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# Standing Committee on Justice and Human Rights

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EVIDENCE

**Tuesday, October 19, 2010**

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**Chair**

**Mr. Ed Fast**



## Standing Committee on Justice and Human Rights

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• (1530)

[English]

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

This is meeting number 29 of the Standing Committee on Justice and Human Rights. For the record, today is Tuesday, October 19, 2010.

You have before you the agenda for today. Before we go to the main part of the agenda I just want to mention that at the end of today's meeting I'm hoping to leave 15 minutes for some in camera committee business to discuss Mr. Dechert's motion that was left on the table after our last meeting. That's the motion on organized crime.

We're beginning our review today of Bill C-22, an act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service. To assist us with our review, we have with us Minister of Justice and Attorney General for Canada Rob Nicholson. Accompanying him are senior officials from the Department of Justice. We welcome back Catherine Kane, who's the director general and senior general counsel, and Normand Wong, counsel, both from the criminal policy section. We'll also have Jean-François Noël, who's a counsel from the criminal policy section, joining our committee meeting after the minister leaves.

Please turn off your cellphones or put them on vibrate. Those of you here at the table, make sure you have your BlackBerrys removed from proximity to the microphone so they don't interfere with reception.

Monsieur Lemay.

[Translation]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Mr. Chair, a motion was mentioned. The problem is that we did not receive it with the meeting agenda. Could Mr. Dechert's motion be distributed to the committee members as soon as possible, during the minister's appearance? That way, we could have a better look at it.

[English]

**The Chair:** I'm advised that we don't have a written copy of it. Mr. Dechert actually did it orally at the last meeting, so it's on the record and it's open for debate at any time. Again, it's within the committee's power to deal with it at any time. I was proposing to leave 15 minutes at the end of the meeting to discuss that and we'll deal with it at that time.

Minister, it's good to have you back. As you know, you've got ten minutes and we'll open the floor to you.

**Hon. Rob Nicholson (Minister of Justice):** Thank you very much, Mr. Chairman. It's good to be back.

Before I begin my formal remarks I would like to address the committee's request to receive a copy of a report on the consultative round-table discussions I had across the country on the youth criminal justice system. I want to thank the committee for the work they've done on this bill and indeed all our justice legislation. I assure you that I will be tabling the report with this committee before the end of next week.

Mr. Chairman, I'm pleased to speak to the committee about Bill C-22, the Protecting Children From Online Sexual Exploitation Act. It proposes to require those providing Internet services to the public to report online child pornography.

[Translation]

Bill C-22 will help Canada increase its ability to protect children from sexual exploitation in a number of ways.

[English]

First, it will strengthen our ability to detect potential child pornography offences. Second, reports generated by this bill will help block child pornography sites through the existing Project Cleanfeed Canada initiative. Third, this act will facilitate the identification, apprehension, and prosecution of child pornography offenders. And most importantly, this act will help identify the victims so that they may be rescued from sexual predators.

While this bill builds upon and complements our existing comprehensive Criminal Code prohibitions against child pornography, the focus of this bill is on child pornography on the Internet and those who provide Internet services to the public, for two reasons. First, the growth in child pornography sites in recent years is largely due to the proliferation of the Internet. Second, those persons or entities that provide Internet services to the public are uniquely placed to discover incidents occurring on their networks or to have such incidents brought to their attention by users.

With respect to the scope of this bill, I would like to use this opportunity to clarify a few areas. First, I would like to stress that this legislation would cover more than just ISPs. The term ISP, or Internet service provider, usually refers to those who provide access to the Internet—in other words, the wires and signals that go into our homes. This bill would apply to everyone who provides an Internet service to the public. As defined in this bill, this would include ISPs and other access providers as well as those who provide electronic mail services such as web-based mail and those who host Internet content such as social networking sites.

Furthermore, this bill would apply not only to persons who provide Internet services as their main business activity, but also to those who provide complementary Internet services to the public, such as cyber cafés, hotels, restaurants, and public libraries. I should also point out, of course, that individuals who commit child pornography offences are already liable to prosecution under the Criminal Code, and they have been in that position since 1993.

This bill would impose new duties on those who provide Internet services to the public. Their first duty will be to report to a designated agency any Internet address that is brought to their attention that points to a website where child pornography may be found. By reporting the Internet addresses, the designated agency will have sufficient information to fulfill its duties under this bill. Upon receipt of a report, the designated agency would first determine if the Internet address information actually leads to child pornography as defined by the Criminal Code, and second, determine the actual geographic location of the web servers hosting the material. Once it has confirmed its assessment of the illegal nature of the material and its location, the designated agency would refer the report to the appropriate law enforcement agency for action.

The second duty imposed on those who provide Internet services to the public would be to notify police when they have reason to believe that a child pornography offence has been committed using their Internet service. For example, if an e-mail provider, while conducting routine maintenance of its mail servers, discovers that the mailbox of one of its users contains child pornography, the e-mail provider would then be required to notify the police that they have reason to believe that a child pornography offence has been committed using its system and provide police with the supporting facts. In addition to notifying police, the service provider would be obligated to preserve the evidence for 21 days following the notification. This would provide police with a reasonable period of time to obtain a judicial order for further preservation or production of the evidence without fear that the evidence might be deleted in the interim.

The service provider who notified the police would be required to destroy any information that would not be retained in the ordinary course of business after the expiry of 21 days, unless otherwise ordered by the court.

• (1535)

Any person making a report or a notification under this bill would also be required not to disclose the report or give notification so as to avoid disclosure that could undermine the criminal investigation.

Another feature of Bill C-22 is that it has been designed to work in concert with those provincial and foreign jurisdictions that have

already introduced legislation for the mandatory reporting of child pornography. The bill has been tailored to limit the possibility of duplicate reporting for those who may already be required to report child pornography in accordance with the laws of the province or a foreign jurisdiction.

It's important to note that Bill C-22 was crafted in accordance with the principle that the legislation should not create new consumers of child pornography or otherwise contribute to the further dissemination of the material. That is why the bill explicitly states that it does not authorize or require any person to seek out the child pornography.

This also means that providers of Internet services will not be required to monitor their networks in order to find child pornography or to otherwise investigate the activities of their users. Nor will they be required to verify an Internet address in order to confirm its content. It's important to understand that while mandatory reporting of child pornography by those who provide Internet services is addressed in this bill, the substantial or actual pornography offences are already addressed in the Criminal Code.

Bill C-22 is about sending a message to those who provide Internet services to the public that they have a social, moral, and now a legal duty to report this heinous material when they encounter it. We believe that the penalties contained in this act strike the balance between this aim and the real focus of the bill, which is compliance.

• (1540)

[*Translation*]

In order to achieve the bill's objective of improving the protection of children, the government wants to ensure that all those who provide Internet services in Canada comply with the law, and not only the main Internet service providers who already voluntarily report such cases and cooperate with the police.

[*English*]

Those are the major elements of the bill, Mr. Chairman.

I hope I can count on your support for these very important measures.

Thank you.

**The Chair:** Thank you, Minister.

We'll go to a round of seven minutes apiece, beginning with Mr. Murphy.

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

Thank you, Minister.

I was relieved that your comments on Bill C-4 were forthcoming, and that there will be a report tabled. We're very happy in that regard, because all of this committee moved in June 2010 to have a report of the round-table discussions that you undertook in 2008. So that's two years, but it's better late than never. So I thank you somewhat for that, Mr. Minister.

**Hon. Rob Nicholson:** I am happy to oblige, Mr. Murphy.

**Mr. Brian Murphy:** In the same vein, Minister, when we talk about the predecessor to this bill—I think it was Bill C-58—it seems that the provinces have leap-frogged us, and leap-frogged you in fact, Minister, and the government.

It's a good bill. There is nothing very outrageous in it that we would object to, I don't think. It should be passed, there is no question. We could hear some witnesses, and so on.

But in the time it took to get back here in the fall of 2010—through prorogation and other political agendas that your government was on—the Province of Nova Scotia brought forward its Child Pornography Reporting Act, which came into force in April of 2010. Then the Province of Alberta brought forward its Mandatory Reporting of Child Pornography Act. They even have stronger language than your act, Mr. Minister. It came into force July 1, 2010.

Now that the ribbing is over, I want to get into something substantive; that is, why then do some provinces in Canada have stricter laws? And specifically I'll pick Nova Scotia. Section 3 notes, "Every person who reasonably believes that a representation or material is child pornography shall promptly report...". Whereas your bill—or we'll say our bill, because we're in it together here—is strictly for the service providers. It's much more narrow.

I think your statement was that you want to coordinate it with provinces that have already brought in this legislation. But I'm thinking of the federal obligation to have laws across this country that provide the same sort of protection and weed out the child pornography that exists in all provinces. Why wouldn't you consider beefing up your federal law to be more in tune, for instance, with that section I read from the Nova Scotia act? The Alberta act is similar.

I'm not sure that there would be a lot of opposition because there is a mandatory duty. Was there some reason we picked sort of a weaker version?

**Hon. Rob Nicholson:** You've covered a number of different areas, Mr. Murphy. You talked about the Alberta bill. It's actually not in effect yet. Nor is the one in Ontario. That being said, there are laws in effect in Manitoba and Nova Scotia, and we of course welcome and encourage any cooperation we get in the regulation of this area at the provincial level.

That being said, I'm not quite sure what you meant by your comment that there's "nothing outrageous" in this bill. This is a good bill. This is a good idea to require Internet service providers to report incidents of child pornography they discover, or to pass on information about child pornography that is given to them or brought to their attention.

Again, this complements what is being done. It complements, quite frankly, what is being done in foreign jurisdictions as well. I had long conversations with my counterparts at the attorneys general level from the United States, Britain, Australia, and New Zealand

earlier this year. They pointed out to me that the sophistication of child pornography has been growing rapidly or proliferating around the world. It's becoming more sophisticated, and I indicated to them, as you might guess, that we will be cooperative, as we have been, and that there will be sharing of information and that we will work together.

So my suggestion to you is that, no, the provinces haven't taken over the field, but we certainly welcome their initiatives on this. Not only is this not "outrageous" legislation, to use your term, but it's legislation that is very much needed and very much welcomed by the people of this country. So I'm urging you to set aside whatever reservations you may have about this or indeed any other criminal legislation we have or will be bringing in. Let's get this thing passed. This is the next step in the fight against child pornography in this country. It will be welcomed at home; it will be welcomed by all our provincial counterparts, whether or not they have passed regulations or legislation in this area; and it will certainly be welcomed by our international partners, who have the same goal that we have, which is the protection of children.

• (1545)

**Mr. Brian Murphy:** Just to follow up, I have only have opposition resources, which are meagre compared with your mighty resources at the Department of Justice, but my records say that the Alberta law has been in effect since July 1, 2010. But let's get on common ground.

Mr. Minister, we agree with this bill. We'd like to pass it. What I'm suggesting, if I can make it any clearer, and I don't know how I can, is that the Nova Scotia law, for instance, that you and I referred to and that has been in force since April 13, 2010, has a wider reporting duty. It states that "Every person who reasonably believes" they've seen child pornography "shall report to a reporting entity". I think that's reasonable. The fines for not doing so when you should have are just fines, not jail terms. This is the kind of positive obligation that we need our citizens to engage in, because this is so widespread.

To be clearer, Mr. Minister, why didn't we go that far and suggest something like section 3 in the Nova Scotia act?

**Hon. Rob Nicholson:** I'll ask Mr. Wong to address that.

**Mr. Normand Wong (Counsel, Criminal Law Policy Section, Department of Justice):** Thank you for the question.

One of the reasons the federal legislation focuses on Internet service providers, aside from the reasons the minister just articulated, is that under the criminal law power, we have to be restrictive about who we target.

There are three things in making a criminal law, one being that there be a criminal act. To do that you have to create a duty, and then a breach of that duty would constitute the offence. Then you have an offence and you have a penalty for that offence. So that's what's true throughout criminal law in Canada.

**Mr. Brian Murphy:** But are you saying that provinces have less of a criminal responsibility than the federal government? The Criminal Code is federal, isn't it?

**Mr. Normand Wong:** The provinces enacted their legislation under their jurisdiction for child and family services, which is much broader than the criminal law, and they were able to target every person who resides in the province. It was problematic for the federal government to expand it to that extent, because of the scope of the criminal law power and being able to create a legislative scheme that could actually hold together.

**The Chair:** Thank you.

Monsieur Ménard, for seven minutes.

[Translation]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** Thank you, Mr. Chair.

Minister, I would like to thank you for your explanations. Like others, I believe that this is a good piece of legislation and that we should adopt it, perhaps with some modifications, but we'll see how it goes.

My understanding is that this legislation does not create an obligation to report child pornography cases. However, if someone discovers child pornography, they can contact an agency that will be designated pursuant to the regulations.

**Hon. Rob Nicholson:** Yes.

**Mr. Serge Ménard:** Do you intend to create an agency or will you rely on existing bodies?

•(1550)

[English]

**Hon. Rob Nicholson:** If the legislation is passed, and I certainly hope it is passed very quickly, we will designate an agency to which individuals or businesses could report incidents of child pornography. We will do that as provided for in the bill and will make that designation once the legislation is passed.

[Translation]

**Mr. Serge Ménard:** I sometime qualify the Internet in the same way Socrates qualified languages: it's the greatest thing out there because it enables us to say and communicate so many good things, but it's also the most dreadful thing out there because of its capacity to breed hate.

The Internet is extremely useful and beneficial for the modern society we live in, but it can magnify our afflictions. Child pornography is not the only reprehensible aspect of the Internet. There are also websites that hint at serial murders. Among others, I am referring to what happened in Quebec. It is almost certain that had the website of Montreal's Dawson College mass murderer been discovered, his weapons could have been confiscated.

Just recently, the police arrested someone in Montreal whose website clearly indicated a predisposition to commit murder. There are probably other problems as well. We are talking about child pornography, but pornography as a whole is generally degrading to women.

Do you think that this agency could possibly investigate the many dangerous attitudes being spread on the Internet?

[English]

**Hon. Rob Nicholson:** If there is any information that directly leads to a crime, there is an obligation on people, on everyone, to help make sure that the proper authorities get that information. This bill is very specific; it deals with child pornography. It is one more addition to the laws that have been enacted in this country for the last 17 years—it is the next step in this—so it doesn't purport to cover everything that all of us might find objectionable. It doesn't purport to cover every type of crime that may be committed; it is not the only answer to every type of investigation of a crime. It is very specific with respect to child pornography.

With respect to updating our Criminal Code on all types of investigation, specifically with respect to the Internet and other vehicles of communication, you will remember the other bills we have, Bill C-46 and Bill C-47, which will provide—Ms. Jennings will remember the term—“lawful access”. All these are part of those particular pieces of legislation, but this is very specific.

And so I'm encouraged that you say this is good legislation and I'm hoping we can all agree that good legislation should move forward. Thank you for those comments.

[Translation]

**Mr. Serge Ménard:** Once the act goes into force, how long will it be before the designated agency is ready to take action?

[English]

**Hon. Rob Nicholson:** Again, it's our intention to move expeditiously on this, of course, to designate an agency. I guess many times when people come across this information or when it's brought to their attention time is of the essence because we don't want the evidence to be erased or otherwise disappear. So you'll notice there are provisions here that once this is brought to the attention of the Internet service providers, the evidence should be preserved for 21 days or longer if there's a court order.

But that being said, we will move expeditiously on designating that group that people will report to. We will get that done, but we have to get the bill passed first and then we will do this.

•(1555)

[Translation]

**Mr. Serge Ménard:** I would like to ask one last question, out of curiosity. Did you come up with the bill's title?

[English]

**Hon. Rob Nicholson:** Every single word of this is mine, Mr. Ménard, from beginning to end. But do you know something? I have the wonderful assistance of the people of the Department of Justice, who help put these together, and I get input from my colleagues from the justice committee, my colleagues within the government, and I can tell you it has been a collaboration that I have found very rewarding and very satisfying. As I say, here are the results today. As you say in your own words, it's a good piece of legislation that's before this committee today.

Thank you for your comments.

**The Chair:** Thank you.

Mr. Comartin, you have seven minutes.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair.

Thank you, Mr. Minister and the officials, for being here.

I just want to follow up on this. I know you're saying you'll designate the organization. Do you know at this point who it is going to be?

**Hon. Rob Nicholson:** I have some pretty good ideas, Mr. Comartin, but until it becomes law and I actually approach the organization, I think it would be appropriate to let it stay at that point.

**Mr. Joe Comartin:** Let me push it to this degree. It just seems to me it's logical—

**Hon. Rob Nicholson:** If you have any suggestions, Mr. Comartin, I'm always glad to have them.

**Mr. Joe Comartin:** I do. It just seems to me that it has to be the RCMP. I just don't see how this thing can function unless you're thinking of setting up an entirely new agency. I don't know what the difficulty is in saying it's going to be the RCMP.

**Hon. Rob Nicholson:** There are organizations, for instance Cybertip. Individuals could be designated to receive information that people get with respect to child pornography. But again, that decision would be made once the bill has passed.

**Mr. Joe Comartin:** But all they would do is pass it on to the RCMP or other police forces.

**Hon. Rob Nicholson:** Exactly.

**Mr. Joe Comartin:** At the time that Bill C-22 came before the House there was an article in the *Chronicle-Herald* by Dean Beeby about the lack of money being spent. Essentially what was happening, Mr. Minister, and I think you're aware of this, was that we were trying to develop software technology that would allow us to search electronically by computers for child pornography sites. It appeared to me that from about 2005 and onwards, there had been some significant developments in that. But there was an evaluation done within the public safety department in 2008, which only became public as a result of this ATI search in 2009, that 40% of the money hadn't been spent in helping develop that and enough officers hadn't been put on it.

I'm just worried if we are going to see a similar pattern once this bill gets through, which obviously it's going to, where we're just not going to move.

A secondary question.... Do you have any idea what is happening with the development of that technology? That's the crucial part of this. Waiting for people to find sites and then report it is not, by far, the most efficient way. Identifying the sites by using the same kind of electronic wherewithal and technology that produces those sites is really the way to go. It seemed to me that we were moving quite dramatically well in that. We've done a lot of this work in our security intelligence services. I'm not quite sure why we haven't been able to get that technology up, running, and available to our police forces.

**Hon. Rob Nicholson:** I think there is quite a bit being done. I mentioned the Project Cleanfeed Canada initiative, and I think this is

one of the important instruments in cracking down on these sites and getting them cleaned up and getting them blocked from coming into this country.

One of the other areas I am very encouraged in is the considerable international cooperation that takes place between Canada and other countries. I've seen presentations, for instance, by Interpol and others. It's impressive. Canada contributes to all of these. Canadian resources are always available, and I've made it clear in my discussions with our allies that this will continue and that this is a priority for this government and for Canadians in general.

So this is an important part of the initiatives that we have to take to better protect children. And I'm encouraged by your comments that we're going to get this thing passed.

● (1600)

**Mr. Joe Comartin:** Do you know what state we're at in terms of developing that technology?

Quite frankly, if you would have asked me this in 2007, at around the time this was happening, I would have thought we would have had it by now, given the advances we were making up to that point.

**Hon. Rob Nicholson:** As far as the exact status of that, I know there are advances by the RCMP, and they're probably better directed toward public safety.

My investigation of this in preparation of this bill was to look at what is being done. I mentioned the Cybertip organization and what is being done in terms of reporting. I mentioned Project Cleanfeed and the cooperation that exists now between Internet service providers.

That's one of the things I made clear. The major Internet service providers do provide this information now. This is an ongoing matter. As I've said before, it's not just a question of it being a good idea; it's the moral thing, the right thing to do. There has to be a legal responsibility. We have as many as 300 Internet service providers, other than the large ones, who already undertake this kind of activity.

We're all moving in the right direction, Mr. Comartin. Again, I'm appreciative and pleased that it looks like you may be prepared to support this bill.

**Mr. Joe Comartin:** How much more time do I have?

**The Chair:** One and a half minutes.

**Mr. Joe Comartin:** I know this is going to be hypothetical and you're going to tell me that, but I want to get it on the record anyway.

The reality is we're going to get that technology at some point and we're going to be able to search the whole Internet for child porn sites. That's coming, if it's not very close to being here. Has the department looked at having legislation ready to impose obligations on the service providers to use that technology?

**Hon. Rob Nicholson:** I'm taking them one step at a time, Mr. Comartin.

I've been involved with pieces of legislation like this on and off for the last 17 years, and it's very difficult to get anything enacted in this country. This is the next positive step in this direction. You get this legislation passed and I will be glad to hear your suggestions for any other legislation you might think we should pass.

It's always a delicate balance when you start talking about what can and cannot be done. There are privacy issues that come into play. Our overriding concern is the protection and well-being of children, to make sure they are protected, and I think this bill strikes the right balance.

**Mr. Joe Comartin:** Well take back my suggestion that you begin to prepare that legislation.

**Hon. Rob Nicholson:** I'm always glad to have suggestions from you, Mr. Comartin, on this and on all issues.

**Mr. Joe Comartin:** I'm sure you are.

**The Chair:** Thank you.

We'll move on to Monsieur Petit. Are you splitting your time?

[*Translation*]

**Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC):** Mr. Chair, I will split my time with my colleague Brent.

Thank you for joining us today, minister.

I attended the 19th annual meeting of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe, which was held from July 6 to 10, 2010, in Oslo, Norway. I had the honour to introduce, on behalf of Canada, a resolution that was the core of Bill C-22. The core I'm talking about is the obligation Internet service providers have to report child pornography on the Internet.

The assembly consists of 57 countries, each of which sends, on average, two parliamentarians to the meeting. The resolution I had the honour to introduce on Canada's behalf was approved by your department. It was submitted to the OSCE's committee that deals with justice issues and was unanimously agreed upon. Then, it was introduced to the 57 member countries of the Parliamentary Assembly, and it was also unanimously adopted.

This resolution was the crux of Bill C-22. At this time, Canada is seen as a leader in this highly technical field. Some countries do not have this kind of technology and find that we are very good leaders in the field.

People who accompanied me, especially Bloc Québécois and Liberal members, helped us with the presentation. I would like to thank you, minister, personally, and especially on behalf of the children. They are the ones we must protect. I thank you for your support. I have noticed that throughout your career, you have fought relentlessly to protect the children.

I will now give my colleague Brent the opportunity to ask questions.

• (1605)

[*English*]

**The Chair:** Mr. Rathgeber—or did you want to respond, Mr. Nicholson?

**Hon. Rob Nicholson:** I'd be pleased to respond to Monsieur Petit.

Monsieur Petit, thank you for your kind words, but I want to congratulate you. I was aware of and followed your efforts in that regard. I want you to know that they're very much appreciated. And I believe they're appreciated outside of this country, because part of

the challenge we have is to make sure we get everyone on board with these issues.

In my conversations with my counterparts at the Organization of the American States meeting earlier this year and at the last Commonwealth justice ministers meeting I attended, this was one of the issues they asked about. They wanted to make sure they had laws on the books that addressed these concerns and that the laws were up to date. Because that is the challenge we have. The technology changes very quickly. The sophistication of these crimes is changing all the time. Our job and our responsibility is to make sure that we are continuously involved in the fight to protect children.

Again, it's not just a Canadian problem or an American problem or a British problem. These are problems that transcend international boundaries. To the extent we work with other countries to do this, we're moving in the right direction. This is why I was particularly pleased that your resolution has been so widely accepted. Again, I thank you for your efforts in this regard.

**The Chair:** Mr. Rathgeber, you have just under three and a half minutes left.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you, Mr. Chair.

Thank you, Mr. Minister, for your attendance here today. Thank you to your departmental officials, as well.

I would like to congratulate you, not only on this bill but on the government's entire history on the safe communities agenda. As you know, there is Bill C-16, ending house arrest, Bill C-21, ending the faint hope clause, and sentencing for fraud. And the list goes on and on.

Minister, I know that you frequently consult with interest groups that have an interest in these particular pieces of legislation. I'm curious, with respect to this bill that's before this committee, about who some of those interest groups might be and what they've been telling you about it and if there's any opposition. Quite frankly, I can't see any. I can't imagine why anybody would be opposed to this bill, but I might be wrong.

**Hon. Rob Nicholson:** Well, thank you very much, Mr. Rathgeber, and thank you very much for your interest and concern and participation on this committee.

You're quite correct. In my travels across this country, when I discuss this with constituents in my riding of Niagara Falls, Fort Erie and Niagara-on-the-Lake, when I talk to law enforcement agencies, and particularly when I talk to victims groups, they are unanimous in their support of initiatives like this to better protect children from sexual exploitation, children who are the victims of child pornography.

When I listen to the suggestions, when I hear the stories of victims groups.... You mentioned a couple of pieces of legislation. The faint hope clause is an excellent example. It's victims groups who tell me that they don't want to be victimized over and over again, and that's what happens on something like the faint hope clause. That being said, we try to give some voice to those victims across this country who want their voices heard in Ottawa. They want to see changes that will better protect them.

When I talk to them about better protecting children from sexual exploitation, they are very supportive of those measures. I've said this over the years as justice minister. When people go back to their constituencies, as I do, and tell people that this is what they're thinking of doing in Ottawa, I think overwhelmingly people will say yes, you're on the right track; we have to do these things.

Thank you again for your question.

**The Chair:** You have half a minute.

**Mr. Brent Rathgeber:** Very quickly, to follow up on my friend Mr. Murphy's question, would you agree with me that this legislation is in fact companion legislation to the initiatives of the provinces, as opposed to what he suggested, which is that it is somehow a weak-kneed approach?

**Hon. Rob Nicholson:** No, we're not at odds with anything that can be done by the child and family services departments within municipalities and provinces. We want their help. We work hand in hand with them. It's not a case of us doing something and you doing something. We're all in this together. We all have an interest in protecting children.

With respect to Internet service providers, the major ones are cooperative. My point is that it's not enough to be cooperative. It's not enough for you to do the right things. You must, in my opinion, have a legal obligation to do that, and it has to apply to everyone who is in this area. This is exactly what this legislation does.

Anything the provinces can do to assist in combatting child pornography and sexual exploitation of children will of course be welcomed and applauded by this government.

•(1610)

**The Chair:** Thank you.

We'll move on to Ms. Jennings. You're going to split your time with Mr. Lee. Is that correct? You have five minutes.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Yes, I am. We have five minutes, so two and a half for me and two and a half for him.

Thank you, Minister.

As my colleague Brian Murphy stated, Liberals do support this bill. We support the aims of this bill.

We do have a couple of concerns. One is concerning the agency to which any person would report if they suspected or had reasonable belief. Have you determined yet which agency that will be? Will it be Cybertip.ca, as it is in Manitoba, and if that is the case, is any funding going to be flowing from the federal government to Cybertip.ca to handle the work?

Second, and very briefly, on the issue of the kind of information the ISP or other person providing Internet services must report to the police, subclause 2(1) of the bill talks about computer data, and it's quite broadly defined, whereas in the United States it is very specific. I'm wondering exactly what information is to be reported, and if it is identical or if you are expecting it to be similar to what's required in the United States, why has that not been specified in the bill?

**Hon. Rob Nicholson:** With respect to the designated agency, as I indicated to Mr. Comartin, I have made no announcement on that.

You asked whether there was funding or whether there would be funding to a group like Cybertip. They do get federal funding right now. They do get funding from the federal government on a regular basis, and my experience with that organization—I'll say it publicly—has been that this is money well spent by the people of this country in support of that organization.

I take note of the fact that you have some concerns about the bill. Again, the drafting of this was very careful. And yes, we look at what our counterparts in other jurisdictions do, but in the end we drafted according to our needs and the requirements we have, and I think those have been addressed.

Did you want to add anything to that, Mr. Wong?

**Mr. Normand Wong:** Thank you, Mr. Minister.

Just to address the computer data issue, the definition we're using is very similar to the one currently in the Criminal Code, and it's to cover as broad a scope as possible to include any information that would be computer-data-related to an offence under this act.

**Hon. Marlene Jennings:** Would that mean then that if the service provider identified actual files containing child pornography images, those files would be reported and transferred to the police?

**Mr. Normand Wong:** The provision requires them to safeguard that evidence—

**Hon. Marlene Jennings:** For 21 days.

**Mr. Normand Wong:** —for 21 days, and police would be required to obtain a warrant or a production order in order to obtain those things. But yes, it would cover any electronic file, including image files or any transaction logs.

**Hon. Marlene Jennings:** Thank you.

I'll turn it over to my colleague.

**The Chair:** You have a minute and a half.

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

Minister, can you indicate to the committee under which head of federal jurisdiction this legislation would fall, under section 91 of the Constitution Act?

**Hon. Rob Nicholson:** It's called the Criminal Code provisions, the criminal power of the federal government.

**Mr. Derek Lee:** This is under the criminal power? Then could you explain why it says in clause 13 of the bill that the Governor in Council—that is, the king—may make regulations generally for the purposes and provisions of this act? Does that mean the king is, by regulation, going to create another criminal offence? Normally the House would never ever allow that to happen, so is this clause to be constrained in some respect, or is the cabinet and Governor in Council going to take it upon itself to create a new criminal offence?

•(1615)

**Hon. Rob Nicholson:** The bill doesn't actually refer to the king. It would refer to the head of state. You're referring to—

**Mr. Derek Lee:** Governor in Council. I'm using the term very.... It's the Governor in Council. You're a member. You know exactly what it is.

**Hon. Rob Nicholson:** There we are: the Governor in Council. Okay, thank you.

Again, that's with respect to the regulations. Among the regulations that could be promulgated under that is, for instance, an answer to Mr. Comartin's question. It was followed up by your colleague. We could designate the agency. That would be done by an order in council—

**Mr. Derek Lee:** This is open-ended, Minister. Are you saying that the cabinet never would or could, under this provision, enact something tantamount to being a Criminal Code provision, that a new criminal offence is not possible under paragraph 13(f)? That's what I want to hear, because if it is I won't want to support it.

**Hon. Rob Nicholson:** Just a second, Mr. Lee. I do want you to support this, so I don't want this to get off track with you or any of your colleagues.

These are the regulations that come as a result of the passage of the Criminal Code amendments. They're all within the Criminal Code power that is given to the federal government under the Constitution of this country, but there are regulations that can be enacted through the orders in council of the type that I suggest you know. The regulations won't be used to create a new or a second Criminal Code. I will take my chances in a minority Parliament to try to get these things passed.

**Mr. Derek Lee:** Excellent.

**The Chair:** Thank you. We're out of time.

We'll go to Monsieur Lemay for five minutes.

[Translation]

**Mr. Marc Lemay:** Minister, nobody can be against virtue. As my colleague Serge Ménard and all those gathered here today said, everyone is in favour of this bill. It's an important, necessary and useful piece of legislation. In addition, I think we have been calling for such a bill for about 10 years. When I was a practising lawyer, there was talk about it. Adopting this bill is becoming increasingly urgent.

This bill should work its way through the legislative process quickly. I think that everyone is in favour of it. Let's assume it will be adopted before the end of December. Regulations related to its implementation are set out in clause 13. Has your department already started thinking about draft regulations? In addition, have you started estimating the costs of the application and the implementation of this extremely important bill?

[English]

**Hon. Rob Nicholson:** You've covered a number of areas, Monsieur Lemay. I'm encouraged by your opening comment. The translation was that nobody can be against virtue. I'm happy to hear that. I'm going to remember that quote and I thank you for it.

You said we can take it for granted that we'll get this bill passed. I can tell you that in now almost four years as justice minister, believe me, I take nothing for granted to get through Parliament. Whether it's the House of Commons or the Senate, we watch them very carefully. And I want to make very clear that on this or on any piece of legislation in the criminal justice area, I do not take anything for granted.

In terms of implementing this, yes, we do want to implement this, proclaim these sections into effect. We do want to designate the

agency that would be designated. And if the agency that was suggested to me by one of your colleagues is used, federal moneys are already in place to go to these organizations.

Again, with respect to the policing in this country, whether it be the RCMP or municipal, our regional police forces are already in place. They do receive this information and they will continue to get it.

● (1620)

[Translation]

**Mr. Marc Lemay:** I would like to know why, under clause 5, a person is obligated to preserve data for a period of only 21 days. Why did you decide on that number of days? That's perhaps the only comment I have. I would suggest that this time period be extended. Reducing it would be difficult, but it would be possible to extend it. I had in mind an extension to a minimum of one month.

[English]

**Hon. Rob Nicholson:** Again, I know it's consistent with other provisions within the Criminal Code, and they tried to get these so that they are in fact.... Twenty-one days is a reasonable period of time, for whoever is making the investigation or going to court, to get the order on this. It's a reasonable period of time for them to get the information.

As you know, Monsieur Lemay—or perhaps don't know—many times information that is either on the Internet or the computer is almost instantaneously cleaned out and disappears. It becomes very problematic at that point in trying to gather evidence. But once an Internet service provider has been given notification under this particular legislation, we believe that three weeks is an appropriate time for the police, or whoever is doing the investigation, to do that, to get the appropriate court order to preserve that evidence. That's the time that we arrived at, and it's consistent with other provisions of the Criminal Code.

[Translation]

**Mr. Marc Lemay:** Subclause 5(2) talks about a judicial order. Would that order be similar to a search warrant or be handed down by a court? Who will issue that order? Unless the person is required to preserve the computer data by a judicial order made under any other act of Parliament or legislature of a province.

[English]

**Hon. Rob Nicholson:** It would be similar to a search warrant. The authorities that issue them would be empowered to do it as well.

[Translation]

**Mr. Marc Lemay:** Okay, thanks.

[English]

**The Chair:** Thank you.

We'll move on to Mr. Dechert for five minutes.

**Mr. Bob Dechert (Mississauga—Erindale, CPC):** Thank you, Mr. Chair.

Minister, thank you for being here this afternoon and for putting this bill before the House. I want to thank you as well for your leadership in the many pieces of legislation in our government's criminal justice agenda that you have brought to the House and that will, in my opinion, help make our communities and our families safer.

I'm also encouraged by what I've heard today from our friends on the other side of this table about their support for this bill. I hope they will move expeditiously to the clause-by-clause review of this bill so that we can send it back to the House for final approval.

Every time the government comes forward with new legislation, Minister, there is inevitably the question of why. In my opinion, it's extremely important that government continue to look at ways to improve our criminal justice system and to ensure the safety of law-abiding Canadians, especially our most vulnerable and our youth. However, in the case of this bill, some people would ask whether or not Internet service providers are currently neglecting to report incidences of Internet child pornography.

Minister, can you please inform this committee on how this bill will make a difference?

**Hon. Rob Nicholson:** Well, I think you're correct in one sense with respect to Internet service providers. The major ones report this information on a voluntary basis right now. But it's not just the major ones that are involved with this. As I indicated in my testimony, there are about 300 other Internet service providers that are also in the business of providing Internet services to people.

Again, it seems to me that it's not good enough that somebody has a moral obligation to do this. It's not enough that somebody should do this because it's the right thing. They should do it, and people do have a moral obligation to support the investigation of Internet pornography. But I believe there should be a legal duty, and I believe this is the next step in updating and modernizing our child pornography laws.

We have to do that. The level of sophistication of this type of business is astounding. In my trip to Washington, as I mentioned, I heard a presentation from the Attorney General of the United States and those who work with him, and I was blown away by the fact that people are becoming so sophisticated in their pursuit of exploiting children. Again, it underlies the message to all of us in the world that we have to continuously be looking at our laws to make sure they respond to this type of plague and that law enforcement agencies have the tools at their disposal to help thwart this terrible crime.

So in answer to your question of why, it's because it's the right thing to do. It's the moral thing to do. We should be doing this to better protect the children of this country and better protect children from around the world. What they tell me is that very often these images of child sexual exploitation are not being filmed in Canada; very often these are outside of Canada's borders. We want to work with law enforcement agencies outside of this country to get the protection to those children that they so desperately need.

Again, this is a step forward in the right direction. I don't take this bill for granted. I get concerned when people say there are concerns about it. This is straightforward. It gets the job done. It should be supported as quickly as possible.

•(1625)

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

Is there time left, Mr. Chair?

**The Chair:** Yes.

**Mr. Bob Dechert:** I'd like to defer to Mr. Woodworth.

**The Chair:** Okay.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Thank you very much.

First of all, Minister, I want to join my colleagues in expressing our appreciation. I think this is another good example of a moderate and balanced bill that is fine-tuning our justice system and contributing to safer streets. In particular, I think it can be obviously said that this bill is going to assist authorities in identifying offenders and also rescuing children from sexual exploitation.

I notice that the information does indicate that suppliers are not required to send personal subscriber information under the statute. I'm wondering what kind of information it is that suppliers would be giving to the agency that's going to be designated under the regulations.

**Hon. Rob Nicholson:** Well, the quick answer is the URL, the Internet address, and the appropriate investigation that would take place after that. There are legitimate concerns of people concerning privacy with respect to these issues, but at the same time we have this overriding concern. So that's what we're asking them to turn over.

**Mr. Stephen Woodworth:** Is the distinction, then, that we're going to be asking for information about the source, not the consumers, if I can put it that way?

**Hon. Rob Nicholson:** It's the source that we want to get at, obviously. For instance, I want to make it clear if you're downloading child pornography, that is already covered under the Criminal Code, and that's an offence in this country. But you're quite correct in indicating that this is to get at those sources, the suppliers, and we have to put one more tool in the hands of law enforcement agencies.

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

We've completed two full rounds, so I'm going to allow the minister to leave and I'm going to ask Jean-François Noël to join the table.

We'll suspend for two minutes while the minister leaves.

•(1625)

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

•(1625)

**The Chair:** I'll reconvene the meeting.

We're going to move to Mr. Lee, for five minutes.

**Mr. Derek Lee:** Thank you.

As I look at the definition of Internet service, and I'm just using the words "electronic mail" that are in the definition section of the bill, Internet service includes other things, but one of them is electronic mail. So if you go down to clause 3, one of the charging sections, and exchange the words "electronic mail" for "Internet service" and I read it, it says, "If a person is advised in the course of providing electronic mail..."—e-mail—"...to the public of an IP address..."", etc.

As I read that, the charging section seems to implicate a person who, in the course of sending out an e-mail to the public, becomes aware of this information. They would then become subject to the provisions of this snitch law. And I use the term "snitch law" because that's what it is. As much as the objective of the bill is a noble one, this is a perfectly simple snitch law, like the kind they had in East Germany after the Second World War.

Anyway, could I ask you to please confirm to me that an individual in that circumstance, sending out an e-mail to the public, would be charged with the obligation in this clause, and if he or she did not report, he or she would be subject to a charge and conviction under this law?

•(1630)

**Mr. Normand Wong:** Thanks for the question, Mr. Lee.

The definition of Internet service provider is to capture as many people as possible who provide Internet services to the public. So this includes e-mail service providers, as you've indicated, but it's—

**Mr. Derek Lee:** No, I didn't say an e-mail service provider; I'm saying a sender of e-mail to the public.

**Mr. Normand Wong:** I'm basically trying to clarify that it only applies to e-mail service providers, so—

**Mr. Derek Lee:** Does it say that somewhere?

**Mr. Normand Wong:** In clause 3, which you're referring to, that duty?

**Mr. Derek Lee:** Yes, or the definition of Internet service.

**Mr. Normand Wong:** If a person is advised in the course of providing an Internet service to the public—

**Mr. Derek Lee:** Yes, that's correct, but Internet service includes specifically the simple terms "electronic mail"—

**Mr. Normand Wong:** Right.

**Mr. Derek Lee:** —so if a person, in the course of providing e-mail to the public, is advised of this IP address.

It's not just service providers, it's a person who sends electronic mail to the public. That could include me or my colleagues around the table as we send out e-mail to the public. I'm just asking you to confirm that the definition, as I just read it, does include us and everybody else in society who sends e-mail. If I'm wrong, you can disabuse me of that by reading the appropriate words from the bill.

**Mr. Normand Wong:** I can see your interpretation from what you're saying, but the bill is not targeting individuals of the public, it is targeting people who provide an Internet service to the public, so including—

**Mr. Derek Lee:** It doesn't say that, sir.

**Mr. Normand Wong:** Well, in terms of clause 3, the policy intent is clearly to cover people who provide this service to the public.

**Mr. Derek Lee:** Okay. We are not writing policy, we are writing law.

**Mr. Normand Wong:** Right.

**Mr. Derek Lee:** The words, as I read them, implicate an individual who sends an e-mail.

**Mr. Stephen Woodworth:** Point of order, Mr. Chair.

It's my belief that questions do need to be fairly put and then correct information ought not to be suggested to witnesses. I'm sure that I just heard the witness say that this law is intended to deal with persons providing an Internet service to the public, and I'm sure I heard Mr. Lee say "no, that's not the case". But in fact that's exactly what the statute said. It's not a matter of policy, it's what the statute says.

**The Chair:** Mr. Woodworth, it isn't a point of order, it's a matter of debate, so I'll let Mr. Lee continue.

**Mr. Derek Lee:** Did you stop the time?

**The Chair:** Yes, we stopped the time. Don't worry.

Mr. Lee.

**Mr. Derek Lee:** I'd like the witness to simply constrain, if he can, using the words of this statute, the application of the statute to just so-called Internet service providers and not to the class of people I have described.

**Ms. Catherine Kane (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice):** Could I suggest some information for your consideration? As you know, it's a principle of statutory interpretation that you have to give meaning based on the intention of the statute, and if you were to look at clause 3 and you inserted the word "e-mail", there would be, in my view, no way that you would be, as somebody who sends an e-mail, subject to that provision. Because if a person is advised in the course of providing e-mail to the public—in your example, something that you would send out to some members of the public by e-mail—of an Internet protocol address or a URL where child pornography may be available to the public, could that happen in that ordinary e-mail that you're sending out? I would suggest that it couldn't.

You're sending an e-mail from your e-mail address with some information. You're not providing an e-mail service. If you were providing an e-mail service, it would be possible that as part of that e-mail service, there would be URLs or IP addresses that included child pornography.

•(1635)

**Mr. Derek Lee:** And the course of sending an e-mail these days seems to involve pop-ups and all kinds of things going back and forth on the Internet that show up on one screen.

I think I've made my point. I'm concerned that the wording here is not precise enough to exclude persons who would be innocently exchanging e-mails, because just on the simple words of the statute, it just refers to electronic mail—a person who in the course of providing e-mail....

So I will leave that there. It is a concern to me. You may have some feedback on that.

I have another question.

**The Chair:** You're out of time.

**Mr. Derek Lee:** Well, we'll wait for another round. Thank you.

**The Chair:** We'll move on to Mr. Woodworth, five minutes.

**Mr. Stephen Woodworth:** Thank you.

I'm going to try to restrain myself in response to Mr. Lee, but in fact it doesn't talk about e-mail. It does talk about "in the course of providing an Internet service to the public". So I would hope that if Mr. Lee is sending out mass e-mails and discovers that his e-mails include an Internet protocol address or uniform resource locator where child pornography may be available, he wouldn't mind reporting that.

However, I have other fish to fry here, and I'd like to direct the witnesses' attention to clause 10, which simply states that a person who has reported information in compliance with the "laws of a province or foreign jurisdiction is deemed to have complied with this Act". And I have a concern that simply reporting information pursuant to the laws of a province or another jurisdiction may not be adequate if those laws do not contain a preservation section such as this act does, which requires the person who reports to preserve computer data.

I'm wondering if perhaps you might go back and give some thought to whether or not clause 10 is overbroad in that it may remove our ability to preserve the evidence simply because it is law of another jurisdiction that has been complied with. Could I ask you to just take that back to the shop and think about it for me, please?

**Mr. Normand Wong:** I'd also like to thank you for your interjection here, because this is something that our provincial-territorial colleagues have pointed out to us as well. The intention of clause 10 was to relate only to the reporting requirements under clause 3, but they feared that it might also apply to the notification requirements under clause 4 and also the requirements to preserve evidence under clause 5, which they saw as the real benefit from this bill.

**Mr. Stephen Woodworth:** Exactly. So if one were going to consider amending it, one might replace the phrase "this act" with the phrase "section 3 of this act", but I will leave that to wiser minds than mine.

I also have one or two technical questions regarding clause 4. The Criminal Code, the last I checked, and I regret I didn't bring it with me, frequently refers simply to peace officers, and I notice that you're using an entirely different phrase in clause 4 to talk about "officer, constable or other person employed for the preservation and maintenance of the public peace". I wondered if there was some reason why you were adopting that particular phraseology rather

than what I think is still the simpler practice, which is found in the Criminal Code.

I also have a second question about that, and it is whether the phrase "reasonable grounds" in clause 4 in your view is equivalent to reasonable and probable grounds or just articulable cause.

So there are two questions, if I may. I don't care who answers them.

• (1640)

**Mr. Normand Wong:** On the issue of peace officer, it's an articulation that is becoming more common, and it will also be spelled out in the regulations as to who exactly a report goes to. We have also heard some other concerns about the articulation that is currently in this bill, so we can certainly take a look at that.

On the second question, in terms of reasonable grounds or reasonable or probable grounds, the reason why we used that standard is although it's a technical term of art in the field of law, it's also I think commonly understood in many ways among the general population. And in relation to that duty we want ISPs and other service providers to report when they have those reasonable grounds to believe that an offence has been committed on their system—that is, they'll know it when they know it. We're trying to avoid them looking into their system to actually find these things. If they stumble upon it doing routine maintenance or it's brought to their attention by a client, and they see it, then they're to notify police.

So it's a higher standard instead of anything that might be....

**Mr. Stephen Woodworth:** If I had my druthers, I'd rather it be something like "articulable cause", which in fact casts a wider net, rather than "reasonable and probable grounds", which might be narrower, but I'm just not sure from reading that. I think it might be the former rather than the latter, and I'm just not sure that you've told me what you think it is.

**Ms. Catherine Kane:** I'm not aware that we've used the term "articulable cause" in Canadian statutes. It's used in American statutes, and our understanding is that it may be a higher threshold to meet, but I think we have to bear in mind that we're talking about a duty on the ISPs and we're not talking about the grounds that the police would rely on to pursue charges. So as my colleague has indicated, we want those ISPs to have a more layman's term to understand. If they have reasonable grounds to believe it's there, we think they'll be erring on the side of a broad interpretation. If it's possible that it be there, they'll report it. The police will then look into it in terms of whether it is in fact child pornography on the site. It won't be up to the person who makes the tip to do that. Then the police will decide if there are grounds to lay specific charges and which child pornography offences are at play. We're not asking the non-peace-officer to do that exploration.

**The Chair:** Thank you.

We have room for two more on the government side. Who's next?

First Mr. Rathgeber, then Monsieur Petit.

**Mr. Brent Rathgeber:** How much time, Mr. Chair?

**The Chair:** Five.

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

Thanks to the witnesses for your expertise with respect to some of the technical elements of this bill.

Mr. Wong, I wanted to pursue a line of questioning that Mr. Murphy asked in the first round of questioning regarding provincial jurisdiction. I think I asked the minister this question, but perhaps you might be able to expand on how this bill will interact with certain provinces. I think Mr. Murphy mentioned my province of Alberta and, if my memory is correct, Nova Scotia, which has recently either implemented or is debating legislation in this area. I was wondering if you might be able to provide some clarification as to how these different jurisdictions' legislation will interact.

**Mr. Normand Wong:** Currently, in the four provinces that have enacted legislation—two are in force and two are not—that is all very similar. They're all based on the provincial jurisdiction on child welfare. So they're broad-based and require any person residing in the province to report to a designated agency or to police when they encounter child pornography.

They do not have an evidence-gathering or protection provision that the federal legislation has. On the flip side of that—and this is part of the point that I tried to address earlier—under the criminal law power, it's a broad power, but it's a narrow power at the same time. It has to serve a criminal law purpose, and one of the issues about approaching it as... We looked at the possibility of applying this to society broadly, and there was no real nexus between the average citizen and child pornography. We could create that nexus between ISPs and child pornography, since the proliferation of child pornography has taken place over the Internet.

So it was easy to create a duty, and, after creating the duty, an offence for breaching that duty. So targeting ISPs under the criminal law power was appropriate, whereas targeting the public in general under the criminal law power was not.

• (1645)

**Mr. Brent Rathgeber:** I appreciate that these provincial pieces of legislation are not identical, but are one or more of the provincial legislatures creating a positive obligation for individuals to report known instances of child Internet pornography?

**Mr. Normand Wong:** Much in the same way we are in federal legislation, they are creating a positive duty to report. Under child and family services legislation in many provinces they have a positive duty to report child abuse, and it's in that same vein. Many provinces have a duty for all citizens; all provinces have the duty that's placed on professionals who work with children.

**Mr. Brent Rathgeber:** Under either jurisdictional issues—sections 91 and 92 of the former British North America Act—or with respect to the charter... And I'm not asking about your legislation; I'm just asking your opinion on those provincial pieces of legislation. Do those raise any constitutional flags for any members of the panel—not this legislation, but the provincial legislation?

**Ms. Catherine Kane:** The provincial legislation is enacted under the provinces' power for child welfare, much like other provincial statutes are to assist people with civil protection orders and so on. So

we don't see that there's any issue there, though our provincial colleagues have engaged in an analysis of the scope of their legislation and the powers in which it's enacted and are confident that they're within their provincial sphere of responsibility, as are we.

**Mr. Brent Rathgeber:** But presumably there's some sort of sanction under these provincial pieces of legislation that provides some sort of penalty for non-compliance with a positive duty.

And again, this is not your legislation, so it's perhaps unfair of me to ask you to defend it or provide opinion on it, but I get to ask the question. Doesn't that raise some issues with respect to penalization of an individual for a positive duty under a provincial statute that's not criminal?

**Ms. Catherine Kane:** It's my understanding that many provincial statutes provide positive reporting duties now. For example, professionals are required to report child abuse that they see, and there are sanctions for non-compliance.

I guess it could also suggest that if you have witnesses here on Thursday who are familiar with the provincial legislation, they might be well placed to answer any issues about how that provincial legislation is being administered.

**The Chair:** Thank you.

We're going to move to Monsieur Petit for five minutes.

**Mr. Derek Lee:** Mr. Chairman, a point of order.

I'm not too sure why you're continuing with government rounds at this point. I've read the rules governing the questioning at committee, and they say very clearly that the rounds alternate between government and opposition at this point. So can you please explain why?

**The Chair:** First of all, Mr. Lee, at the beginning of each Parliament when committees meet, they establish their own procedure. As you know, they're masters of their own procedure—

**Mr. Derek Lee:** That's correct. I've read the rule.

**The Chair:** Yes, I'm sure you have. You've been here a lot longer than most of us.

At that time it was settled upon that we would have rounds as you've already seen on the list. We're coming to the end of the—

**Mr. Derek Lee:** No, I've read the rule. If you read the rule, very clearly there's an alternating mechanism. Could you read it?

I'll read it if you don't. I'm going to make this a point of order and I'm prepared to read it if you don't want to read it.

**The Chair:** Mr. Lee, there's no point being combative. I'm being cooperative here.

• (1650)

**Mr. Derek Lee:** Just read the rule.

**The Chair:** I will gladly read the rule.

It was agreed that at the discretion of the chair, during the questioning of witnesses, there be allocated seven minutes for the first questioner of each party; that thereafter five minutes be allocated to each subsequent questioner, alternating between government and opposition parties until all members have had a chance to participate, after which, if time permits, a new round will commence.

**Mr. Derek Lee:** Thank you.

Are you going to be alternating?

**The Chair:** We do alternate. Sometimes in groups, sometimes in....

**Mr. Derek Lee:** Alternating means alternating. You just conspicuously did not alternate. You went to Mr. Petit after recognizing—

**The Chair:** Mr. Lee, we have—

**Mr. Derek Lee:** We have your new rule. That's what you have.

**The Chair:** No, it's not my rule. It's the committee's agreement to do this.

**Mr. Derek Lee:** You just read the alternating rule. I'm sorry, if you don't wish to follow it, that's fine. Let's get on with the questioning. I know you'll get to me at some point here.

Thank you.

**The Chair:** You are, actually. You're going to be next, after Monsieur Petit, all right?

**Mr. Derek Lee:** Thank you, Mr. Chair.

**The Chair:** Thank you.

Monsieur Petit.

[*Translation*]

**Mr. Daniel Petit:** Thank you very much.

I have only one question to ask Mr. Wong about the wording in clause 8:

A civil proceeding cannot be commenced against a person for making a report in good faith under section 3 or for making a notification in good faith under section 4.

Even if someone reported a URL address containing child pornography—and this is the type of address we're talking about—in bad faith, it would still be reported. So I'm wondering what good or bad faith have to do with this issue?

For instance, let's assume that a criminal wants to take down another criminal. That person would inform the RCMP of the address, under section 3 or section 4, which would result in the shutting down of the criminal's website and in the person's conviction, and so on. The person reporting the address would be acting in bad faith. So I'm wondering what good or bad faith have to do with clause 8? This is a civilian notion and I understand it, but we can assume good faith is involved at all times.

So, I would like to know why you use the expression “in good faith” in clause 8. Whether the person is acting in good or bad faith, as soon as section 3 or section 4 are involved, the case is closed. Whether we are talking about a criminal making a complaint to take down another criminal, or about an honest person reporting on an

activity, under sections 3 and 4, once incriminating information is found, the conclusion is the same.

I'm just trying to understand why you use the expression “in good faith.”

[*English*]

**Mr. Normand Wong:** Thank you, Mr. Petit.

You're right in the sense that it doesn't matter whether there's good faith or bad faith when you're dealing with clause 3 and clause 4. This immunity provision is almost like a “for greater certainty” provision, because, you're right, a civil proceeding could proceed against a person who acts in bad faith anytime.

One of the reasons we put it in there was just to give comfort to the ISP community that will be affected by this legislation, to say as long as they acted with due diligence, they are immune from civil liability. But if there's any proof that they didn't act in good faith, then of course you're right, there could be a civil action against the ISP or the service providers. It really is just a “for greater certainty” provision.

[*Translation*]

**Mr. Daniel Petit:** Thank you.

[*English*]

**The Chair:** Thank you.

We're at the end of the first full round. We can go to another round and there should be enough time to do at least one full round.

I'd like to address Mr. Lee's point. As you know, Mr. Lee, everyone gets a chance to speak once before we go to another round. And of course if we want to discourage parties from splitting their time, we can discuss that, if you want to bring a motion forward.

I understand you took the position that perhaps because some on the government side had split their time, they had already spoken. We've worked as a very collaborative committee, and I think it's worked reasonably well. I try to treat everyone fairly and in an even-handed manner. I'd prefer to move forward on that basis, but it's always open to you to bring forward a motion that would change the order in which we call people to ask questions.

By the way, if we start another full round we'll go for seven minutes. We probably don't have enough time for that. Is everyone okay with us going five minutes apiece? So we'll do one Liberal, one Bloc, one NDP, and one government.

Is everyone okay with that?

**Some hon. members:** Agreed.

**The Chair:** All right. We'll proceed on that basis.

Mr. Lee.

**Mr. Derek Lee:** Fine. I have two questions.

Clause 10 of the bill purports to deal with federal-provincial overlap. The minister has said very clearly that this is federal criminal law jurisdiction under section 91. If that's so, why do we have provinces with similar legislation out there? And if this federal bill passes, wouldn't the federal legislation pre-empt the provincial legislation? That's why we have criminal law jurisdiction here, so we don't have ten different little Criminal Code countries, as they have in the U.S.A.

Would you address that, please, in terms of jurisdiction? What happens to provincial laws that are apparently in the same criminal law field? If the minister was right, this is criminal law and the provinces don't have criminal law jurisdiction.

My second question relates to clause 3, in which there are the words "Uniform Resource Locator where child pornography may be available". Since we are dealing with criminal law legislation here, that is a very low threshold for your average citizen, "where child pornography may be available". You have not used words like "where child pornography appears to be available", or "is believed to be available". Rather, the simple words used are a person becomes aware of a URL where child pornography "may be available".

Would you please address this? I find the threshold very low, given my earlier question and remarks about an individual who sends out e-mails and who becomes aware of this is implicated in the charging section. They don't even have to know that there is child pornography on that other site. In this case, the child pornography simply "may be" there. To my mind, if this is criminal legislation, if it's a real criminal law snitch law, we have a low threshold and I think the whole thing could be at risk if you were to end up with a weak case.

Those are my two questions: federal-provincial jurisdiction; and the use of the words "may be" instead of something firmer.

● (1655)

**Ms. Catherine Kane:** On the issue of whether there is an overlap with the federal and provincial law, as indicated earlier the provinces are operating in their child protection power. We're operating under the criminal law power with this stand-alone statute.

There are many examples where provincial and federal law is complementary. I'm thinking of impaired driving, for example. We have provisions in the Criminal Code. The provinces also have a whole range of quasi-criminal offences under their highway traffic legislation. And in some cases a person can be liable to both sets of penalties, and in others, not. This is similar to that.

We also see that in terms of domestic violence. The provinces have domestic violence legislation that's complementary to the Criminal Code charges that may be at play with respect to assault, or whatever applies. It's the same here.

The provinces have called upon the federal government repeatedly for federal legislation in this area. They have also pursued their own approaches, but we believe they will act hand in glove and there won't be any sense of duplication. That's why our legislation also provides for the reporting requirements, that if you report under one statute you have discharged your obligations under the other. So if a person is in Manitoba and reports the tip under that legislation, they're also deemed to have reported under this legislation. But as

Mr. Woodworth has noted, we want to make sure that they are also required to preserve the data, so there may be some need to refine clause 10 to make that clear. But to date none of our provincial colleagues have expressed concern that this legislation will impact theirs negatively.

**Mr. Derek Lee:** Okay.

**Mr. Normand Wong:** On the second question, clause 3, we have to remember there are two different obligations under this act. Under clause 3, they're required to report to a designated agency, and under clause 4 it's a requirement to notify the proper police authorities. If they have reason to believe under clause 4, they must preserve the evidence under clause 5.

Under clause 3, you're worried about the standard of "may be available". When developing the legislation, two principles that the minister articulated were kept in mind: that the legislation shouldn't contribute to the further dissemination of child pornography, nor should it contribute to the creation of further consumers of child pornography. So creating a lower threshold may be available.

This is a standard that the ISP will employ when receiving a tip. If they receive an e-mail from a subscriber that says he or she found child pornography at a website, that's the standard that meets "may be available". We don't want them to require their personnel to go to the website and confirm there's child pornography; we simply want them to advance that tip to the designated agency to triage and send it on to police if it turns out to be child pornography.

The standard really is for their own recognition of the credibility of the tip and whether it constitutes something that fits under this legislation.

● (1700)

**The Chair:** Thank you.

The Bloc is passing on its question, so we'll move on to Mr. Comartin for five minutes.

**Mr. Joe Comartin:** Thank you.

I think that this point where Mr. Woodworth gets caught is a really important one. I'm concerned that clause 10 may also alleviate responsibility to report under clause 4. When you're doing the review of this, if you could look at it being clear that clause 10 does not exempt the responsibility under clauses 4 or 5....

I have a question. You've used a different test in the reporting requirements in clauses 3 and 4. In clause 3, "where child pornography may be available to the public" is the test requiring them to report to the agency, and then in clause 4 it's reporting to a police officer or other designated person. The test there is where they believe the Internet service "is being or has been used to commit a child pornography offence".

Are you contemplating setting it out more specifically in the regulations? I would assume a lot of the people who will have to make this decision on whether an offence has been committed are not going to be people with legal backgrounds, so how are they going to determine this?

In particular, I'm thinking of the situations where we know it's a problem. You get pieces of art being sent over the Internet that may have the possibility of being defined as child pornography. You get personal pictures being sent—the baby-in-the-bathtub situation. How are you expecting people to comply, in particular with clause 4, where they don't have a legal background in criminal matters? Are they exposing themselves to potential charges, for instance, with the baby in the bathtub or the piece of art, where the police officer decides that they should have reported?

**Mr. Normand Wong:** There are a number of parts to that question.

There are different standards between the two clauses. I addressed the reporting standard in the question from Mr. Lee, but the notification standard applies when a service provider discovers it on their own system or it's brought to their attention by one of their subscribers; when they investigate, it's apparent to them that whatever is there is child pornography. If it's not apparent to them, like the baby in the bathwater, or a piece of art, then they haven't met that standard of belief that there's child pornography.

In many ways, it works. If you're prosecuting this case, there are a number of different hoops the crown would have to jump through in terms of proving that someone had reasonable belief, but the defence is always subjective too.

The baby in the bathwater or the art piece are areas where someone would say they didn't have belief that it was child pornography. The way it was crafted is more along the line that you know it when you see it. So if there's—

**Mr. Joe Comartin:** It has not exactly been successful, Mr. Wong, as you know, in terms of a test for all sorts of pornography.

• (1705)

**Mr. Normand Wong:** The test for child pornography, though, for the ISPs, under the provision in clause 4, is supposed to work in a way that would require ISPs to report only when they know. There's also a provision under clause 7 that explicitly states, “Nothing in this Act requires or authorizes a person to seek out child pornography”. We're not requiring ISPs and service providers to monitor their networks to find this stuff and to try to apply a standard. We don't want them to create child pornography units within their organizations.

One thing we will do, along with Cybertip and the Canadian Centre for Child Protection, because they are funded federally and have education programs, is spell out the obligations of the ISPs and service providers under this act. We will also perhaps put together an information package that targets the people who have duties under this act so that they better know how to fulfill their duties.

**The Chair:** Thank you.

I'm going to go to Mr. Dreeshen. You have five minutes.

**Mr. Earl Dreeshen (Red Deer, CPC):** Thank you very much, Mr. Chair.

Thank you to the witnesses.

I'm happy to be here today to add to the commentary on Bill C-22. I think we're all in agreement that child pornography is a serious form of child sexual exploitation and that any type of activity that exploits and endangers children must be dealt with seriously. I'm pleased to see that in this committee today we're all in agreement that action is necessary. This legislation, to me, seems like it's going to be a valuable tool to help with the investigation of such exploitation.

Having read the bill, there's one question that has come to mind. How will social media sites that make possible the airing of disturbing images so that they are shown to the public, and specifically to children, be dealt with?

**Mr. Normand Wong:** It's a very topical question, given what happened on Facebook in B.C. Facebook itself is a U.S. company, and it's based in the U.S., so it would be subject to U.S. laws. As the minister has indicated before, Canadian law enforcement officials and U.S. law enforcement officials work in tandem on many of these investigations. The reach of the legislation is only inside Canada, but certainly we would expect the cooperation of entities such as Facebook, which provide services to Canadian citizens. We would expect it to abide by Canadian law and to cooperate with Canadian law enforcement.

**Mr. Earl Dreeshen:** As the minister mentioned earlier, we are able to reach out to other countries in order to deal with these particular types of issues. Do you have any commentary on that, as well? We're speaking of the U.S. and Canada right now, but I'm just curious as to some of the other associations we have with other countries.

**Mr. Normand Wong:** There are programs. There's a national strategy for child sexual exploitation on the Internet. The Minister of Public Safety is responsible for that. The RCMP, through the National Child Exploitation Coordination Centre, has many contacts through Interpol and the international law enforcement community. Also, Cybertip.ca, Canada's national reporting tip line, is part of INHOPE, which basically links all the different tip lines in existence throughout the world. So Canada has its hands in many different international partnerships to deal with combatting child sexual exploitation over the Internet.

Thank you.

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

I'm advised that Mr. Murphy and Ms. Jennings have two very short questions, and we'll wind up with those. Then we'll take a brief recess, and then go in camera.

Go ahead, Mr. Murphy.

**Mr. Brian Murphy:** Mine may have been covered, I don't recall. We're talking about Internet service providers, and when I asked for the 30-second question in the interim you mentioned Facebook and that it was American. But Facebook is made available to people through Internet service providing companies in Canada, I would suggest, so would they not be caught by this, number one? I think the answer is yes.

Number two, what Internet service provider consultation have we had? This piece of legislation we agree with. Even the minister, however, said it's really just a first step or it's a step. It strikes me that those witnesses have a huge stake in this: that is, the people who provide Internet services, ISPs, have a huge stake in this. If they're not in this room listening to this, they should be. If they're not willing and able to come quickly as witnesses, they should be—even necessarily, maybe, the thought of demanding that they come, but let's not go there.

But you're our safety blanket here as a department. What kind of consultation did you have with the people who are affected directly by this legislation? Could you give me a relative degree of consultation?

• (1710)

**Mr. Normand Wong:** I've personally worked in this area since 2000, so for about ten years I've been working on child sexual exploitation over the Internet, and I've had many occasions to meet with members of the ISP or telco community.

In developing this legislation I had the opportunity to speak to a number of key players from that community. As the minister has stated in his speeches and in the press release, we've tried to tailor the bill as closely as possible to the business arrangements or business processes of the larger ISPs we've talked to. Those ISPs basically constitute 90% of all Canadian subscribers, so it covers the vast majority of them.

**Mr. Brian Murphy:** Could you give me an idea of the number? Is it under 100?

**Mr. Normand Wong:** In terms of the ISPs?

**Mr. Brian Murphy:** Yes.

**Mr. Normand Wong:** Under ten. Well, under ten in terms of major ISPs. Some of the smaller ISPs through the Canadian

Association of Internet Providers, which is an independent body that represents 30 or 40—

**Mr. Brian Murphy:** But I guess what I'm getting from what you're saying—

**The Chair:** We're going to keep it short, because we're not doing another round.

**Mr. Brian Murphy:** Well, I'll talk to you later.

**The Chair:** Ms. Jennings, one short question.

**Hon. Marlene Jennings:** A very short question.

Our researchers here provided us with an excellent document analysis of Bill C-22. There were a series of technical questions that I found fascinating. I don't believe you have time to respond to them now, but perhaps you would respond to them in writing to the committee through our chair.

It's section D of the report produced for the committee entitled "Technical Questions", point 4, and then it has a series of questions. And the ones that are particularly of interest to me are the zombie computer issue and the territorial application of the law. I'd like you to respond to all of the questions in writing through the chair to the committee.

Thank you.

**The Chair:** Does anyone at the committee have objection to requesting that those questions be answered? No? All right.

If you could do that and then pass it through the chair, we'll circulate the answers to the committee.

All right, what we're going to do now is just suspend for a couple of minutes as the room clears and then we'll go in camera.

*[Proceedings continue in camera]*







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