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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

Thursday, October 28, 2010

• (1530)

[English]

The Vice-Chair (Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.)): I call this meeting to order. This is meeting number 32 of the Standing Committee on Justice and Human Rights.

Today we have on the agenda, pursuant to the order of reference of Friday, October 8, 2010, the consideration of Bill S-215, An Act to amend the Criminal Code (suicide bombings).

The witness and proponent of the bill, fellow MP Kelly Block, is with us today.

We'll go to MP Block for 10 minutes, after which, if needed, we will call upon Glenn Gilmour, counsel in the criminal law policy section of the Department of Justice, to answer questions from members of the House.

I welcome Kelly Block here to present her bill.

You have 10 minutes.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair.

I am very pleased to appear before the Standing Committee on Justice and Human Rights to speak in support of Bill S-215, which is the same as the former Bill S-205, An Act to amend the Criminal Code (suicide bombings), as passed by the Senate with some amendments on June 10, 2009.

Former Bill S-205 was then debated at second reading in the House of Commons last October and November. It was referred to this committee in November 2009, but it died on the order paper in December.

Mr. Chair, please allow me to provide some background information about this bill for the benefit of all distinguished members.

The bill expressly seeks to include the act of suicide bombing within the context of the Criminal Code definition of terrorist activity.

Suicide bombing is a monstrous way to wreak havoc, because it shows the utmost contempt for human life. The damage from a suicide attack can be tremendous. The September 11 attacks killed nearly 3,000 people.

It is also clear that suicide attacks are becoming an all too common terrorist tactic. The July 7, 2005, London bombings; the 2008 attacks in Mumbai, India; the Moscow metro bombings in

March of this year; other recent incidents in Dagestan, and many in Afghanistan—all are part of a worldwide trend of terrorizing ordinary people.

Suicide bombing is already covered by the definition of terrorist activity in the Criminal Code, and deservedly so. The definition of terrorist activity is contained in subsection 83.01(1) of the Criminal Code.

Bill S-215 seeks to amend section 83.01 of the code by adding the following after subsection 83.01(1.1):

(1.2) For greater certainty, a suicide bombing is an act that comes within paragraph (a) or (b) of the definition “terrorist activity” in subsection (1) if it satisfies the criteria of that paragraph.

To begin with, the first part of the definition of “terrorist activity” incorporates, in part, criminal conduct as envisaged by the International Convention for the Suppression of Terrorist Bombings, one of the United Nations' counterterrorism conventions.

Further, the general definition of terrorist activity found in the second part of the definition includes terrorist activity that intentionally causes death or serious bodily harm, or endangers a person's life. Thus, it could be argued that suicide bombing committed for a terrorist purpose already falls within the definition.

While a general definition of terrorist activity that encompasses suicide bombing would be sufficient for the purposes of prosecution, distinguished Canadian criminal lawyers told the Senate Standing Committee on Legal and Constitutional Affairs that explicitly covering suicide bombing in the Criminal Code could help prosecute and punish the organizers, teachers, and sponsors of suicide bombing.

Therefore, Mr. Chair, this bill proposes that a “greater certainty” or definitional clause be added to the definition of terrorist activity. The benefit of this clause is that it provides a clear and forceful education message, not only to the people of Canada but also to the world, that Canada denounces suicide bombing as a tactic of terrorists given its obvious contempt for human life and dignity.

Mr. Chair, this bill is drafted with precision to ensure that this definitional clause is consistent with the definition of terrorist activity currently in the code and does not accidentally enlarge the scope of terrorist activity. The bill expressly states that it is only seeking to include, within the definition, a suicide bombing in circumstances that satisfy the criteria for terrorist activity as stated in the definition of a terrorist activity. In this way, the wording of this provision ensures that any other type of suicide bombing with no connection to terrorist activity is not included in the definition.

Let me provide an example to demonstrate how carefully this definitional clause has been drafted.

• (1535)

On the one hand, I believe we can all agree that a suicide bomber who deliberately targets innocent civilians in order to advance his or her terrorist goals and those who assist him or her in those efforts should be caught by this new definitional clause.

On the other hand, consider the case of a mentally ill man who straps bombs to his body, goes to an empty field, and threatens to blow himself up but no one else. If he does blow himself up, he has engaged in suicide bombing, but there is no intention to intimidate the public for a political, religious, or ideological purpose. Nor is there any intention to harm anyone other than himself. Put simply, in this situation the suicide bomber has no connection at all to terrorism. Such a man was not intended to be caught by the original definition of terrorist activity, nor should he be caught by the new definitional clause.

Proposed subsection 83.01(1.2) of this bill achieves this clarity of result because it makes it clear that a suicide bomber must satisfy the criteria set out in either paragraph (a) or (b) of the definition of terrorist activity. In other words, it must be linked to terrorism.

Mr. Chair, I would also like to briefly note that the bill proposes to come into effect on a day to be fixed by the Governor in Council rather than on the day on which it would receive royal assent. This ensures maximum flexibility for the government to advise provinces of this change before it comes into effect.

As I previously stated, this bill has a lengthy history. It was originally introduced as Bill S-43 on September 28, 2005, reintroduced as Bill S-206 on April 5, 2006, reintroduced yet again as Bill S-210 on October 17, 2007, and reintroduced a fourth time as Bill S-205 on November 20, 2008. By finally passing this bill, Canada would show international leadership by likely being the first nation in the world to adopt this reference in its legislative definition of terrorist activity.

In closing, I support this bill because it promotes the worthy aim of specifically denouncing the despicable act of suicide bombing by terrorists. The changes brought by this bill to the definition of terrorist activity would continue to give Canada the necessary tools to prosecute persons for terrorist suicide bombings, whether it's the suicide bomber himself or herself where there has been an unsuccessful suicide bombing, as well as persons involved in the preparation or counselling of a terrorism offence.

Thank you very much.

• (1540)

The Vice-Chair (Mr. Brian Murphy): Thank you for your very precise presentation. We'll have a round of questions of you by members of the committee.

If members have questions of Justice officials, maybe they could wait until the clause-by-clause consideration.

Do we have questions of MP Kelly Block on this bill?

Mr. Lee for seven minutes.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Just to go back to the purpose of the bill, I do understand the denunciation function, the denunciation purpose. But beyond that, it seems to me that if you do have a bomb go off, if you do have a suicide that accompanies it, there wouldn't be much in the way of investigation, prosecution, charge, conviction, sentence to follow, because the suicide has occurred.

Is there some other additional purpose beyond what I've described that would be covered by this legislation?

Mrs. Kelly Block: Thank you very much, Mr. Chair.

My understanding is that by amending this act in this way, this would not only demonstrate how seriously we take suicide bombing but it would provide for the prosecution of anyone who might be identified as having counselled, encouraged, or taught someone to be a suicide bomber.

Mr. Derek Lee: Okay. I do understand that. Good.

Because there is an absence of definition of what suicide bombing is...although the English words seem to paint a picture for us. You've addressed one of the scenarios, but I just....

We are writing law here. We're criminalizing something. So I'm just curious; if somebody with a sign on his car that says "Save the seals" drives the car into service station gasoline pumps, knowing it's going to blow up, is that a suicide bombing? Or would it be...?

If you're not sure, that's okay. We may not be sure either, because there is not a precise definition here.

Mrs. Kelly Block: I would decline to answer that question simply because I don't feel I'm in the place to answer...as you've indicated, Mr. Lee.

Mr. Derek Lee: Okay.

You've mentioned flying a small plane into a field of corn with a banner saying "Down with bad guys and up with good guys". That wouldn't be clear either...knowing the plane was full of aviation fuel and would explode?

Mrs. Kelly Block: I don't believe I mentioned that as an example. I mentioned the example of an individual who may choose to take his own life by strapping bombs to himself and that it would not be caught in the definition of terrorist activity.

I believe the intent of this bill is to clarify that individuals who use suicide bombing as a way to intimidate, to cause harm, to cause death to citizens—that would be caught in this definition.

Mr. Derek Lee: Okay.

Forty-four years ago, a guy came into the Centre Block here. He was wearing a bomb and he blew himself up in one of the washrooms in Centre Block. He obviously had a bomb and intended to use it. It may have gone off prematurely.

I couldn't figure out whether that was a suicide bombing or not. Can you?

• (1545)

Mrs. Kelly Block: I would suggest that it probably was a suicide bombing: the question is was it a terrorist activity?

Mr. Derek Lee: Yes. He wanted to be president of the new republic of Canada. That was his purpose.

Mrs. Kelly Block: That would be the answer that I can provide for you, sir.

Mr. Derek Lee: Okay, thank you for that.

Thank you, Mr. Chair.

The Vice-Chair (Mr. Brian Murphy): Madam Jennings, there are three minutes left in Mr. Lee's time. Would that suffice?

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

Ms. Block, I'd like to begin by saying, one, I commend retired Senator Jerry Grafstein for bringing this forward and you for taking it up when Senator Grafstein retired.

I support this bill wholeheartedly. I think the objective of the bill is laudable and that you are correct, as was Senator Grafstein, that this will put Canada in a leading role.

Perhaps in order to allay some of the concerns that my colleague Mr. Lee expressed, I'd simply like to go to the paragraph in the Criminal Code that this bill would be amending.

If one looks at the text immediately following item 83.01(1)(b)(ii) (E) in the Criminal Code, we see the words:

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission

And then it goes on.

So I believe that the concerns of individuals, and perhaps some organizations, that this bill has no purpose because, by definition, if a suicide bomber is successful there's no one prosecute, are in fact incorrect, because the bill would allow for sweeping up those who counsel this kind of activity and those who engage in facilitating it.

And for that you have my complete support.

Thank you.

Mrs. Kelly Block: Thank you very much.

The Vice-Chair (Mr. Brian Murphy): Okay.

[Translation]

Mr. Ménard, you have seven minutes.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Ms. Block, I don't know whether you are aware of the fact that the French version of the bill refers to "*attentats suicides*". I believe the correct English translation would be "suicide attacks". But the English version uses the expression "suicide bombings".

Considering the purpose of your bill, what is more important: including bombings in the definition or just suicide attacks?

[English]

Mrs. Kelly Block: Thank you very much for the question.

I understand your concerns. However, as you know, should any changes be made, the bill must go back to the Senate. I would urge you to accept the language as is, as the spirit is the same.

I would also like to remind this committee, Mr. Chair, of a comment made in the House by the member Thierry St-Cyr:

We support this bill because we are very concerned about the safety and protection of all citizens and suicide attacks on civilians are considered barbaric acts that are contrary to the values of Quebec society and the general respect for life.

I support the language as is in this amendment.

[Translation]

Mr. Serge Ménard: I suppose it's because suicide attacks are what you consider most reprehensible. That is what you are seeking to condemn here, correct?

[English]

Mrs. Kelly Block: It would be suicide bombings with the intent to harm other individuals, to cause harm to property, to create fear in citizens.

[Translation]

Mr. Serge Ménard: In your opinion, when airplanes flew into the twin towers at the World Trade Center, on September 11, 2001, was that a suicide attack?

• (1550)

[English]

Mrs. Kelly Block: I believe they were.

[Translation]

Mr. Serge Ménard: Indeed, it was the worst suicide attack in the history of humanity, if I'm not mistaken. And yet, no bomb was involved.

[English]

Mrs. Kelly Block: You are correct. However, that was an act of terrorism; it was terrorist activity. This amendment is proposing to ensure that suicide bombing is included in the definition of terrorism, in the definition of terrorist activity.

[Translation]

Mr. Serge Ménard: Yes, I understand, but when I read the wording in French, it's clear that the intent is to include suicide attacks. So, what should I be relying on in order to understand the intent of the proponent of this bill: the French version or the English version? I see that you are relying on the English version. Are you right to be relying on the English version, or am I right to be relying on the French version?

[English]

Mrs. Kelly Block: I would suggest that we need to rely on the English text that has been presented in this bill and that the French text needs to support the English text that has been presented in this bill.

[Translation]

Mr. Serge Ménard: Why do you say that? Why would we rely more on the English wording than on the French wording?

[English]

Mrs. Kelly Block: Again, sir, because that's the way it was submitted; that was the intent of the individual who first proposed this bill. I believe it remained the intent of Senator Frum, who introduced the bill back into the Senate this session.

I'm wondering if I could call upon the staff member from the justice department to join me to answer that question.

The Vice-Chair (Mr. Brian Murphy): Yes, I think that's a good idea.

So you would like to defer that question of why the French and English versions don't accord and, I guess, the intention of the original drafter. The original draft was probably in English, knowing Senator Grafstein.

Glenn Gilmour.

Mr. Glenn Gilmour (Counsel, Criminal Law Policy Section, Department of Justice): Thank you very much.

I think it is arguably the case that the French wording is not the same as the English in that suicide bombing.... If one interpretation of "*l'attentat suicide*" is "suicide attack", then that is certainly a broader phrase than the "suicide bombing" in the English version.

However, my understanding is that in the interpretation of the texts, there are various rules of statutory interpretation that come into play. I believe one of them is that when it comes to interpreting criminal law, you should generally read an interpretation that is the most favourable to the accused, given the possible impact that could be had on the accused.

My guess is that in interpreting these provisions, the courts would look at both the English and the French and possibly conclude that suicide attack, in this particular context, or at least the phrase "*l'attentat suicide*", would be interpreted along the same lines as terrorist bombing.

However, I do concede that there is a difference in the wording between the two phrases, in my view.

[Translation]

Mr. Serge Ménard: The proponent of the bill is not here today to explain why he wants to limit the scope of his legislation.

[English]

Mr. Glenn Gilmour: I'm sorry...[*Technical Difficulty—Editor*]

• (1555)

[Translation]

The Vice-Chair (Mr. Brian Murphy): One moment please, Mr. Ménard. You will have to repeat your question.

[English]

Mr. Glenn Gilmour: I offer my apologies.

[Translation]

Could you repeat your question, Mr. Ménard?

Mr. Serge Ménard: Having worked as a criminal lawyer, I am obviously familiar with the legal rule. An accused must benefit from the most favourable interpretation of the law. As a lawmaker, it seems to me that if we're talking about suicides attacks, the definition must be far broader than would be the case for "suicide bombings", considering that the worst suicide attack to have occurred on this planet did not involve the use of a bomb. Mr. Lee gave examples of other suicide attacks that could be carried out in the same fashion.

Perhaps I could just give you another random example: a terrorist gets on a bus filled with tourists that is travelling up a mountain, jumps on the driver, grabs the wheel and drives the bus off the mountain, killing all the passengers. It seems to me that is just as serious an act as placing a bomb under a bus on a public thoroughfare.

I could certainly have understood your thinking had you said that suicide attacks are already covered under the legislation. If they are, then that necessarily means that the legislation also covers suicide attacks carried out using a bomb. However, when I read the French or the English version, it seems clear to me that the intent of the person who drafted this bill was to ensure that suicide attacks would be covered. One may well think that there is no need to cover them, because someone carrying out a suicide attack receives the punishment he deserves, but the fact is that here we are considering everything related to that attack: the preparation, the person who gave advice, and so on. Given all of that, I would like to see this apply to all suicide attacks, and not just those carried out using a bomb.

I realized that this bill will be referred back to the Senate. And it's not a bad idea for people in the Senate to see that members of the House of Commons sometimes have better ideas than they do... Sometimes.

The Vice-Chair (Mr. Brian Murphy): Perhaps.

[English]

Would you care to respond to that question—in the briefest of time?

Mr. Glenn Gilmour: Just very briefly, as it has already been mentioned, I believe the intention of this piece of legislation was to focus specifically on the aspect of suicide bombing and to ensure, in case there was any lack of clarity, that suicide bombing was caught by the definition of "terrorist activity".

Certainly other forms of suicide attack, I think it's fair to say, Monsieur Ménard, would be caught by the general definition of "terrorist activity" even if they don't fall within this greater certainty clause, given the way the general definition, I would say, of terrorist activity is defined.

So for the purpose of this bill, focusing specifically on terrorist bombing, I think the way the English is worded is suitable, because that was the purpose of the bill.

As to the question of whether, in a particular situation, that would amount to a suicide bombing or not, I suppose there will always be those factual instances where there might be disagreement as to whether it constitutes a suicide bombing or some other form of terrorist attack.

Nonetheless, the general definition of "terrorist activity" would still catch it.

The Chair (Mr. Ed Fast (Abbotsford, CPC)): Thank you.

We'll go to Monsieur Petit.

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Chairman, I would like to share my speaking time with my colleague, Mr. Norlock.

First of all, Ms. Block, I would like to commend you for this, because it isn't always easy for a member to pilot a bill of any kind through Parliament. To begin with, it's a lengthy process and, very often, a bill—even a good bill—can die on the Order Paper, as they say, between parliamentary sessions. In this case, it came back to life. I checked the titles and wording of the various bills submitted prior to this one, and in every case the term used was “suicide bombings”. No other term has ever been used.

Furthermore, I would also like to commend the senator, with whom I frequently travelled for activities involving the Organization for Security and Cooperation in Europe. He truly is a great gentleman who, I believe, has fought long and hard, as part of the different groups he was associated with, in order to prevent terrorists, whether it be for religious, national or political reasons, from carrying out bombing attacks, and so on. I believe that is the purpose of this bill and that is really what he was seeking to do.

Having said that, on behalf of my colleagues, I would like to confirm that we will be supporting this. I will now turn it over to my colleague, Mr. Norlock.

• (1600)

[English]

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, my colleague.

I guess my question would be for Mr. Gilmour. It's obvious to me that this bill is needed. It's obvious that we are wont to support it. My simple question is on the language issue that we have been dealing with.

It sounds to me as though it doesn't imperil the efficacy or the intent of the bill; it just creates an interpretive issue that the court before which the case may be coming would be able to deal with. It simply would revert to the intent behind the bill, which would be, if it's a suicide attack, to revert to existing law, or if it's a bomb—to me, a bomb is an explosive device, as the simplest way to put it—the court would be able to handle the issue at hand.

Would I be correct in that, or does it place the legislation itself in peril if there were to be an appeal under this particular clause?

Mr. Glenn Gilmour: My own view is that it is not a fatal flaw, if that's what you're concerned about. I think it would be an interpretive issue that would be decided by the courts, as they have done on past occasions when there have been differences in wording between French and English versions.

As I said, there is a variety of interpretive rules that the courts have used. One of them is the rule I expressed—probably very poorly—to Monsieur Ménard, that when it comes to the interpretation of criminal law matters, the courts try to strike interpretations. If there's one interpretation that's less favourable to the accused than one that is favourable, the courts as a general rule will try to choose the interpretation that's more favourable to the accused.

As to exactly how that rule would apply in this particular case, I think it's fair to say that courts would probably look at the English language, which says “suicide bombing”, and consider whether or not the French phrase, “*l'attentat suicide*”, should be interpreted in light of the English. But of course that's mere speculation on my part.

Mr. Rick Norlock: I guess that would then lead me to say that, should this committee pass this as is, there is really no need to send it back to the Senate, because this place moves at a snail's pace, and who knows...? We just heard in the news that in Washington, D.C., I believe it was, they were able to thwart a possible bombing on their subway.

As these issues become more and more a daily issue, one would not want to impede this by sending it back to the other place for simply a slight error that is not fatal to the legislation.

So unless, Mr. Gilmour, you tell me something otherwise, I would implore this committee to just pass this as is so that we can get this legislation before the House as soon as possible.

• (1605)

Mr. Glenn Gilmour: Ultimately that is a decision for this committee to make, and I think it would be inappropriate for me to comment on that.

Mr. Rick Norlock: Thank you.

The Chair: Thank you.

Is there anybody else?

Seeing no one, I want to thank our witness, Kelly Block, and also counsel, for being here.

Mr. Gilmour, I think you're going to stick around because we're doing clause-by-clause consideration, so don't leave yet; Ms. Block, you can certainly leave if you wish.

Mrs. Kelly Block: Thank you.

The Chair: Okay, we're going to call clause-by-clause.

(On clause 1)

The Chair: We have a Bloc amendment to clause 1. I would ask Monsieur Ménard to introduce that amendment.

[Translation]

Mr. Serge Ménard: I don't really need much time to discuss it. I think I've already made most of my arguments through the questions that were asked.

However, one thing is certain. I believe, with all due respect, that if there is one thing we should not do and that I find unacceptable, it would be to allow two contradictory versions to pass into law on the assumption that the courts will deal with it later.

I can also tell you when the courts do deal with these issues subsequently, their interpretation is generally not the one that most benefits the accused. That is a rule laid out by the Supreme Court that is now part of our case law—a rule articulated by the highest court in the land, which was to always give the accused the most favourable interpretation.

I, personally, feel that if this is an important provision, it should include all forms of suicide attacks, because the worst suicide attacks that we have experienced thus far were not necessarily carried out using a bomb. Obviously, if an airplane explodes, we can assume that it contained explosives. However, I am not sure everyone would agree that if someone flies a plane into a building, that plane could be considered a bomb. However, the other example I cited earlier is just as appalling. If someone decides to deliberately drive a bus full of passengers off a cliff into a ravine, by grabbing the steering wheel from the driver, the outcome is just as appalling.

Furthermore, if we don't need more security, then we don't need this at all. It's as simple as that. This is already a terrorist act covered by the legislation. So, if that legislation meets a certain need, I guess that need will cover all forms of suicide attacks, and not just those carried out using explosive materials or bombs.

That is the reason why I tabled this amendment which—I should point out in passing—was suggested to me by the Quebec Bar. It was initially the Quebec Bar that drew our attention to this point. As I recall, they were also of the view that the term “suicide attack” would be closer to the expressed intent of the framer of the bill, which was to fill a gap... That's why I am presenting this amendment, as well as the one that follows. I believe they should both suffer the same fate—in other words, both should either be passed or defeated.

[English]

The Chair: Thank you.

Mr. Murphy.

Mr. Brian Murphy: The rule of interpretation that the most narrow interpretation should be used in terms of an accused seems the correct one; therefore, this really is a “suicide bombing” bill to amend the Criminal Code.

However, I live and breathe this bilingual mentality and ethos in Moncton, New Brunswick. That's the centre of bilingualism, right? And I just can't imagine....

Usually that statutory interpretation rule is used where unwittingly Parliament has two versions that are different. They didn't do it on purpose. We're almost saying that we're going to do this on purpose: we're going to have suicide bombings on one end and suicide attacks on the other, knowing, therefore, that the courts will interpret it as suicide bombings.

It's almost like deliberately bad drafting, so part of me says that we can't do that. On the other hand, what we heard from you, and what I believe, is that the glue needed to fix any ambiguity in the existing section is to specify suicide bombings. We have a Conservative government that is also supporting an amendment that is very narrow and precise and surgical—congratulations.

So I'm somewhat torn on the amendment. But we have to draft legislation in both languages that, as far as we know, accord with each other.

For that reason, I believe I'm going to support Mr. Ménard's amendment. It shouldn't be against the idea that we're doing something good for attacking the idea of suicide bombings or attacks; it's indeed broader. Mr. Ménard raises the question of

whether that is covered by the section as it exists; I don't suppose we're doing any harm, and at least his amendment makes us adopt two versions that are in accord, as far as I can tell.

That's where I am on the amendment.

●(1610)

The Chair: Okay.

We have Mr. Woodworth and then Mr. Rathgeber.

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

I too am sympathetic with the notion that the French and English should be in accord; however, if we are to do that, in my view we ought to do it in a way that respects the intention of the bill. In other words, if there is—I don't want to call it a mistranslation—an inconsistency in the French translation of “suicide bombing,” then in my view the correct remedy would be to correct or amend the French version so that it is consistent with the intention of the bill, which is to refer to suicide bombing.

To me, it would be compounding the error to amend the English version to something that quite clearly was not intended by the bill or its drafter. I will be opposing Mr. Ménard's amendment, but I would be favourable toward some solution that might deal with the problem in an appropriate way.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Mr. Chair, I concur with Mr. Woodworth.

It appears to me that the problem, if we can assume.... When Mr. Murphy was in the chair, he assumed that if Senator Grafstein was the author of the original bill, it was likely drafted in English. I think that's a reasonable supposition.

So the problem is not with the English translation, the problem is with the French translation of Senator Grafstein's original intent. I wonder, then, if it's not the French version that ought to be amended. I understand that the phrase “*les attentats suicides à la bombe*” might more accurately reflect the English version.

I agree with Mr. Woodworth that this is the appropriate way to resolve this discrepancy.

I will be voting against Mr. Ménard's motion unless he will allow me a friendly amendment to his motion to amend the French version.

The Chair: What's your wish, Monsieur Ménard?

[Translation]

Mr. Serge Ménard: Personally, I think the term “suicide attack” is preferable.

[English]

The Chair: Go ahead, Mr. Plamondon.

[Translation]

Mr. Louis Plamondon (Bas-Richelieu—Nicolet—Bécancour, BQ): Mr. Chairman, it seems to me that we're not just talking about the similarity of the English and French versions. We have to properly interpret the framer's intent. The intent is to address suicide attacks, and not just suicide bombings. That seems obvious to me.

As my colleague was saying, if we were to rely only on the English version, the 9/11 attacks would not be included. And yet they were the worst suicide attacks in the history of humanity. We need to understand the intent of the framer of the bill. It is quite clear that he meant to refer to suicide attacks in general. In that case, the proper term would be “suicide attacks” and not “suicide bombings”. That seems perfectly obvious to me.

[English]

The Chair: Before we go to Monsieur Petit and then to Mr. Rathgeber, if it's all right with you, I'd like to hear from Mr. Gilmour.

Do you have any comments on what you've heard so far in the debate on the words “attack” and “bombings”?

Mr. Glenn Gilmour: Well, I think that in English certainly, the word suicide “attack” is broader in scope than suicide “bombing”. We've been discussing whether or not 9/11 was in fact a suicide bombing and whether it would fall within the suicide bombing aspect. I'm afraid that to the extent there was an explosion that occurred as a result, I think an argument can be made that it was a bombing—although not specifically a bomb in the sense that there was not a timer attached to it.

I guess it's a question of the policy that Parliament wishes to follow. Consider the example of a suicide attacker who does not use a suicide bomb but firearms, with the intention of killing as many people as he or she possibly can, and not blowing himself or herself up but being killed in the process by others. That would be an instance of a suicide attack that does not involve a suicide bomb.

However, I believe the intention behind this bill was to focus on suicide bombing. If I recall correctly, I think one of the organizations, for example.... I believe the term suicide “bombing” was the term that was frequently used in this bill originally and in the discussions of this bill, and so I would be inclined to try to focus on the suicide bombing aspect of that bill. I may be incorrect, but certainly my understanding is that it was the intention to focus on suicide bombing as the evil to be particularly denounced.

So I'll just leave it at that.

• (1615)

The Chair: Now we have Monsieur Petit.

[Translation]

Mr. Daniel Petit: Thank you, Mr. Chairman. Let's compare the previous bills with the one we are examining today. When the proponent tabled his bill in the Senate—he is now retired—his intention was to including what are known as “suicide bombings”. He focused on that and proposed a bill to address what are known as “suicide bombings”. He particularly wanted to focus on that issue.

In spite of my understanding and Mr. Ménard's understanding, I have no choice but to say that I cannot support his amendment. It does not reflect the intent behind this bill. I understand that the intent is broader, but Bill S-215 is meant to address bombings. Therefore, I have no choice but to vote against his amendment and support the English version of the bill in this case. I sense that this is what the senator wanted, as opposed to a provision of general application.

[English]

The Chair: Thank you.

We'll go to Mr. Woodworth.

Mr. Stephen Woodworth: Thank you.

I have the impression that Ms. Block was the sponsor of this bill in the House, so we can look at the record of proceedings in the House. We don't really have to resort to whatever might have been Senator Grafstein's intention.

For the benefit of my colleagues, I'd like to read into the record the excerpt from Hansard in which Ms. Block speaks to the introduction of this bill. I have to assume that it would have been on first or second reading. I'll just give you the relevant extracts. Her words were as follows:

Please allow me to provide an explanation of the contents of this bill for the benefit of all hon. members.

The bill seeks to explicitly include the act of suicide bombing within the context of the Criminal Code definition of “terrorist activity”.

Suicide bombing is a monstrous way to wreak havoc because it shows the utmost contempt for human life.

Elsewhere she stated as follows:

Explicitly including “suicide bombing” in the definition would also serve to denounce this horrendous practice and to educate the public that such suicide bombing is repugnant to Canadian values.

Finally, elsewhere she stated as follows:

For these reasons, I agree that there are benefits in making an exclusive reference to suicide bombing in the definition of “terrorist activity”. However, it is also important in doing so not to adversely affect the current definition of terrorist activity. Fortunately, this bill has been drafted with precision in order to address this concern.

Clearly, if I'm right that Ms. Block was the sponsor of the bill in the House, she has placed on the record in Hansard her intention with respect to the bill, and in a way has issued an implicit caution that the bill is drafted with precision in order to ensure that it doesn't adversely affect the current definition of “terrorist activity”.

For this reason, I would strongly counsel my colleagues to maintain the intention that was expressed in the House when this bill was introduced and spoken to by Ms. Block, and to avoid any proposal, such as would be contained in Mr. Ménard's amendment, to widen the scope of the bill beyond “bombing”.

Thank you.

• (1620)

The Chair: Thank you.

Next we have Mr. Rathgeber.

Mr. Brent Rathgeber: Thank you, Mr. Chair.

The committee is really getting ahead of itself. We've really gone off the topic here.

The Criminal Code, in existing section 83.01, has a very exhaustive definition of “terrorist activity”. There are 11 paragraphs that fall under section 83.01, and I'll just read one of them. There is some concern, if I'm understanding my friends on the other side of the table correctly, that the 9/11 attacks somehow would not be captured by this bill, and I think they're right, but what they're missing is that it's already covered by section 83.01 of the Criminal Code.

One of the current definitions of “terrorist activity” is in subparagraph 83.01(1)(a)(ii):

the offences referred to in subsection 7(2) that implement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971,

If my friends on the other side of the table are having trouble understanding that we're trying to make sure that “terrorist activity” includes suicide bombing, that is what this amendment is meant to do. That's not the exhaustive definition of “terrorist activity”; that's in addition to the 11 paragraphs that are currently contained in section 83.01.

For those reasons and the reasons outlined by Mr. Woodworth, we need to vote against Mr. Ménard's proposed amendment. If there is some concern about the difference between the French and English translations, the committee should accept my solution and amend the French version to make it narrower.

Thank you.

The Chair: Does anybody else want to speak to this matter?

Go ahead, Mr. Norlock.

Mr. Rick Norlock: Mr. Chair, I know by the indication of this e-mail that all members of this committee received a communication from Canadians Against Suicide Bombing, the president and vice-president of which are the Honourable Reuben Bromstein and Dr. Salim Mansur respectively. They refer to evidence given before the Senate committee by distinguished Canadian criminal lawyers, including the chair of the Canadian Council of Criminal Defence Lawyers, recommending that this bill be passed.

Let's just go with the English interpretation and get on with it.

The Chair: All right.

We have Mr. Lee next.

Mr. Derek Lee: I think all parties around the table here support the bill, the thrust of the bill and the objective of the bill. The glitch that we've uncovered is a discrepancy between the English and the French. It's tangible, it's material, and the question is whether we should fix it here, which would require the bill to go back to the Senate. That isn't a huge problem, as I'm sure it will go through there in about 10 minutes. But Monsieur Ménard's amendment can be put, and be adopted or not.

Someone described a friendly amendment to that. It doesn't have to be a friendly amendment, but can just be an amendment that comes forward in a way that would address the apparent discrepancy. I'd be prepared to support that. It's not rocket science, apparently. It's just to get some words *en français* that emulate “suicide bombing” rather than “suicide attack”.

If any members opposite had such a wording to propose as an amendment, I'd probably support it. I can't speak for anyone else here, but we should try that. If it's not going to work, then let's just swallow the pill and move on.

• (1625)

The Chair: Monsieur Ménard, did you have a comment?

You're next, and then we're going to go to Monsieur Petit.

[Translation]

Mr. Serge Ménard: If I understood your suggestion earlier, you were wondering if I would accept a so-called “friendly” amendment.

I do not agree that the English wording should take precedence, but I have no objection to asking whether there is support for it, even though the amendment did not meet the deadline. I am going to try my best to convince you. Either the 9/11 attacks are covered by the previous definitions... I just read the definition of “terrorist activity” in section 83.01 of the Criminal Code. If the 9/11 attacks are captured by that, then this is not necessary; the alternative would be the need to specify that this type of activity is not... Or we have to specifically target suicide attacks.

Having said that, I have no objection to another amendment being proposed immediately, if mine is defeated.

[English]

The Chair: We're still dealing with Mr. Ménard's amendment, which is to change the word “bombings” in the English to the word “attacks”.

Monsieur Petit.

[Translation]

Mr. Daniel Petit: Mr. Chairman, given that this is a substantive issue, we must consider how the bill was framed by the proponent. Let's take Mr. Grafstein, for example; he drafted the bill in English and used the term “suicide bombings”. He knows what he wants.

However, the French translation uses the term referred to by Mr. Ménard, which is “*attentat suicide*” and the idea would be to use that term everywhere. Now if we rectify the translation... This goes back to what Mr. Murphy was saying earlier, when he was talking about his bilingual province... Supposing we come across what I would term a “typo”—in other words, that the term “bombings” was mistranslated. Would it not be better in that case to check to see whether we have to start the whole process all over again? I don't understand that.

The fact that we have a translation issue doesn't mean we have to go all the way back to the Senate. It's a translation issue; it is not necessarily a substantive issue. That's the important point. If Mr. Ménard's version is accepted, I think we may want to go along with the suggestion made by Mr. Brent, one of my colleagues, regarding the possibility of adding “*attentats suicides à la bombe*”. That could be a potential amendment, based on my colleague's position on this.

[English]

The Chair: I'm going to call the question, simply because Monsieur Ménard is stuck on his amendment.

Ms. Brown, are you signed in?

Ms. Lois Brown (Newmarket—Aurora, CPC): I am. I'm subbing for Bob Dechert.

The Chair: Are you signed in, though?

Ms. Lois Brown: I've signed in.

The Chair: All right.

All those in favour of BQ-1? All those opposed?

(Amendment negatived)

The Chair: Now, we're still on the bill.

Mr. Lee.

• (1630)

Mr. Derek Lee: Mr. Chair, I'm wondering whether there would be an appetite for an amendment, which I would be prepared to move, that would insert the words, in the French version, "*de la bombe*" after the word "*suicide*" in proposed subsection 83.01(1.2).

The Chair: Mr. Lee, I'm advised it should be "*à la bombe*", not "*de la bombe*".

Mr. Derek Lee: Well, then, I'll consider that a friendly amendment to the friendly amendment.

The Chair: That's coming from the expert himself: the unilingual Ed Fast.

Mr. Derek Lee: So it's "*à la bombe*" rather than "*de la bombe*".

The Chair: Thank you.

Mr. Derek Lee: I would be prepared to move that if it were procedurally correct at this time.

The Chair: Yes, it's perfectly in order.

An hon. member: Could we have it read in French, please?

The Chair: Okay, we'll have it read in French.

The English does not change.

[Translation]

Mr. Wayne Cole (greffier à la procédure): That Bill S-215, in clause 1, be amended by replacing in the French version, line 7 on page 1, with the following:

(1.2) Il est entendu que l'attentat suicide à la bombe

[English]

The Chair: All right, you've heard the amendment. Is there any debate?

All those in favour?

(Amendment agreed to)

(Clause 1 as amended agreed to)

(Clause 2 agreed to)

The Chair: Moving to the title, the BQ amendment can't be made anymore, because the first amendment didn't pass.

We shall then move to the next one—

[Translation]

Mr. Louis Plamondon: Mr. Chairman, on a point of order.

This amendment cannot be made, but on line 8, the wording should be amended along the same lines as the amendment which was just passed—in other words, by adding those words.

[English]

The Chair: Would someone like to propose an amendment?

An hon. member: [Inaudible—Editor]

The Chair: Okay, Mr. Lee, you've made the amendment to reflect the earlier amendment in the title, correct?

I'll have our assistant here read that back.

[Translation]

Mr. Wayne Cole: That Bill S-215, in clause 1, be amended by replacing in the French version, long title, page 1, with the following:

Loi modifiant le Code criminel, (attentats suicides à la bombe)

[English]

The Chair: Is that acceptable?

[Translation]

Mr. Louis Plamondon: "*Attentats suicides à la bombe*"?

[English]

The Chair: Right.

So that's the amendment proposed.

All those in favour...?

Sorry, Mr. Murphy.

[Translation]

Mr. Brian Murphy: I am a Francophile, but I am not perfectly bilingual. In the title, it's in the plural, but in the amendment, it isn't. Should we be saying "*des bombes*"?

Mr. Wayne Cole: No, it should be "*à la bombe*".

[English]

Mr. Brian Murphy: For them both?

A voice: *Oui*.

Mr. Brian Murphy: Very good. I just wanted to be sure.

The Chair: Does everybody understand?

All those in favour of the amendment?

(Amendment agreed to)

The Chair: Shall the title as amended carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

An hon. member: [Inaudible—Editor]

The Chair: On division?

• (1635)

Mr. Louis Plamondon: No, not on division.

The Chair: Not on division?

An hon. member: It's unanimous.

The Chair: Okay, that's great.

Shall the chair report the bill as amended?

Some hon. members: Agreed.

The Chair: Thank you.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit: I have a point of order. I would like to hear the opinion of the clerk or legislative clerk.

In terms of the amendments we just passed... If these are technical, as opposed to substantive amendments, because of the problem with the translation, I imagine there is no need to refer this back to the Senate. That is what I am seeking your opinion on. I'm sure there have been rulings in the past dealing with similar cases.

Are we required to refer this back to the Senate? It's not a substantive amendment; it only deals with a mistranslation. It doesn't even affect the interpretation.

[*English*]

The Chair: I'm advised by our analyst that the reprint is not permitted because it is a Senate bill.

Mr. Wayne Cole: That's another question—

The Chair: Yes, I know, that's another question. Do you want to answer the question?

[*Translation*]

Mr. Wayne Cole: I believe the bill should be referred back to the Senate.

[*English*]

The Chair: So it is being sent back.

Mr. Daniel Petit: Okay.

The Chair: That's it for the bill. It will now go back to the Senate, at least with respect to the amendments.

[*Proceedings continue in camera*]

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