their timely response to Bill C-464, and I look forward to continuing the debate on this very important piece of legislation. I'd like to thank David and Kate for their continued support and for joining me here today. I'd also like to thank the Canadian Resource Centre for Victims of Crime for their interest in and support for Bill C-464.

I look forward to hearing from other witnesses and to continued discussion and debate.

In closing, we support the proposed amendment that was brought forward by the parliamentary secretary. It puts more clarity and defines "minor children" so that there will be no misunderstanding when this needs to be used in a court of law.

Once again, thank you for your time. We look forward to answering your questions.

**The Chair:** Thank you, Mr. Andrews.

We'll move on to the Canadian Resource Centre for Victims of Crime. I believe, Ms. Illingworth, you're going to present. You have 10 minutes.

• (1120)

**Mrs. Heidi Illingworth (Executive Director, Canadian Resource Centre for Victims of Crime):** Thank you.

Good morning.

The Canadian Resource Centre for Victims of Crime is a national, non-profit advocacy group for victims and survivors of serious, violent crime. We provide direct assistance and support to victims across the country, as well as advocating for public safety and improved services and rights for crime victims.

The CRCVC is pleased to appear today before the Standing Committee on Justice and Human Rights to take part in the debate over Bill C-464.

Before we begin, we would like to acknowledge David and Kate Bagby, who have travelled a very long distance to share their story with us today. Their story is truly tragic, and I'm sure you're aware of the details. We are here, along with the Bagbys, to make sure that another family does not have to endure the same suffering.

The decision to grant bail is inherently difficult. A judge is asked to balance the rights of an accused, who is presumed innocent until proven guilty, against the protection of public safety. It is our position that the protection of the public must take precedence over an accused's right to be released from custody pending trial.

The Criminal Code has provisions that govern when detention should be ordered, and Bill C-464 seeks to amend these provisions and correct what is, in our opinion, a gross oversight. Bill C-464 modifies paragraph 515(10)(b) to provide that the detention of an accused in custody may be justified where it is necessary for the protection or safety of the accused's minor children. It is hoped that this modification might save the lives of children, children like Zachary Turner, whose life would not have been lost had the judges who twice granted Shirley Turner bail not done so. There are a number of examples where Zachary Turner was failed by the systems put in place to protect him, but ultimately the fact that he was not considered in the evaluation of Shirley Turner's risk led directly to his death.

We are fortunate in Canada that cases of homicide where the victim is a child are rare. It is, however, alarming how many of these young victims are killed by their parents. Statistics Canada reports show that in 2006 there were 60 homicides committed against children and youth under the age of 18. This represents 10% of all murders committed during that year. Thirty-six of these young victims, or 65%, were murdered by family members. In 2003, 33 children under the age of 12 were murdered. Twenty-seven of these cases were solved, and of those, 85% were found to be murdered by a parent. Over the past three decades, from 1977 to 2006, 90% of family related homicide victims under the age of 18 were killed by a parent, the definition of which includes step and adoptive parents. These statistics tell us that a significant number of murdered children lose their lives at the hands of their parents, and that the younger they are, the more likely it is that their parents take their lives.

Unfortunately, Statistics Canada does not record statistics on the number of cases that involved a parent who was released on judicial interim release when they murdered their child. We must therefore rely on individual cases reported in the media to capture these crimes. The media shows us that Zachary's case was not unique.

Peter Lee of Victoria attempted to murder his wife in 2007. He was charged but granted judicial interim release despite a recommendation by police that he not be released by the courts. Conditions were imposed that required that he not have contact with his wife, yet in September 2007 he murdered his six-year-old son as well as his wife and her parents.

In Cumberland, Ontario, in April 2006, Frank Maily murdered his two sons, ages six and nine, his daughter, aged twelve, and their mother. He then burned down their home, with their bodies in it, killing himself in the process. He was not to have contact with Francine, but he had visitation rights to the children, and he committed these murders at the conclusion of one of their visits. Maily had a long history of domestic violence and was on bail at the time he murdered his family.

In 2002, Lawrence Mends was released on bail in St. Catharines following an attempt to take the life of the mother of his child. When he returned to her home to attack her again, he wounded her and murdered their two-year-old son, Robert, stabbing him in excess of 20 times with a knife.

These are just a few examples where the risk to children was not properly assessed. In addition to these cases where children lost their lives, there are numerous cases where children were left orphaned

when one parent was murdered by another, frequently in the presence of the children or when their mother was trying to protect the children from harm.

**The Chair:** Ms. Illingworth, I'm just going to ask you to slow down a little bit. When we read our presentations they tend to be faster than one would normally present them. So slow down, because we have some interpreters who need to keep up with you.

Thank you.

• (1125)

**Mrs. Heidi Illingworth:** Okay. I'm sorry.

These children often survive because of the sole actions of their murdered parents and will likely be irreparably harmed by these offences.

It was argued in the Turner case that Shirley Turner need not be detained, as she had allegedly sought to harm and ultimately murdered the only person she would have wanted to harm. Our experience in working with victims of domestic violence tells us this logic is flawed, and this is generally not the case. Abusers, especially those who prey on a spouse or a significant other, generally don't differentiate between their spouses and their children. They seek to harm those who are vulnerable and dependent on them. The children are quite frequently harmed in order to inflict pain on the spouse or in response to the relationship shared by the spouse and the children.

Our experience and media reporting tell us that the public is concerned about crimes committed by those people who are on bail and awaiting trial for other offences. This is especially true in cases involving serious or violent offences, the cases that this amendment was drafted to address. As written, it will enable a judge who is considering a bail application to take into account the risk that the accused is likely to commit a serious crime if he or she is given bail, and to include the accused's minor children in the determination of that risk.

The proposal does not suggest that all accused be denied bail or that the conditions under which a person will be granted bail be made so onerous that no accused will be granted bail. It asks that meaningful consideration be given to the minor children of the accused when determining risk—children who are quite often at the greatest risk of harm at the hands of the accused. It does not dictate that bail will be refused in any given case or that having children would unfairly predispose an accused to remand.

On a daily basis our centre assists Canadians like the Bagbys. Serious, violent crime has had an impact on their lives. These victims and survivors want more than anything else to ensure the justice system has the tools in place to prevent what happened to them or to their loved ones from happening to anyone else. The legislative change proposed in Bill C-464 will compel the judiciary to consider the minor children of the accused when they are making decisions on judicial interim releases. Had such consideration been given to Zachary Turner, Christian Lee, Jessica, Brandon, and Kevin Maily, and Robert Mends, among many others, they would likely be alive today.

Thank you.

**The Chair:** Thank you.

Ms. Gray-Donald, do you have anything to add?

**Mrs. Krista Gray-Donald (Director, Advocacy and Awareness, Canadian Resource Centre for Victims of Crime):** No, thank you.

**The Chair:** Thank you.

We'll move on to Mr. and Mrs. Bagby.

Mr. Bagby, I believe you have a statement.

**Mr. David Bagby (As an Individual):** Thank you.

First I'd like to thank Mr. Andrews and Senator Banks for taking up this issue and introducing legislation to improve this bail situation.

Here are five facts I want to put in evidence with this committee: murderers are dangerous; most people accused of murder actually did the killing; repeat killings are unpredictable; courts have no means, other than incarceration, to prevent second killings; and murder is not just another crime. I want to back up those five things with a little data.

One, murderers are dangerous. That's intuitively obvious, but the literature on murder is sprinkled with notations that the recidivism rate is very low, under 1%. That's nice and that's comforting, until you consider the fact that even at less than 1%, it is about 17 times the murder rate for the general population of Canada. That factor, 17, is based on recidivism statistics from the Canadian National Parole Board and population statistics from Statistics Canada. If you want to tune that number for more accuracy, I'm sure one of your staffers would have access to complete statistics on all murders throughout Canada for as far back as you care to look. I doubt very much that the number will change dramatically with more data.

Two, most people accused of murder actually did the killing. I used a 25-year study of murders in the Toronto area to demonstrate this fact: 85% of those accused actually did the killing. Again, a funded researcher could get a more accurate number, but the basic proposition stands. Most people accused of murder actually did the killing.

Three, repeat killings are unpredictable. Shirley Turner provided the most recent example that I know of in Canada, killing her son Zachary while free on bail, pending extradition to Pennsylvania for the murder of Andrew Bagby. In 1994, also in Newfoundland, John Cousins murdered Edward Shaw while free on bail, pending his trial for the murder of Marvin Squires. In England in 2007, Garry Weddell murdered his wife Sandra. He was charged with the crime, examined by a psychiatrist, and declared safe for release; that is, he presented no danger to himself or others. The court released him on bail, whereupon he shot and killed his mother-in-law, Traute Maxfield, and then himself.

Four, courts have no means, other than incarceration, to prevent second killings. A piece of paper won't stop a killer. Shirley Turner was ordered to appear in court and agreed to obey that order. She did in fact obey that order many times over the 20 months of the extradition process, but she always had the option to thumb her nose at the court and disappear whenever she felt like it, and to hurt as

many people as possible on her way out. The same was true for John Cousins and Garry Weddell.

Five, murder is not just another crime. For every other crime, the primary victim and all the secondary victims—those who care about the primary victim—have at least the potential to recover something like a normal life. Even the victim of a brutal repeated rape or any other kind of vicious assault has an opportunity, with a lot of help from family and friends and maybe professional counsellors, to restore some semblance of normalcy to his or her life. It's not so for a murder victim.

• (1130)

When the last breath is drawn, all negotiations are terminated, all bridges are burned, and there can be no recovery. All is lost. Murder is the only crime that leaves such desolation in its wake.

The general population gets these facts. Here is a quote from University of Ottawa law professor David M. Paciocco:

Many Canadians are losing faith in the criminal justice system. They believe that courts are letting too many people go and are being too soft on those who are punished. It is not too strong to suggest that some of these people are disgusted with what they see.

That is from the first paragraph of the preface of Professor Paciocco's 1999 book, *Getting Away with Murder: The Canadian Criminal Justice System*. In that book he explains, in layman's terms, why this happens—why some people get away with murder. I found it very helpful and mostly palatable, but Professor Paciocco's elitism shows through on at least one issue.

After carefully explaining why the rule of law is so important in combating arbitrary variations in the delivery of justice, he turns right around and applauds circumventing the rule of law through plea bargaining. In response to the wishes of Canada's voters, Parliament passed a law imposing a sentence of life imprisonment for murder, but Professor Paciocco decries this loss of prosecutorial and judicial discretion, citing cases where prosecutors—and he—considered this sentence to be too harsh.

He applauds the bargaining down of an actual murder to a charge of manslaughter in order to avoid a life sentence for the killer. Apparently the rule of law is a wonderful thing when it works to the advantage of a criminal, but it's okay to sneak around the rule of law when a prosecutor, a professor, or a judge doesn't agree with a particular statute.

I have one more example of elitist disconnect from the real horror of murder. This is from a judicial decision in which Quebec Court of Appeal Justice Jean-Louis Baudouin explained the release of accused murderers on bail. I quote:

...certain inconveniences with respect to effectiveness and the repression of crime [are] the price that must be paid for life in a free and democratic society...

This is an asinine use of the word “inconvenience”. This is in a written judicial decision. Zachary, Edward Shaw, and Traute Maxfield had suffered enormously greater harm than can be described by “inconvenience”. I submit that a case in which an innocent person who is unfortunate enough to appear guilty and is forced to await his or her trial in custody is a much more accurate application of the word “inconvenience”. Once acquitted, the innocent accused has an opportunity to go on with his or her life. It's not so for second victims of actual murderers.

A free and democratic society should be able to minimize the inconvenience to an innocent accused who is held in custody while awaiting trial through liberal visitation and communication rules. But a free and democratic society should also be able to protect its innocent citizens from the actual monsters that arise among us.

You, the Government of Canada, are too late to help Zachary, and I was too late in realizing that I was his only hope. If you leave the bail law as it is, siding with the monsters against the rest of us, eventually someone like me will do the right thing and kill one of these monsters you routinely set free. You will then have to send an innocent person to prison for the crime of protecting himself and his family from a murderer.

• (1135)

Thank you.

**The Chair:** Thank you very much.

We'll move now to questions from members.

Mrs. Bagby, did you want to add anything to that?

**Mrs. Kathleen Bagby (As an Individual):** No. All I want to know is...

Excuse my speech. I had an accident and had an intracranial hemorrhage in 2006, and my speech isn't as good as it used to be.

It's a very personal thing, murder. It goes to a grief too deep for crying. People don't seem to understand that. It's as if... Well, “God doesn't give you more than you can bear”, or things like that, are said to you. It could have been managed; it could have been deterred. We were there; we were two people who could have Zachary. But she walked around that courtroom, adjusting drapes, pouring water, and we were sat in the back, not saying a word, and no one could come to the courtroom with us, because she was walking free, and they knew that if they came, she would just go over to them and indicate friendship. Although they loved Andrew, they didn't want her in their lives, and we didn't blame them. But it was lonely.

We managed. To actually interface with her was tremendously painful. I used to look at her hand and think to myself, everybody seems to think that she's a delicate little doctor and couldn't possibly have done this. I haven't pulled a gun, but I figure it doesn't take much to pull a trigger. It was a very brutal crime, as that judge well said, but it was a very particular one. Only my son Andrew was her victim.

She fooled everybody, because everybody was giving her the victim's rights, that everybody is innocent until proven guilty, and that America would change the law and give her the death penalty. But the death penalty was never a problem, because in Pennsylvania

only police murderers, or people who murder two people, or who torture.... Those are the three murderers who might be getting the death penalty. Her lawyer would say that the Americans tell lies and could change that. But they never would. Why would they? Then nobody would ever extradite anybody to America.

She got all these things. Judge Green said to her one day, “Dr. Turner, I'm so sorry the law is slow and that we have your life on hold.” I wanted to scream from the back, “My son's life is on hold forever, and you have the audacity to apologize to this woman?”

But of course the victim's survivors have no rights. The crown prosecutor said, “I'm not your son's lawyer; I represent Canada and America.” He didn't even want to be seen with us, because it would mean that perhaps he was biased towards us. I find that absolutely abominable, because in Pennsylvania we were treated so well by the police. I know that doesn't always happen in America. We came to Newfoundland with great expectations. We thought, America and Canada are friends; they have an extradition process. Shirley—the murderer—told us that her lawyer told her that he could easily get two to three years in Canada before she was extradited, so that would give her time for the baby.

I just want people to know that we lost Andrew; nobody could have prevented that except Turner. But it was total disregard for Zachary. We were there, but we got searched. We had an hour visit with him because she said we might hurt him. We had to pay a lady to sit there and supervise us while we had that hour.

• (1140)

We did all that; we didn't care. We got searched all the time. You can't imagine how wonderful it was to walk down that corridor and know there's part of Andrew there. He was beautiful. But we were put through terrible pain to get to Zachary, and then this happened.

So I just want you to know there are changes that could be made, and I'm hoping they will get made.

Thank you.

**The Chair:** Thank you very much.

We'll move on to Mr. Murphy. Do you have some questions of the witnesses?

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** Thank you, Mr. Chair.

I want to thank the witnesses from the resource centre.

I also want to thank our colleague, Scott Andrews, who, in untypical humility, really, underplays the role he played in bringing this forward. I think there's going to be unanimity, and it was done without any fanfare or politics, so congratulations to you. Well done.

And lastly, but really firstly, to the Bagbys, it's a very compelling situation that we have before us, and we all feel quite moved by your testimony. We could call this Zachary's law. We could make it fact specific. It does relate to a number of fact situations that the resource centre brought forward. But I would urge committee members and the general populace and politicians in general to look at laws that we make in a more general sense, so they can affect in a positive way or a less negative way the general criminal law. That's why we might do a disservice in narrowing the discussion today. I haven't heard, in my four years, a lay person suffering from grief and having a high emotional hold on an issue more succinctly talk about reforms that could be made than you, Mr. Bagby, in your five points.

On your first two points, with respect to statistics, we do have those resources, and immediately after this meeting I will make inquiries, for the committee's benefit as well, from Juristat, our service, with respect to the issues of recidivism and how often guilt is actually the case in murder and capital cases. So thank you for that point.

I'll skip to your fifth point, which is the gist of my question, that murder is not just another crime. In fact, it unites the members that we're very concerned about violent crime, the rise in violent crime in this country, which includes of course life-ending crimes and life-changing crimes. The idea that murder is not given the hierarchy it should be, and violent crime is, is something we can all agree on.

In fact, getting into my point about section 515 and show cause, you'll notice in the beginning of it, in every case, there has to be this consideration of release, except for those offences in 469. You might all look and say, 469, those must be really serious crimes, and I suppose they are, but it shows how outdated our laws are. They go back to the time of the kings and queens, when sedition and treason...I don't know the last sedition case that I've ever heard of. So in the hierarchy in this old law we give precedence to crimes that aren't as heinous as murder. Murder should be given a priority that it is not given in section 515.

In section 515 we might consider going forward, reversing the onus that has been reversed. We may all be aware that the crown has to show why, on the balance of probabilities, someone should not be released except in certain circumstances. We might look at that, because a defence lawyer might well be able to meet that burden and the balance of probabilities. It's a suggestion that comes to mind based on your reasons.

My question to both the resource centre and to you, Mr. Bagby, would be this. Do you see some broader amendments or improvements that we can make to section 515 in general? I've suggested one, the reversing of the onus, the hierarchy being changed with respect to certain circumstances where it's not really allowed.

And overall, my second question, because I think Mrs. Bagby is particularly interested in this question, and I know it's not in the purview of this act, is this. Is our extradition process so unwieldy, even between cooperative and friendly states, that we must urge other ministries of the government to move on the issue of expediting extradition in capital or in murder cases?

If you look at the facts of this situation and some other extraditable offences, the delay is often quite inordinate, and it does often lead to other offences occurring that wouldn't otherwise occur. That's quite aside from the aspect that people are basically flouting their freedom against the rights I think of people to feel that there ought to be a reckoning. You could say punishment, but that's only one aspect of the Criminal Code in sentencing. But they're flouting, by their freedom, the conclusion—or the reckoning—for what their actions are.

• (1145)

That's a two-part question, I guess. First, what other reforms could we look at within section 515 or otherwise, and what about expediting this expedition process?

• (1150)

**Mr. David Bagby:** I've made no secret since Zachary's murder that I think anyone accused of murder should be denied bail, period, and I believe these five points support that. If you can't do that, then at least reverse the onus so that the defendant has to bring something more than a promise. Shirley Turner promised she would appear in court every time. But she always had the power to say, "Buzz off, I'm out of here," which she did. Something more than a promise should be required. If you change it so that the onus is reversed, it's got to be something more than words on a piece of paper.

Regarding the extradition, I do not understand why it isn't this simple. I know I'm not a lawyer, but I don't understand why it isn't this simple: the requesting state says it wants a certain person for a certain crime, and the responding state, in my opinion, should simply determine if this is the person. Yes. If this action took place in our country, would it be a crime? Yes. Then off you go. The details happen at trial. The trial is where, to my knowledge, every criminal justice system, at least in the western world, really digs in and gets as close as a courtroom can ever get to the truth. All the preliminary stuff is, dare I say, often a waste of time.

Shirley Turner's attorney had a couple of nits that he argued, and they were fine points of the law and they didn't have a damned thing to do with the fundamental question of whether this person did this crime.

**The Chair:** Thank you.

We'll move on to Monsieur Lemay for seven minutes.

[Translation]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Thank you for being here, sir, and you, madam. The Bloc Québécois and myself have an enormous amount of respect...

I am sorry; I have to start again.

[English]

**Mr. David Bagby:** Yes.

[Translation]

**Mr. Marc Lemay:** Mr. and Mrs. Bagby, I wanted to tell you that I have an enormous amount of respect for the work you have done following the events of 2003. They were very painful—I still feel that to be so. You can count on the fact that we will vote for this bill and for the amendment it proposes.

That said, I have some questions and requests for clarification. If my reading and my understanding are correct, the murder took place in Pennsylvania, in the United States.

[English]

**Mr. David Bagby:** Andrew was murdered in Pennsylvania.

[Translation]

**Mr. Marc Lemay:** So he was granted bail in the United States. His wife, rather, was granted bail in the United States.

[English]

**Mr. David Bagby:** May I clarify that?

[Translation]

**Mr. Marc Lemay:** Yes.

[English]

**Mr. David Bagby:** The police in Pennsylvania were building a case against her, and one of the key pieces of evidence—it's long and complicated, like every criminal case—was cellphone records proving that she was actually in Pennsylvania at the time of the killing. They had a lot of other evidence, but that nailed it down, and that took longer—that took well over two weeks—and she fled the country one week after the murder.

[Translation]

**Mr. Marc Lemay:** The murder took place in the United States and the bail discussions also took place in the United States, if I understand correctly.

[English]

**Mr. David Bagby:** The murder took place on November 5, 2001. She fled on November 12, 2001, and she was formally charged about two weeks after that. So there was no arrest warrant for her until November 29, 2001, I think.

•(1155)

[Translation]

**Mr. Marc Lemay:** Right.

Let me explain, so that things are clear.

As a criminal lawyer, I have defended people like those whom you described in no uncertain terms a little earlier. I understand your pain and I respect it, but the law in Canada has changed. In fact, a person who has committed a murder cannot be granted bail unless he shows that he is worthy of release. So it is the accused who has to show that, under section 515 of the Criminal Code.

In murder cases in Canada, people are certainly released on bail. I could send you statistics about that. There are repeat offences, but for murder, these are few. Those cases are unacceptable. Courts have to take appropriate steps so that there are no repeat offences. If there is the slightest doubt, a court keeps the person in custody. That part has fundamentally changed.

That is why I asked myself these questions. I have looked carefully at the amendment to the Criminal Code you are proposing. That is why we are going to vote for it. Henceforth, when children are involved, there will be questions for the accused. Now, the proposed amendment deals with minor children.

Would you go as far as to protect unborn children? That is a problem. We are going to protect minor children, but what do we do about unborn children? I do not know if you have views about that, but, if you do, I would like to hear them.

[English]

**Mr. David Bagby:** I'm not sure I'm the one who should try to answer that. Mr. Andrews has proposed a bill that addresses the protection of children, but I propose to protect the entire population of innocent people. Shirley Turner could have just as easily killed Kate, me, or anyone else who angered her. So perhaps I'm the wrong person to ask that question of, because I would expand it to include everybody. But if you're going to stick to children, unborn children should be covered by this too.

In fact, way back at the beginning of this we made contact with the district attorney in Pennsylvania and asked, "If the extradition happens quickly and she's pregnant, what will happen?" He said that women deliver babies in jail all the time. It doesn't happen every day, but it's not rare, and there is perfectly good delivery care in jail. So if you're pointing on that line, I would include unborn children.

You said that people accused of murder now aren't released. How far back are you going? Ray Newman in Newfoundland was released on bail several weeks ago, and he's accused of murdering his wife. I'm not sure what you mean.

•(1200)

**The Chair:** We're at the end of Mr. Lemay's time, so we're going to move on to Mr. Comartin right now.

[Translation]

**Mr. Marc Lemay:** I cannot give you an answer.

[English]

**The Chair:** Mr. Comartin, you have seven minutes.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Are the justice people going to be available to answer some questions? I have a concern similar to Mr. Lemay's in terms of the applicability.

Mr. and Mrs. Bagby, I think everybody sitting around this table, and I think all Canadians, can have only some sense of the pain that you've been put through. As you heard from Mr. Murphy, there's unanimous support for this bill, so it will go through. I understand from Senator Banks that a similar result will occur in the Senate, so it will go through.

Mr. Andrews, I have a question for you with regard to the second amendment that's being proposed, which is that after royal assent it not come into effect for 90 days. There are times when that's appropriate, when our judicial system and prosecutorial system and police, the criminal justice system generally, have to be prepared. I can't see that here. Have they given you any explanation as to why they want to wait 90 days as opposed to it coming into effect immediately?

**Mr. Scott Andrews:** No. After introducing the bill, I consulted with the minister, and they made two points. One was on the definition of minor children, which is addressed in the amendment, and the other was that this is a normal practice in the legal community. I'm no lawyer, so I would lean on your advice on that particular point that normally they give 90 days so the courts and everybody can adjust to the change in the legislation. That's as much as I know. That was the response I got.

**Mr. Joe Comartin:** Is it appropriate for us to ask questions of justice officials now or do you want us to wait until the...?

**The Chair:** We'll wait until we go to clause-by-clause.

**Mr. Joe Comartin:** Those are all the questions I have. Thank you.

**The Chair:** Thank you.

We'll move on to Mr. Dechert.

Are you splitting your time with Mr. Norlock?

**Mr. Bob Dechert (Mississauga—Erindale, CPC):** Yes, I am.

**The Chair:** Please proceed.

**Mr. Bob Dechert:** Thank you, Mr. Chair.

First of all, Mr. and Mrs. Bagby, I'd just like to say how sorry I am that this tragedy happened to your family. On my behalf and that of my colleagues and everyone here, I'd like to express our deepest condolences and sympathies to you for your loss.

Mr. Andrews, I'd like to commend you and thank you for bringing this bill before Parliament. Far too often, in the partisan nature of this place, we lose focus of the jobs we are sent here to do. It's my view that one of the paramount jobs we're sent here to do is to enact legislation that protects our communities, our families, and especially our minor children. I think this amendment to our Criminal Code is long overdue. I want to thank you for bringing this forward. I think this is a perfect example of the sort of thing that can happen when all parties work together for the benefit of all the people we represent.

As you know, our government has worked very hard to revise our criminal justice legislation to ensure that our families and our communities are protected, as evidenced by the announcement by the Minister of Justice earlier today of some proposed amendments to the Youth Criminal Justice Act, which I hope will also be seen by all parties in the same light.

I'd like to ask you to describe for us, if you can, how you believe this change to the Criminal Code of Canada will ensure the protection of our youth.

**Mr. Scott Andrews:** Thank you, sir.

One of the things that got me in this job, being a new person and on the job for less than 16 months, is that we're flooded with so much information. So many things come across our desks.

In particular, we all look at things in our own home province. I had the opportunity to see this documentary. I knew the story and I knew what the Bagbys had gone through, but when I went out and took in the documentary—and we get asked to view many things and hear many stories—it did have a profound impact on me as to how we could change things. By working together, by making sure we

gather all-party support on things, and by compromising, we can move forward.

I thank you for those comments. I just wanted to add that. That's why I brought this forward.

With respect to protecting children, we need to give the courts and the justice system the ability and the tools they need to deny bail in order to protect children. We need to have that ability. The courts need to do it. We cannot do it alone as parliamentarians. We have to rely on our judicial system, our public prosecution, and our lawyers. They need the tools to do the job. In this particular case, I just saw this as one opportunity to change the law to give them the tools they need to do their job in denying bail.

• (1205)

**Mr. Bob Dechert:** Thank you.

**Mrs. Kathleen Bagby:** Excuse me, could I just say something?

**The Chair:** Yes, Ms. Bagby.

**Mrs. Kathleen Bagby:** When we were in Newfoundland, Judge Hall, who was letting out another person on bail for murder, said he knew there were people in the audience who didn't approve of this action but that they'd have to go to Parliament, that it was Parliament's fault that judges make these decisions. So that's why we came.

**The Chair:** Thank you.

We'll move on to Mr. Norlock for three and a half minutes.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** Thank you.

Thank you very much, witnesses, for being here—in particular, of course, Mr. Andrews, and more specifically, Mr. and Mrs. Bagby.

I have only three minutes and there are many things I would like to explore with you. The first one is that, quite frankly, I agree with your five points, and in particular, the point that murder is not just another crime. Actually, you have to live with the people who have experienced murder and/or any crime in their residence—sometimes it's just a break and enter into a person's residence. As a police officer, I saw time and time again where people could not live, or found it difficult to live, in their home because someone had broken into their home. They never felt secure after that. Their children cried at night.

The court system, I have to say, is moving towards listening more to victims, but I believe it needs to move a little bit further on caring about the victims, and in particular the victims of murder, because people live with it.

I have to apologize in a way, but I guess I don't in another way. I have mixed feelings about your coming here today, because you have to relive and keep reliving this. But I think when you go to bed at night, you know that it's part of your closure, that you're doing something about a tragic thing that happened in your family.

In terms of our justice system, although it has many warts and blemishes, I believe it to be one of the best in the world. As police officers, we were constantly reminded by crown attorneys and other lawyers that our system is based on the fact that better ten guilty people go free than one innocent person be convicted. I think we need to begin to look at that in terms of different crimes. There should be a different weight put to that thought.

Lastly, when I look at this committee, when I look at a Canadian looking at our committee, listening to us, finding out where our heads are at when we try to change the law, or if I were reading the results of this hearing or reading the testimony...I'd like to know as a Canadian why the justice gave the person bail.

Can you recall the reasons given for the person being released on bail?

**Mr. David Bagby:** You mentioned the famous quote about "Better ten...", right? There was a great counter I came across while researching my book. Some theoreticians or jurists or whoever said essentially—I can't remember the exact quote and I will paraphrase—that any way you turn it, it's still ten times the number of errors. Wrong is wrong. If a decision is wrong, either way, it's still a wrong decision.

Why was Turner released on bail? In a nutshell, Judge Gale Welsh, in her written decision, stated—and Kate paraphrased it a while ago too—that her crime, while violent, was specific in nature. That's a quote—"specific in nature". It meant that if she did the crime, she's already killed the person she meant to kill: Andrew Bagby. He's the one who really angered her. That does not imply that she's a threat to anyone else. That was her fundamental logic, as I interpret that phrase "specific in nature". She also stressed that presumption of innocence applies.

My counter to both of those is that presumption of innocence is a very important principle in criminal law, in my opinion and apparently in the opinion of almost anybody who thinks about it, at least in the western world, but it has been stretched to ludicrous extremes. There ought to be some middle ground where precautions can be taken if someone is probably a killer but has not yet been determined to be a killer beyond a reasonable doubt.

Of course, I propose a blanket rule, but it could be somewhere in the middle, such as a halfway house. If you're accused of a violent crime, you go live in a halfway house where you have a lot of freedom and your friends can come see you, but you can't walk out of there and do it again. If you do walk out of there, then you go to a real jail.

I don't know; I'm making this up half on the fly. The point is that there ought to be a way to protect the truly innocent against the probably guilty until you get to the stage at which it is beyond a reasonable doubt at the trial.

•(1210)

**The Chair:** Thank you.

**Mrs. Kathleen Bagby:** I would like to add that we were amazed when we first heard that Turner had been arrested under warrant and within hours was released. The crown prosecutor and her lawyer went into that courtroom with an agreement already made. It had \$100,000, which they could not raise, so that was crossed out, and

\$75,000 was put there. The crown prosecutor didn't even say it. He just said that she could have bail.

**The Chair:** Thank you.

Members of the committee, I'm in your hands. I'm proposing that we do one more round of three minutes and then move to clause-by-clause consideration. Is that acceptable?

I hear no objections, so we'll move forward on that basis.

Ms. Mendes, you have three minutes.

**Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.):** Thank you very much, Mr. Chair.

First, Mr. and Mrs. Bagby, I offer our sincere sympathies for what you've lost. Losing a son and a grandson must have been something that one doesn't overcome ever, I think. Thank you for coming before us and presenting the story.

I would like to take the opportunity to ask Ms. Illingworth to advise us or to share with us recommendations on other measures that we could bring forth to give victims of violent crimes a sense of closure, if nothing else.

**Mrs. Heidi Illingworth:** As you just said a couple of seconds ago, it's really difficult. The word "closure" is not something that we use often with the people we work with, because, as you said, in cases of homicide there really can be no closure.

The Bagbys are here trying to make a change for the better, to protect society, and that is something that a lot of the families that we have seen over the years have a strong need to do, to ensure that no one else is harmed in the way they have been harmed. We just commend them again for being here and sharing with us.

I think our paper highlights a lot of our concerns. With bail in this country, judges have to do a better job of looking at the risk to children, not just in the case of accused murderers but in cases of domestic violence. In our paper for you today we listed three examples of the serious problems that are going on in this country with spouses who are released on bail and go on to harass and harm their ex-husband or ex-wife and their children again and again. In the extreme cases we see familial homicides happening.

•(1215)

**Mrs. Krista Gray-Donald:** I'd like to make a point about the extradition process as well.

Shirley Turner was accused of murder and had fled the country in which she was accused of murder. There is no way she should have been out on bail, ever. She was a flight risk, and that was not considered. She had a child while in Canada, and it's horrible that none of the protections that are theoretically put in place to take care of this child were even looked at, not the first of which is that the judge should have considered the child.

I'm actually saddened that we have to put this amendment into the Criminal Code, that minor children must be, that they have to be, considered. It should be a given that if an accused has children and has harmed a family member or has been accused of attempting to harm a family member, then the children automatically should be the primary concern, because they are truly the innocent and defenceless ones in this case.

As we said in our brief, there were a host of errors in which Zachary Turner was failed, but those are two of the very important ones, from our perspective.

**The Chair:** Thank you.

Monsieur Lemay or Monsieur Ménard, do you have any further questions?

Monsieur Ménard.

[*Translation*]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** I do not think that your amendment adds a great deal to what already exists in the Criminal Code. I imagine that a judge who relies on the present provisions in the Criminal Code would come to the conclusion that you are hoping for, that is, in this particular case, that the person will remain in custody. In this case, I can accept the idea that “you cannot have too much of a good thing” and I am ready to add this possibility to the act, which judges already take into consideration, in my view.

But I would like us to bear in mind that people are falsely accused of murder in Canada. I was fortunate to have a wonderful criminal law practice. I never got mixed up with criminal organizations. I was fortunate to have a reasonably good reputation with the result that lawyers who did not do criminal law would send me their criminal cases. I have obtained four acquittals in murder cases and I see no reason why those people would not have the right to bail.

These are things that you never hear about. Let me just mention one case. It involved a doorman at a club, a bouncer. He was at the door to keep order and make sure that people came to no harm. There was only one bartender, who asked him to look after the bar while he went to the bathroom. A patron, who had been drinking quite a lot, ordered a drink. The doorman told him that he was the bouncer and that he did not serve drinks. The patron became aggressive and threatened the doorman, who still refused to serve him. The patron punched him. The doorman grabbed him as he fell backwards and punched him back. The patron fell to the floor and died. The doorman was charged with murder. I do not have to tell you that he was acquitted. The Crown was hoping that we would plead guilty to manslaughter, but I had enough experience that I was not concerned when the charge was more serious than the one they wanted. Yes, he was granted bail and I do not see why anyone would think that someone like him should not be granted bail.

I could tell you about other cases, domestic situations, but they will never make the front pages. The front pages are for the heinous crimes. In daily practice, we see that we have a country and a justice system where the presumption of innocence is important, thank God. It should apply right from the start, in my opinion, even though, in a murder case, the onus would be on the accused to show that it would not be dangerous to release him.

[*English*]

**The Chair:** Monsieur Ménard, we'll leave that as a statement.

Please make a very quick response.

**Mr. Scott Andrews:** Unfortunately, as Ms. Gray-Donald pointed out, you'd think that a judge would take it into consideration. We shouldn't really be putting that in the Criminal Code, but we have to strengthen it.

When I did my research on this bill, the problem with granting bail is trying to balance that with the Charter of Rights and Freedoms. You're innocent until proven guilty. We looked at the most serious crimes and not being able to grant bail in those cases. Unfortunately, as you just pointed out, one shoe does not fit all. If you have to pigeonhole stuff, there is no real way to put it in and be in compliance with the Charter of Rights and Freedoms as far as being innocent until proven guilty.

It is hard to try to make a blanket law or statement that for murders in certain cases you'll be denied bail. I found that very difficult to come to grips with in learning the process and the law.

• (1220)

**The Chair:** Mr. Bagby.

**Mr. David Bagby:** The point you raise, sir, I think is the crux of the bail issue, and I guess there are two basic facts I'd like to....

A court cannot get it right every time. It can't be done. There's never enough information for a court to be perfectly right every time. There will be errors. It's unavoidable. So I suggest designing the system, which is what a court is, in such a way that when there is an error, the maximum damage is minimal.

For the case you're talking about...actually there's a case in Newfoundland in Saturday's paper. A guy spent 27 months in jail based on DNA evidence that has now been demonstrated to be almost certainly wrong. I think he's out now and I think they've dropped the charges—but it's analogous to the bouncer case.

He was wrongfully accused. I've had a lot of time to think about this. I've been lying in wait for you, sir, and I'm sorry if it's going to come out this way, but I propose a debate. I want your bouncer who spends 27 months or whatever in jail and then is freed to debate a bail-released murder victim. I want him to come in here and tell you how much he suffered, and then I want Zachary to come in here and tell you how much he suffered, and let's see who got hurt the most.

**The Chair:** Thank you.

Are there any further questions from the government side?

Mr. Rathgeber.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you, and thank you to all of the witnesses.

My congratulations to Mr. Andrews. I think this is a well-intentioned bill, and certainly it has my support and the support of all the members. I congratulate you on that.

I have one question following up on Mr. Ménard's question regarding application. I accept your answer, Mr. Andrews, that you're trying to add specificity so that the judge, when considering judicial interim release, has something else to think about, and that's the protection and safety of the children of the accused.

But a test still has to be met. Perhaps this is a question for Ms. Illingworth. What is substantially going to change in your mind regarding what goes through the bail hearing justice's mind? It's always been the case that if there's a reasonable likelihood that the accused will commit a Criminal Code offence, the person ought to be detained. So by adding this, what extra protection is instilled for the children of the accused?

**Mrs. Heidi Illingworth:** I don't know that there is an extra protection on it, but to have it in there is an important measure for families who have gone through what the Bagbys have gone through to know that. I realize the Criminal Code judges are already supposed to consider the safety of victims before releasing an accused on bail, but it doesn't happen enough. It's not happening enough. We see it all the time with the victims that we help on a daily basis, with the women and children who are victims of domestic violence. It's important that it goes in there as a statement so that perhaps the crown can argue, there is a real risk here and you need to consider the safety of these children.

• (1225)

**Mr. Brent Rathgeber:** Thank you.

**The Chair:** Mr. Petit, a short question.

[Translation]

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

Good afternoon to all the witnesses.

First, my congratulations, Mr. Andrews. Introducing a private member's bill is not easy. You and I both know that it takes time and that it often comes to nought. You have my complete support.

I would mostly like to speak to Mr. David Bagby.

I would like to talk to you a little about what our government is doing. We have introduced bills on human trafficking and child pornography. My party sponsored them. Children are important to me. I have four children and four grandchildren. You can see already where I am coming from.

My question is simple. It seems that you have done a lot of research, which is very commendable on your part, and focused your argument very well. You are here with your member of Parliament, Mr. Andrews, and it is clear that there is good chemistry between you. You provide each other with support.

Do you believe, in your heart of hearts, that the amendment you are proposing to section 515 of the Criminal Code, simple though it is, is really going to put an end to this kind of crime?

[English]

**Mr. David Bagby:** I think the proposed modification to the bail law has value as it's written. I think of it like this. The crown prosecutor has a set of tools that he can use to try to get bail denied for an accused, and the Criminal Code lays them out. This gives him

one more tool, one more screwdriver that might fit. In some cases, I can envision this being of value.

Another way to look at it is this. If this had been the law in Newfoundland in 2001 and up, would Zachary still be alive? I don't think so. My impression, from the legal arguments...well, there was no legal argument in the first bail hearing in December 2001. But Judge Welsh's legal decision, written on January 10, 2003, stressed that Dr. Turner was to be presumed innocent and therefore the crime she was accused of was not relevant to bail, and that she had obeyed the court order to come back many times, so she was not a flight risk. If, at that time, Mr. Madden, the crown prosecutor, had stood up and argued that she had a minor child in her custody and that child might be in danger, the judge would have simply said, "Show me a threat. When did she threaten the baby?" She never threatened the baby. To our knowledge, she never said a word about threatening the baby, or anyone. She was too smart, too careful.

I'm sorry, I don't mean to undermine what Mr. Andrews has proposed here. I simply mean to push the logic of this as far as I can see it going. I don't see any way a manipulative murderer can be kept in jail or in other custody unless it's a blanket rule, because some of them are just too smart.

Shirley Turner had us convinced, mostly convinced, that she was getting ready to go back to Pennsylvania and face trial. She never gave us a hint that she was going to turn wacko and do this. She was consulting a psychiatrist. That psychiatrist declared, after the murder-suicide, that he saw no indication of danger to herself or others.

So my point is, number three, repeat killings are unpredictable. Shirley Turner's a great example of it.

Gary Weddell is an even better example. The court ordered him to undergo psychiatric evaluation. The psychiatrist came back and said he was not a threat to himself or others, and he went right out and killed himself and another.

• (1230)

**The Chair:** Thank you.

I want to thank each one of the witnesses: Mr. Andrews, for bringing the bill forward; Mr. and Mrs. Bagby, for having the courage to appear before us today; and also Ms. Illingworth and Ms. Gray-Donald, for adding their input to our proceedings here.

We're now going to move to clause-by-clause. I'm going to ask the two justice officials to take their places at the table. Our witnesses can take a seat in the gallery. We'll recess for two minutes.

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\_\_\_\_\_ (Pause) \_\_\_\_\_

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**The Chair:** We will reconvene the meeting. We're moving now to clause-by-clause consideration of Bill C-464.

(On clause 1)

**The Chair:** I understand there have been discussions between Mr. Andrews and the government side on two government amendments.

Mr. Dechert, perhaps you could present amendment G-1.

**Mr. Bob Dechert:** Correct. Thank you, Mr. Chair.

The government would like to propose an amendment in clause 1, replacing line 9 on page 1 with the following:

any person under the age of 18 years, having regard

**The Chair:** You've heard the amendment. Is there any discussion? Are there any questions?

Yes, Mr. Murphy.

•(1235)

**Mr. Brian Murphy:** I'd like to ask this. I did have a discussion with Mr. Dechert, who explained it to me, but I would like to have the Department of Justice officials explain. Why the change? Some of this deals with the collision, realistically, between provincial laws protecting the best interests of the child—and in some provinces that is displayed by different ages—and the Criminal Code, which sets out 18 in a number of locations as a milestone.

What is the reason for the change?

[*Translation*]

**Ms. Anouk Desaulniers (Senior Counsel, Criminal Law Policy Section, Department of Justice):** This amendment has been proposed precisely in order to make the wording of the bill similar to the Criminal Code. So, if you look at sections 171 and 172 of the Criminal Code, you find the idea of a person under the age of eighteen years. So this was to make the wording correspond better to what is found in the Criminal Code.

[*English*]

**The Chair:** Does that answer your question?

**Mr. Brian Murphy:** Yes.

**The Chair:** Are there any other questions? Is there any further discussion?

Hearing none, I'll call the question on G-1.

(Amendment agreed to)

(Clause 1 as amended agreed to)

**The Chair:** Now I understand the government is also proposing a new clause 2, which would be labelled amendment G-2.

Mr. Dechert, did you want to present that?

**Mr. Bob Dechert:** Yes, Mr. Chair, thank you very much.

The government would also like to propose that Bill C-464 be amended by adding, after line 14 on page 1, the following:

2. This Act comes into force 90 days after the day on which it receives royal assent.

**The Chair:** Thank you.

Mr. Comartin, I understand you had a question of our justice officials.

**Mr. Joe Comartin:** Yes. I understand your normal policy for wanting this time gap, but this is a very straightforward amendment.

Certainly, if you need to send notices out to the prosecutors and judiciary, you could do that in advance, letting them know that the act is coming into effect. I just don't see the reason for adding another 90 days to something like this.

[*Translation*]

**Ms. Anouk Desaulniers:** During our discussions with the provinces, since they are principally responsible for the administration of justice and act as prosecutors in criminal cases, they asked us, in a general way, when amendments deal with criminal proceedings, to give them some latitude in implementing the amendments over time so that they can give their prosecutors the necessary notification and provide them with training where necessary.

As you point out, this amendment is more limited, but we still wanted to use best practice, which up to now has worked well for the provinces.

[*English*]

**The Chair:** Mr. Comartin, do you have a follow-up on that?

**Mr. Joe Comartin:** I understand the normal process and why the provinces ask for that if there is anything that is complicated. I understand the general policy behind it, but it's just not applicable here. We can let the department and the minister off the hook if they want by having us make the decision.

I am going to be voting against this amendment. I would like this to come into effect as soon as it clears the Senate and gets royal assent.

**The Chair:** Thank you.

We'll go to Mr. Murphy and then Monsieur Ménard.

[*Translation*]

**Mr. Brian Murphy:** If I am not mistaken, you said that the provinces generally needed us to let them know about these changes in the law. For this bill in particular, has the government had any discussions about the amendments?

**Ms. Anouk Desaulniers:** We have not had specific discussions about the coming into force of the bill. It has been brought to the attention of the provinces, certainly through the Federal/Provincial/Territorial Working Group on Criminal Procedure.

[*English*]

**Mr. Brian Murphy:** Just to finish on that, because it was a general suggestion—and I am totally in agreement with Mr. Comartin that it was a general suggestion and not a specific one—ninety days might be just the period in which this constellation of events might occur, that this exact situation might occur, and I don't think we need to wait ninety days, so I will not be supporting the amendment. I don't want to say I am supporting Mr. Comartin so early in the season, but I'm not supporting the amendment.

•(1240)

**The Chair:** Mr. Ménard.

[*Translation*]

**Mr. Serge Ménard:** I would just like to take advantage of the presence of the officials from the Department of Justice to get a little information.

It reads: "2. This act comes into force 90 days after the day on which it receives royal assent." Does that mean that the government is still free to delay assent, or even withhold it for ever?

**Ms. Anouk Desaulniers:** I confess in all honesty that I am not familiar with parliamentary procedure. I defer to the expertise of the committee on that.

**Mr. Serge Ménard:** The Criminal Code always contains amendments to legislation. They have been in the Criminal Code for 30 years, but they have never come into force.

I can specifically mention some provisions about the use of breathalyzers and the requirement to provide specimens. Without much of an exaggeration, that has been about 30 years.

[*English*]

**The Chair:** Ms. Desaulniers, do you want to respond to that?

[*Translation*]

**Ms. Anouk Desaulniers:** There is a mechanism that allows a section to provide that various sections of the bill shall not come into force until an order has been issued, even after the bill has received royal assent. Perhaps this mechanism is the reason why some provisions of the Criminal Code are still not in force. Most bills do not come into force at the time of royal assent, but afterwards.

[*English*]

**The Chair:** Thank you.

Is there any further discussion on amendment G-2?

Mr. Dechert.

**Mr. Bob Dechert:** Thank you, Mr. Chair.

You've heard from the Department of Justice officials. My simple understanding is that this is just a best practice, such that whenever there is an amendment to legislation such as the Criminal Code, there is an administrative period for the prosecutors and other public servants who need to deal with it in order to change their practices and procedures to comply with the law.

However, I would not want to see the unanimity of support for this bill damaged in any way, so given what seems to be the preponderance of the view on the other side that they would not want to support this amendment, I am willing to withdraw it.

**The Chair:** You'll need the support of the rest of the committee members.

Does everyone agree to have this amendment withdrawn? I see consensus here.

(Amendment withdrawn)

**Mr. Bob Dechert:** If I could just point out, too, it's my understanding that the government has every intention of implementing this as soon as possible.

**The Chair:** Thank you for that clarification.

Shall the title carry?

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

**The Chair:** Thank you.

Mr. Andrews, congratulations.

We're going to suspend so that we can clear the committee room, then we have some committee business to take care of.

[*Proceedings continue in camera*]





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