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Thursday, December 9, 2010

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 this meeting to order.

This is meeting number 42 of the Standing Committee on Justice and Human Rights. For the record, today is Thursday, December 9, 2010.

You all have the agenda before you today. We'll be dealing with two items. First of all, during the second half of today's meeting we'll be proceeding to clause-by-clause consideration of Bill C-48, an act to amend the Criminal Code and to make consequential amendments to the National Defence Act.

Before we do, however, we have with us again, for an hour, our Minister of Justice and the Attorney General of Canada, the Honourable Rob Nicholson. The minister is here to review and respond to questions regarding the consultation report on Bill C-4, an act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other acts.

Minister, thank you for coming.

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Mr. Chairman.

I'm pleased to have the associate deputy minister, Don Piragoff, with me today. I'm here before you again to assist in your examination of Bill C-4, amendments to the Youth Criminal Justice Act.

The proposed reforms to the Youth Criminal Justice Act that are contained in Bill C-4, Sébastien's Law (Protecting the Public from Violent Young Offenders), are based on a mixture of what was heard during the cross-country consultations on decisions of the courts and the views expressed by Canadians with an interest in the issues, whether in written submissions or in discussion with me and others.

During the course of developing these reforms, I held consultations with various youth justice stakeholders in every province and territory across the country. In addition, I sought and received written submissions by mail and electronically prior to the introduction of the bill.

To put the details in context, after more than five years of experience with the Youth Criminal Justice Act, I launched a review of the act in February 2008. This began with a meeting with provincial and territorial Attorneys General to discuss the scope of the review and to encourage provincial and territorial ministers to identify the issues relating to the act that they considered to be the most important.

In May 2008 I began a series of cross-country round tables, usually co-chaired by provincial and territorial ministers, in order to hear from youth justice professionals, front-line youth justice stakeholders, and others about areas of concern and possible improvements regarding the provisions and principles of the Youth Criminal Justice Act. Input from individuals and organizations through the Department of Justice website was also sought, as well as input through in-person meetings and in written form.

This review and other consultations permitted a variety of different views, including those of police and the legal community, aboriginal Canadians, youth involved in the youth justice system, and others, to be brought forward and considered.

The results show that most provinces and stakeholders believe that the Youth Criminal Justice Act works well in dealing with the majority of youth who commit crimes; however, there were concerns about the small number of youth who commit serious, violent crimes or are repeat offenders.

As well, while the goal of the act is to deal with young offenders through alternative means that encourage rehabilitation, some are of the view that the act has imposed barriers that could restrict the courts from imposing custody on youth who should receive custody. Also, they believe that while adult sentences are available for those 14 and over and can be used where appropriate, these are not always considered, even in the most serious cases. Concerns were expressed by some about youth who commit violent or repeat offences and who may need a more focused approach to ensure that the public is protected.

For example, some were concerned about violent youth who may avoid detention through bail. The fear is that those youth could commit a serious or violent offence while awaiting trial. The current law on pretrial detention is seen by some as too complicated. These complications might also make it more likely that youth who should be kept off the street pending trial may be released, only to reoffend, sometimes with lethal consequences.

As you are aware through the testimony of Justice Nunn and of others who appeared as witnesses on this bill, the Nunn commission of inquiry in Nova Scotia dealt with a case in which a youth who had been detained was released, stole a car, and was involved in a car accident in which a person was killed.

The proposed reforms would greatly simplify the judicial interim release scheme. The new law will include a very simple test. If the youth has allegedly committed a serious offence, then this youth can be detained while awaiting trial if he or she, if released, would likely endanger the public by committing another serious offence.

Overall, taking into account all that was heard during the round table discussions, as well as on the website and from other written and oral input, the conclusion we came to was that although the act is working well for most youth, particular elements of the act need to be strengthened to ensure that youth who commit serious, violent, or repeat offences are held accountable with sentences and other measures that are proportionate to the severity of the crime and the degree of responsibility of the offender.

● (1535)

The proposed reforms address these concerns. The principles of the act will be changed to make the protection of society an explicit objective of the act. Specific deterrents and denunciation will be a part of the sentencing principles. Not only youth who commit violent offences or who have a pattern of findings of guilt will be eligible for a custodial sentence, but also those who have a pattern of extrajudicial sanctions.

The meaning of "violent offence" will be expanded to include offences in the commission of which a young person causes, attempts to cause, or threatens to cause bodily harm, including endangering the public. To ensure that adult sentences are imposed in appropriate cases in which the youth has been convicted of committing a serious, violent offence—which is defined in the bill as first- or second-degree murder, attempting to commit murder, manslaughter, or aggravated sexual assault—the prosecution will be required to consider seeking an adult sentence and to advise the court if they choose not to apply for an adult sentence. The provinces will have the ability to continue to set the age for the requirements at 14, 15, or 16.

Changes will also be made to publication provisions. In addition to retaining the current lifting of the publication ban when an adult sentence is imposed on a youth, the new law would require judges to consider lifting the publication bans for all convictions of violent offences for which youth sentences are imposed.

Also, there will be a requirement that records be kept when extrajudicial measures are used by law enforcement. Keeping these records will make it easier to find patterns of reoffending, which ties in with the amendment to the sentencing provisions with regard to extrajudicial sanctions.

A further change is related to youth serving custodial sentences. The bill makes it clear that no young person under 18 will be placed in custody with hardened criminals in an adult institution. Youth can, however, be transferred to an adult facility, of course, when they become adults. All young people under 18 will serve any custody portion of their sentence in youth facilities, separate from adult offenders.

In addition to the feedback provided through consultation with stakeholders, decisions of the courts were also a critical factor in developing Bill C-4. Of particular importance are the amendments that respond to the Supreme Court of Canada's decision in Regina v. D.B., remove the presumptive offence provisions, and clarify the test and onus requirements related to adult sentences.

In May 2008 the Supreme Court of Canada ruled that certain provisions of the Youth Criminal Justice Act violated section 7 of the charter. These provisions placed an onus on young persons found guilty of presumptive offences to justify receiving a youth rather than an adult sentence, and to justify the continued protection of their privacy. The amendments we are proposing will remove the presumptive offence provisions from the Youth Criminal Justice Act, as well as other inoperative sections.

The act will also be changed to clarify the test for the imposition of an adult sentence and to ensure the onus is on the crown to satisfy the court as to the appropriateness of an adult sentence. Amendments are also being proposed to ensure that the youth sentence calculation provisions are applied when a young person who has reached adult age is serving a youth sentence in an adult correctional facility.

In conclusion, the reforms in this bill are based on a mixture of what was heard across the country: consultations, decisions of the courts, and the views of Canadians with an interest in these issues, which were expressed either in written submissions or in discussion with me and others. These amendments will support and improve a fair and effective youth justice system for this country and result in a youth justice system that holds youth accountable for their criminal misconduct and promotes their rehabilitation and reintegration into society in order to promote the protection of the public.

Thank you.

● (1540)

The Chair: Thank you, Minister.

We'll move to questions. Just before we do, I'm assuming, Mr. Murphy, that you're going first?

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Yes, Chair.

The Chair: Minister, I believe Mr. Murphy, through the clerk, has provided your office with a list of questions. Did you receive them?

Hon. Rob Nicholson: Yes, sir, I did.

The Chair: All right. Thank you.

Go ahead, Mr. Murphy, for seven minutes.

Mr. Brian Murphy: Thanks.

I didn't mean to do anything other than try to be very precise on what I intend to ask for, and to put committee members on warning that if we don't get some answers to these questions—not all today, of course, but in time—that I intend to bring a motion in that regard.

To be precise, and just by way of background too, those are the six questions I'd like some answers to. I'll go through them as I can.

Thank you for coming here today.

I'm a little concerned, to start off, Mr. Minister, on the timelines here. In May 2008 to August 2008 you had your hearings. You went to every province and territory. I'm assuming you went to one place in each of those places, but that's part of my questioning, to figure if you went to multiple places within a province or territory. It looks to me—this is a question right off the bat—that the report was actually prepared on March 5, 2009. There's a date at the bottom, yet you don't refer to that report being dated March 5, 2009, in your covering letter to Mr. Fast.

That's my first question: was that report actually prepared on March 5, 2009? If so, why did we have to go through the trouble of bringing a motion on June 17, 2010, and wait for an appearance in December 2010? Mr. Minister, I know that the other place there, the chamber, is full of rhetoric sometimes, and I know that everybody gets a little flourish of purple prose, but you've often used the moniker of delay for us. One might say that there's a bit of delay here. If the hearings were finished in August 2008, the report may have been prepared—it looks as though it was—in March 2009. We asked for it in June 2010, and we're just talking about some specific answers in December 2010.

Was it actually prepared in March 2009?

Hon. Rob Nicholson: I'll have to get back to you on that exactly what date or month.

You're quite correct in saying I had hearings starting in May 2008, including 2008 as well, but that was only part of it to me. The department solicited input on this. We studied the Supreme Court of Canada's decision. We looked very carefully at the Nunn report. Again, this information was just for the purposes of compiling and putting together the legislation. It wasn't intended to be a bestseller; it was intended to assist us at the department in putting together the legislation. This legislation is the result of that.

Mr. Brian Murphy: Since it's not clear what the March 5, 2009, date means, I might skip down.

This should be a fairly easy question: were the people who attended these round tables actually given a copy of this report that was sent to Mr. Fast? That's a yes or no, I would think.

Hon. Rob Nicholson: No, they weren't. Again, this report was to inform the policy development within the Department of Justice, but if you think this has widespread interest and is—I hesitate to use the word—a bestseller, we'd take that into consideration.

● (1545)

Mr. Brian Murphy: If that's meant to be sarcastic and rhetorical, I appreciate that's the world I think in, and that's fine, but yes, we do think it's important to this committee. Mr. Del Mastro stood in the House today and said he'd give all the material on Bill C-32 to the committee studying it. We're studying an important bill that you want passed; we want to know the answers to all these questions.

I won't ask for the answers to these questions. I'll ask if you see any trouble in answering questions one, two, and three. Those are basically the nuts and bolts of it: who attended? When did these meetings occur? Could you provide us with the materials they saw? It's a very opportune time. If the department can amass all that stuff, we can all spend the Christmas break reading it and come back better informed to pass the bill that you want so diligently passed, but which you've been sitting on the round table results from for Conservatively two years, Liberally two and half years—NDP, I don't know.

Voices: Oh, oh!

Hon. Rob Nicholson: Thank you.

First of all, in answer to number one, we commenced our hearings in Vancouver, British Columbia, in May of 2008. I went from there to Edmonton, Regina, Winnipeg, Halifax, Montreal, Toronto, St. John's, Charlottetown, Moncton, Nunavut, Yellowknife, and Whitehorse, and I concluded on August 22, 2008.

Who attended those? I invited provincial and territorial ministers to join me in hosting those consultations in each province and territory. For the most part those individuals were able to comply, but not in all cases. Participants represented the judiciary; prosecutors; defence counsel; legal aid; police; RCMP; academics; non-governmental organizations; researchers; psychologists; child advocates; children and mental health program specialists; youth justice programs; and municipal, provincial, and territorial officials.

There was no requirement that the participants provide any written materials. For the most part, they came to discuss their experiences with the youth justice system. They made their suggestions as to what should be changed or should not be changed, but it was a discussion between us.

Again, the report you have before you is a compilation of the results and input we received.

Mr. Brian Murphy: It's nice to repeat your covering letter, but are you going to provide us with the names of the people who went and any briefing material they supplied, as well as dates and locations?

It seems pretty straightforward. Why wouldn't you do that? I want a straight answer to that.

Hon. Rob Nicholson: I have no problem.

Mr. Brian Murphy: Okay.

Hon. Rob Nicholson: If it helps you to know the names of the people—

Mr. Brian Murphy: It would sell it for me.

Hon. Rob Nicholson: You can have anything we've got, anything to expedite the discussion and passage of this bill.

Mr. Brian Murphy: Well, you buy the first two and a half years and I'll buy the next three months.

What was the cost of the round table exercise?

Hon. Rob Nicholson: It was absorbed within the existing departmental budget, and I have to tell you that I believe it was money well spent.

Mr. Brian Murphy: I might agree with that if I had everything.

What was the amount?

Hon. Rob Nicholson: The associate deputy minister tells me it was approximately $100,000 for the consultations.

Mr. Brian Murphy: Thank you very much, Minister.

The Chair: Thank you.

We'll go to Monsieur Ménard for seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Minister, for the short title of this Act, you chose the name Sébastien.

Young Sébastien Lacasse, a resident of my riding, was very viciously attacked by several youths, only one of whom was under the age of 18, but he was the one who struck the fatal blows that killed young Sébastien. That young man appeared in Youth Court, but he was sentenced as an adult.

Clause 18 of your bill amends section 72 of the Act so that judges may not impose an adult sentence unless there is no reasonable doubt. So you are taking a case that shows that the law works, since the young person was sentenced as an adult. However, a number of people to whom I have spoken who are very familiar with the case in question have told me that under the proposed bill it would be more difficult, if not impossible, for the judge to impose an adult sentence.

What is the idea behind amending a law that is working well and naming it after Sébastien?

● (1550)

[*English*]

Hon. Rob Nicholson: Monsieur Ménard, we have to reflect the decision of the Supreme Court of Canada in R.v. D.B., as you're aware.

Again, if you think we can toughen up any of these sections, any input you have would be quite refreshing. We drafted this very carefully, looking at what the Supreme Court of Canada has to say. As you are aware, we have to respect what the courts say in this country. We had to redraft the section with respect to adult sentences keeping that in mind.

[*Translation*]

Mr. Serge Ménard: Minister, it wasn't the Supreme Court that suggested you name the law after Sébastien.

[*English*]

Hon. Rob Nicholson: I'm sorry. You asked two questions. I thought you were referring to section 72 and the provisions within section 72. Again, these are responses, as the bill is, for a number of reasons, but that's one of the reasons we are drafting it. It is in response to the Supreme Court Canada. It was a decision of the government to call it Sébastian's Law in recognition of this young victim.

[*Translation*]

Mr. Serge Ménard: In any event, you also have the report. I am going to read you a few passages, at page 2:

> Little support for changes to the YCJA at this time: Legislation cannot prevent crime, reduce crime or protect the public. Changing legislation will not change behaviour. The YCJA should not be changed just for the sake of change. There was an overwhelming consensus that the perceived flaws are not in the legislation; the flaws are in the system. The development of the YCJA was described as a long and thoughtful process that came from evidence based research. A sensible and defensible Act based on intelligent principles. Any changes should be evidence-based and made following the same thoughtful process.
>
> It was noted that the YCJA is only five years old and it needs "time to take root". The effectiveness has to be communicated to the public, who, to this point, have not been very well informed. In recognizing that the YCJA is complex legislation that deals with complex issues, the message was clear it should not be amended based on individual cases or stories.

Is that a good summary, in the introduction, of the complaints made to you during your ministerial consultations?

[*English*]

Hon. Rob Nicholson: I don't think that's complete, Mr. Ménard. If you went on, you would see that the report says that there was much discussion, for instance, regarding repeat and violent offenders, which leads some to think that the YCJA needed to be amended to strengthen the notion of public safety. I heard in British Columbia that "British Columbia expressed frustration with chronic property offenders and finding a better way of delineating between young people..." and that "All agreed that prolific offenders are a small percentage but the Province needs to have a strategy to deal with them."

In Saskatchewan, there was "concern expressed regarding the practice of gangs using and recruiting young people for more serious crime." I heard, for instance, that "Many talk about having to stop that 'out of control' young person and detention was sometimes the only way to protect the public." I heard a wide range of comments.

Again, as I said in my opening remarks, for the most part the law works well, but for a small number of out-of-control—and, many times, violent—youth, some changes had to be made. A number of these were highlighted, as you know, in the Nunn report out of Nova Scotia.

Again, we are required to respond to the Supreme Court of Canada decision. All of these came together, and you have the legislation that is before you today.

[*Translation*]

Mr. Serge Ménard: I was actually expecting you to refer to the comments you received from various quarters, in a province that is probably isolated. However, when I look at the entire document and the summary done by the people who accompanied you in the ministerial consultations, I get a different picture. At page 3, for example, they say:

> The restorative justice approach is seen as a very positive element along with extrajudicial measures. Despite the fact that the legislation is considered very complex, it was referred to as being "as good as it is going to get"; "a damn good piece of legislation."
>
> Jurisdictions agreed there could be some minor "tweaking" of the YCJA, but the flaws are in the system, not the legislation. The YCJA itself is not the challenge; it is the dialogue that happens in the public. The public perception of public safety, whether real or perceived, will not change with amendments to the YCJA. Changing the YCJA will not change behaviour. If changes must be made to the YCJA, they should only be made slowly and as a result of a more comprehensive review.

I could continue reading pages as they have been submitted to us here. You are justifying this bill based on the consultations you conducted on the street, where people told you how bad the law is. But the report specifically states that it is misunderstood because the public is poorly informed.

What are you doing to better inform the public? Why aren't you moving slowly...

The Chair: Mr. Ménard...

Mr. Serge Ménard: ...and doing a comprehensive review?

● (1555)

[*English*]

The Chair: Monsieur Ménard, thank you.

Hon. Rob Nicholson: Well, you referred to page 3 of that, and from page 3 there was much discussion regarding repeat and violent offenders, which leaves some to think that the YCJA needed to be amended to strengthen the notion of public safety.

Ultimately, Mr. Chairman, the responsibility falls on those who are in government and who have a look at this to demonstrate leadership. There's not always a complete consensus on all of these, and while I indicated when I introduced this bill to Parliament that for the most part the system works well and that there are many wonderful parts in the youth criminal justice system in this country, changes needed to be made, and we're prepared to bring them forward. The cross-country tour I took consulting with people on the Youth Criminal Justice Act was one part of it.

Of course, there are people who made submissions to me, to the department, to my colleagues, and, I'm sure, to you, suggesting changes that they wanted or offering comments, criticism, or compliments with respect to the existing system. We have the Nunn report, which is one of the seminal studies in this particular area, and as I indicated to you earlier, when sections are struck down or there are comments by the Supreme Court of Canada, we are under an obligation to respond.

They all come together, but ultimately it comes down to leadership and moving forward and improving the criminal justice system of this country.

The Chair: Thank you.

Mr. Comartin, you have seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair, and thank you, Minister and Mr. Piragoff, for being here.

I'm having the same frustration as Mr. Ménard, Mr. Minister. The report is 19 pages long. Any objective reading of this report is summarized in the first heading on page 1: “Little support for changes to the YCJA at this time”.

I've read it all—a couple of times, actually. Other than some comments by the police.... Quite frankly, their concern was addressed by the proposed amendments from the three prosecutors we heard from, which aren't in the bill. Justice Nunn's recommendations, generally, are also not in the bill, including the key one about dealing with that hard core, that 1% to 3% or maybe, at a maximum, 5% of really difficult youth offenders. We had the three prosecutors proposing amendments in three specific areas, for part of which Justice Nunn was supportive. You don't have these in the bill, and I'm not hearing anything from the government suggesting that you're prepared to move amendments in that regard.

Let me just finish. I actually have a question; those were more in the way of comments.

Who actually wrote this report?

Hon. Rob Nicholson: An independent contractor put this together for us.

Mr. Joe Comartin: Can I assume that this person attended all of these sessions?

Hon. Rob Nicholson: Yes.

Mr. Joe Comartin: Did they have the opportunity to review whatever written briefs you got at that time?

● (1600)

Hon. Rob Nicholson: They had everything, yes.

Mr. Joe Comartin: This person would have applied, I'm assuming, an objective analysis of all of the information they received from the experts in the field.

Hon. Rob Nicholson: I think that's pretty reasonable.

Mr. Joe Comartin: Okay.

I think I will make it a question: I just don't know how you could have come up with this bill after getting this report.

Hon. Rob Nicholson: Again—

Mr. Joe Comartin: Let me deal specifically with the issue of specific deterrence. As far as I can see, it's not even in here at any point. They certainly were very negative on any general deterrence, but there are no comments on specific deterrence. How did it end up in the bill?

Hon. Rob Nicholson: This isn't the only.... I've been trying to make it clear to you that this is a result of those discussions. We have other input into legislation, so I'm again going to tell you that I don't want you to get the impression that those meetings I had from May through August 2008 completely comprise the four corners of this bill. They don't. I have to take into consideration what the Supreme Court of Canada is saying; I have to say what the Nunn report says; I have to take into account the representations that are made directly to the department. As well, I had a federal-provincial meeting with provincial and territorial justice ministers to get their comments.

That said, I'm looking forward to whatever report you make in this committee. I'm looking forward to seeing any suggestions you have with respect to this bill. I know you have other witnesses you're going to hear after me, and I look forward to hearing what they have to say and any comments that you make in your report.

Mr. Joe Comartin: Just so I'm clear—and I believe this is true of the other members of the committee on both sides of the table—obviously we are all supportive of the amendments that flow out of the Supreme Court of Canada decision. Even if we don't agree with them, we know they have to be in the bill. Clearly there's support from everybody on this committee with regard to not holding youth in adult agencies or custodial positions. Those provisions are there. I'll just make that as a comment.

To pursue this, though, I'd like to go back to the recommendations of the prosecutors. Have you seen those proposed amendments from the testimony they gave here that they followed up with written recommendations?

Hon. Rob Nicholson: The issues have been discussed with them, but they have not given us any written proposals as to which amendments they would like.

The Chair: You have two and a half minutes.

Mr. Joe Comartin: I've got a question, because we did get correspondence from the prosecutors after they testified. Your—

Hon. Rob Nicholson: We will continue to look at anything that happens at this committee, Mr. Comartin, but you have custody of this bill at the moment, and I look forward to any report or any recommendations you happen to make.

Mr. Joe Comartin: I'm not going to let you off the hook that easily, Mr. Minister. It's still ultimately your bill and your department.

Hon. Rob Nicholson: I appreciate that.

Mr. Joe Comartin: I want to stick with the prosecutors. They were very clear. They work in this area for their department all the time. These are the problem youth they're dealing with. These are the three specific issues they addressed. I'm sorry I don't have the amendments here, but in each case they were very specific in both their testimony and the written material we got from them.

Hon. Rob Nicholson: They didn't give it to us. If you have specific amendments they are recommending, we would be glad to have a look at them, Mr. Comartin.

Mr. Joe Comartin: We will pass those on to you.

I have no further questions, Mr. Chair. Thank you.

The Chair: Thank you, Mr. Comartin.

We'll move on to Mrs. Glover for seven minutes.

Mrs. Shelly Glover (Saint Boniface, CPC): Thank you, Mr. Chair.

Minister, I'm truly pleased to be here because I have some experience I'd like to share with you, if you'll allow me. Before becoming a member of Parliament, I was a police officer, and it was my pleasure to have been chosen by the chief of police in Winnipeg to be one of the trainers for the YCJA when it became legislation.

As a result, I was heavily involved with crown attorneys, etc., who were involved in putting forward the Youth Criminal Justice Act in our province. They had to make some decisions based on the guidelines as to waiver forms and those kinds of things. I was pleased to have been consulted on a number of facets of the Youth Criminal Justice Act. I must say that as I trained the police officers of the Winnipeg Police Service, it became very apparent to me that this was a piece of legislation that was going to cause us an enormous number of problems with our youth.

We could see from the beginning that our youth were about to fall through the cracks, that the paperwork was going to be horrendous, that our youth were not going to be served, and that they were going to be exploited by adults who saw the Youth Criminal Justice Act as a tool to use our children to commit serious offences for which they themselves would suffer serious penalties. Under the Youth Criminal Justice Act, they could use children to commit these offences, knowing very well there were no deterrents, no denunciation, and no penalty. Unfortunately, our predictions came true.

I have to say that as a police officer who had to use the Youth Criminal Justice Act, this is probably one of the worst pieces of legislation I had to deal with in my tenure.

I'm going back, so I'm pleased as a member of Parliament to add to this discussion, because I hope to go back with some tools I can use to protect our kids—all our kids—because some of the kids involved in the criminal justice system are not there willingly. They are there because they have been exploited.

I want to share with you exactly what happened when the warnings, caution, and referral program came into play under the Youth Criminal Justice Act. I would arrest a child for drugs. The Youth Criminal Justice Act said I must now warn. Have you ever seen a warn demonstrated, sir?

● (1605)

Hon. Rob Nicholson: A warn?

Mrs. Shelly Glover: A warn. This is what I do when I arrest a youth for drugs. This is a warn under the Youth Criminal Justice Act.

Hon. Rob Nicholson: Okay, go ahead.

Mrs. Shelly Glover: Give me your drugs. I'm taking you home. Don't do that again.

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Are you sure?

Mrs. Shelly Glover: That's it. If you want to see a caution, this is it: give me your drugs; I'm taking you home, and I'm now going to write down, "Don't do that again."

I'll tell you that it broke my heart. I knew these kids were about to be mules. That's what happened. We had a trend of adult criminals taking vulnerable kids off the street and saying to them, "I'll give you $50 if you go into Safeway and steal a tube of toothpaste." The poor vulnerable child, who may not have eaten for two days, does exactly that and gets $50, which is an enormous amount of money for these children.

Then this criminal would tell this child, "It's $50 if you come with me into that house; we're going to steal a tube of toothpaste." That would happen. Then it would be, "It's $50 more if you go by yourself. It's $100 if you deliver this package." Now the kid is a drug dealer.

Under the Youth Criminal Justice Act, every time I was catching this kid with drugs, there was no punishment. There was no deterrence for that youth. There was nothing. It convinced many of these youths to proceed. My heart was breaking for them, but we continued to do our part, as police officers do, because we were the enforcers.

I have to turn to Sébastien's Law. I recently was in court with neighbours from my childhood. Their son was murdered. Their son was murdered by a 17-year-old. Two months after being charged with the offence, he was released on bail, and at the age of 18 he proceeded to almost stab someone else to death.

I ask you, Minister, what would have happened to that 17-year-old accused if Sébastien's Law had been in place at that time. What would have happened if it was a youth who had a previous criminal record and who had now allegedly murdered another person? Would he have been out in two months, or would the strict bail conditions you're proposing have potentially saved the next person, who almost died, from being injured?

Hon. Rob Nicholson: As you know, there are bail provisions with respect to serious offences, and that is one of the changes we are bringing about in this bill. The bill strives to make youth accountable for their own actions. That has been very clear in this legislation.

If there are others—and you gave the example of adults who are participating in this criminal activity—there are existing provisions within the Criminal Code. They can and should be charged as well for their part in exploiting young people in this country.

The bill you have before you addresses a number of concerns you have raised. You're a good one to raise them, quite frankly; you have the experience in this area, and let me welcome you to this committee today. I know of your interest in this and I know of your expertise. You have been great in giving us input with respect to our justice legislation, and not just in this area, but in other aspects of legislation in the criminal justice area. I've found your expertise and advice have been invaluable since you have become a member of Parliament. I'm very appreciative of that.

The bill we have before you is targeted. It's specific. Again, I heard that in Manitoba. I heard people tell me they wanted to make sure the public was protected and that protection of the public would be one of the elements that would be part of the legislation. We have been only too pleased to be able to comply with that and to raise the protection of the public and innocent individuals under the Youth Criminal Justice Act, as well as to get help to young people who need help.

Thank you. Again, I appreciate your input on this.

● (1610)

The Chair: Thank you.

We'll move to Ms. Jennings for five minutes.

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

To come back to the three points, I wish to ensure that the questions submitted by my colleague, Mr. Brian Murphy, will be answered. I wish to ensure that each point will be answered in writing to this committee, and in short order.

Is that correct?

Hon. Rob Nicholson: That is correct, Madam Jennings.

Hon. Marlene Jennings: Thank you.

On the issue of the report, which is why you're here today, Minister—and I thank you for your presence—the quotes cited by Mr. Ménard and Mr. Comartin come from this report. This report purports to be an accurate reflection of what was heard in those consultations, which took place from May 2008 to August 2008, to repeat the dates you gave us.

The last two sentences on page 1 of the report read as follows:

> Legislation cannot prevent crime, reduce crime or protect the public. Changing legislation will not change behaviour. The YCJA should not be changed just for the sake of change.

Here's the kicker:

> There was an overwhelming consensus that the perceived flaws are not in the legislation; the flaws are in the system.

That's not me talking. That's not Mr. Ménard talking. That's not Mr. Comartin talking. That's the report, which purports to accurately reflect what was heard in those consultations in every single province and territory with all of the participants, the group of participants you mentioned. Without giving the actual names of organizations and individuals, this report says:

> There was an overwhelming consensus that the perceived flaws are not in the legislation; the flaws are in the system.

That's one point I wish to make.

A second point I wish to make is that I take note of Ms. Glover's recounting of her experience as an officer in the City of Winnipeg police force required to deal with the Youth Criminal Justice Act. I wish to say that if one speaks to the police, whether they are the municipal police forces of Quebec or the current provincial police forces of Quebec, that would not be the experience they have when they arrest and find youth with soft drugs. It's not, “Give me the drugs. I'm going to drive you home. Please don't do that again.” That's not the case.

Why is it not the case? It's because the Province of Quebec, with the previous youth offender act, actually put into place a whole system of prevention—a system of working with children and families at risk and working with the social services program, the health programs, and law enforcement—so that when the Youth Criminal Justice Act came into effect, we already had the outside services that the overwhelming majority of the participants, from my reading of this report, said were needed. The problem was that the resources did not flow to where they should have in order to ensure that this legislation was effective—that is, to family services, to child protection, and to health programs. The resources were not there.

In Quebec they're straining, but the resources have been put in place and the programs are there. Maybe there aren't as many as we'd like, but police officers will not say and do what Ms. Glover described was being done in Winnipeg, and I'm thankful for that.

● (1615)

Hon. Rob Nicholson: Okay. You did read part of the report, Madam Jennings—

Hon. Marlene Jennings: I read all of the report several times—

Hon. Rob Nicholson: Okay, thank you.

Go ahead, then.

Hon. Marlene Jennings: I just wish to clarify: I read all of the report several times.

The Chair: We have half a minute for a response.

Hon. Rob Nicholson: You did quote a number of things from the first part of the report.

As with a novel, for instance, you can't just read the first page or the first chapter; you have to read it all. If you had continued to read, you would have seen the report state on page 3:

> There was much discussion regarding repeat and violent offenders, which lead some to think the YCJA needed to be amended to strengthen the notion of public safety and to reflect the public concern regarding youth crime and crime sprees.

Again, on page 4—

Hon. Marlene Jennings: Tell me what page and paragraph that is.

Hon. Rob Nicholson: —the report reads:

> The criteria for detaining a young person was much debated with many suggesting that the YCJA should be changed to previous findings of failure to comply....

On the next page it states:

> Participants in all jurisdictions were clear that Canada must have a distinct and separate justice system for youth than for adults.

The Chair: We have a point of order.

Hon. Rob Nicholson: I can't quote—?

[*Translation*]

Mr. Serge Ménard: Does the Minister...

[*English*]

Hon. Rob Nicholson: If that's the ruling, I will comply with that.

[*Translation*]

Mr. Serge Ménard: When the Minister quotes the report, could he do as we do and indicate the page where the passage he is reading appears?

[*English*]

The Chair: Minister—

Hon. Rob Nicholson: It's page 3. I said that.

The Chair: All right. He did say page 3.

Hon. Rob Nicholson: The first paragraph—

The Chair: All right. We're out of time.

Hon. Marlene Jennings: Thank you.

The Chair: We're going to go to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): That's unfortunate, Minister. I like listening to you, because you know exactly what to bring up to outrage us. That is exactly what you are doing, and it's quite brilliant.

It's unfortunate that my colleague Ms. Glover has not read the report. If she had read it, she would have seen that the reality she says she has witnessed in Manitoba—I'm not there myself, but she is —doesn't correspond at all to what I have read.

There is a lot of talk about aboriginal people, for example. There is a lot of talk about difficulties and violent crimes. But you can't take an isolated paragraph as you are doing, Minister. You have to read the entire thing.

For example, the report says: "Concern was expressed at the over-representation of Aboriginal youth in the youth justice system." It's bizarre, but I do not see anywhere, anywhere at all, where Ms. Glover got the information she gave in her speech.

I listened to you and you said that the people who were there, in your ministerial consultations throughout Canada, are the people who are involved in administering the Act on a daily basis. They you talk about "consistent messages from all provinces and territories" and "[l]ittle support for changes to the YCJA at this time". I am not the one saying this; it is written in the report.

There is an entire section entitled "Need a strong social safety net to support implementation of the YCJA". That is the product of your consultations, Minister. There is another one entitled "Support for review of the pre-trial detention provisions". You like that. There are interesting tidbits. Farther on, it says, and listen carefully, because I stress this: "No support for introducing deterrence as a sentencing principle". I am not the one saying this. Wow, Minister!

It also says that "[p]rogramming is critical to YCJA's effectiveness" and there is a "[s]ummary of other messages". You have to read the entire report. I have read it three times, and just in case, by some misfortune, the English version isn't the right one, I read it in French and English. I can assure you that this report does not provide support for your bill.

I will ask you my question. Why, even though I know you don't like it, did you not model it on the situation in Quebec, which has had phenomenal success, as we can see throughout the report, in rehabilitating young offenders? Why tear something down that is working so well? Everyone is asking you not to touch this Act. Give it time to mature. Five years is too short. The judges are the ones telling you this, Minister.

● (1620)

[*English*]

Hon. Rob Nicholson: Thank you.

You said I was taking selective quotes from the report. I was responding to selective quotes that Madam Jennings made. I thought that was a fair comment and that I could perhaps quote from it as well.

Now, you made comments specifically with respect to Ms. Glover. Ms. Glover is an expert. She is somebody I value, and she is a value to this country in terms of what she has done and what she has stood for in this area.

You did mention Manitoba specifically, so I will read from page 8. Under “Manitoba”, it says:

> This roundtable highlighted the severe problem of car theft in the Province. The public perception is these young people are out of control and are not held accountable. A concern was raised that the protection of the public has taken a back seat to rehabilitation.

And it continues. That is directly from the report.

Mr. Marc Lemay: Okay—

Hon. Rob Nicholson: Oh, I guess I can't answer.

[*Translation*]

Mr. Marc Lemay: No, no, no, Minister, read...

[*English*]

Hon. Rob Nicholson: No, you go ahead, Mr. Lemay. I don't want to be taking up all the time with answers.

[*Translation*]

Mr. Marc Lemay: No. Read the rest. That's the problem. I agree with what you are saying, but you have to read the rest. It goes like this:

> Strong suggestions to look at evidence-based policy and research on what works.

[*English*]

The Chair: Thank you. Mr. Lemay is out of time, unfortunately.

[*Translation*]

Mr. Marc Lemay: There we are, Minister.

[*English*]

The Chair: We'll move to Ms. Glover again, for a second question.

[*Translation*]

Mr. Marc Lemay: Thank you.

[*English*]

Mrs. Shelly Glover: Thank you, Mr. Chair. I know I only have a short period of time, but I have so much to say.

With regard to Ms. Jennings' comment, she obviously doesn't understand what a "warn, caution, and referral" is, because it's not an arrest. There is a very lengthy process involved. I was just describing what we do when we warn and we caution.

It is very frustrating for police officers to have to use the Youth Criminal Justice Act, because it takes, on average, approximately six to eight hours to process a youth. Under the Youth Criminal Justice Act they put in many different layers of process, including a youth waiver form that's two full pages, which you have to go through with the youth over and over again. It takes an enormous amount of time. The youths feel as if they are being subjected to too much pressure in the room. Frankly, it's not helping them.

I want to clarify for the record that it takes about six to eight hours. We don't have six to eight hours for me to do a whole arrest here, but when you warn or caution a youth, no one—neither the judiciary nor the government—has the right to tell the parent to go to any kind of reform. We can't tell them to go to the services. We can recommend; we give them the list of resources, but under a warn and a caution, there is nothing to force those children into any kind of helpful program.

It's not only that: YCJA said every province would create programs, but in my province no programs were created several years into this YCJA, so police officers were left not having anywhere to refer them to. As well, don't forget that this government decided to increase the social transfer payments to the provinces by 3% every year. I think we're at a 30% increase now. If there are no programs, we ought to be asking the provinces about that.

I want to come back to the report. Mr. Lemay is wrong. All those kids that I took those drugs from, that I exploited, are my aboriginal youths, my vulnerable kids who ended up in jail because they were exploited by criminals, and that is wrong. That is why the Youth Criminal Justice Act is a huge failure: those aboriginal kids would never have been exploited had we had deterrence, denunciation, and public safety as the priorities.

It says exactly what you said, sir. It says, "Concern was expressed at the over-representation of Aboriginal youth in the youth justice system" because they were exploited under the Youth Criminal Justice Act.

In any event, I want to go back to Paul Cherewick and the murder of my neighbour. Public safety is a huge recommendation, which you cited just recently, minister. When it comes to public safety, the 17-year-old male who was responsible for that murder got bail and then went out and almost murdered another person while on bail. Had public safety been taken into account, do you think that might have been prevented?

● (1625)

Hon. Rob Nicholson: Ms. Glover, I'm very careful about never commenting on any specific case. When you raised the matter with me, I spoke in general terms, which I always do with respect to these.

But I think you made a very good point with respect to aboriginal Canadians, because this report—and we're only getting snapshots of it here—on page 9 of the report says: "Policy and programs need to be culturally sensitive and more recognition has to be given to the involvement of Aboriginal youth at all stages." That is one of the reasons I am supportive of the money this government has allocated for the youth justice fund and for the aboriginal justice strategy, which comes within the purview of the Department of Justice. I have always been a big supporter of it.

While you may be critical of some aspects of what the provinces are doing, I have been very supportive and very complimentary of what the provinces are doing. Unlike what Monsieur Lemay said, I'm very pleased with what the Province of Quebec is doing, and I was very careful in the drafting of this legislation to make sure that we interfered in no way with provincial involvement on these matters. I was very careful at every step of the way on this, because anything that the provinces are doing...and as you have experienced on a day-to-day basis, it's people like you, municipal police forces, and provincial agencies, that are involved with these young people.

Yes, there is support at the federal level. I am pleased that $177 million annually goes to youth services funding from the federal government; I support that. I support it just as I support the increases to the Canada social transfer, because I want that money to get to help young people. Quite apart from the Canada social transfer, I am one of the big supporters of that $177 million going to the provinces, because I want to support their programs in this area.

I'm a big supporter of the aboriginal justice strategy and the specific money that we are putting in for the youth fund. Why? It's because we want to help these people, because I believe we have a better chance of rehabilitating a young person than if somebody is 47, rather than 17. We want them all to lead productive lives in society, but the younger we get them and the younger we give them help....

So I've always been a big fan of the provinces working within their areas of jurisdiction; I've been very supportive. And I've made that point to provincial attorneys general: to the extent that you put programs in place that are sensitive in some cases to aboriginal youth and to others, to the extent that you are sensitive in these areas and that you're putting resources to them....

I've been very supportive, and it's not just a Christmas card I send them or that the government sends them. We're making sure that they get the funds from the federal government, and I think it's money well spent. We put money into helping those young people.

The Chair: Thank you very much. We're at the end of our time, Minister.

Mr. Piragoff, thank you for coming.

Hon. Rob Nicholson: It's always a pleasure, Mr. Chair.

The Chair: We're going to suspend for two minutes as we move to clause-by-clause.

● _____ (Pause) _____

●

● (1630)

The Chair: We'll resume the meeting. We're proceeding to clause-by-clause consideration of Bill C-48, an act to amend the Criminal Code and to make consequential amendments to the National Defence Act.

To assist us we have officials from the Departments of Justice and National Defence. First of all, from Justice we have John Giokas, counsel, criminal law policy section.

Welcome back.

Also we have, from the Department of National Defence, Bruce MacGregor, director of law in military justice policy and research.

Welcome back as well.

You have before you two amendments, LIB-1 and LIB-2, and we'll refer to them as such.

First of all, pursuant to Standing Order 75(1), consideration of clause 1 has been postponed, and we are on clause 2.

Is everyone ready to move forward with clause-by-clause?

Is there any discussion on clause 2?

Mr. Comartin.

Mr. Joe Comartin: I'm sorry; I'm just reading something else, Mr. Chair. That's fine.

The Chair: There are no proposed amendments right now to clause 2.

(Clauses 2 and 3 agreed to)

(Clause 4 agreed to)

(On clause 5)

The Chair: Now we move to clause 5. There are two amendments. We'll move first of all to Liberal amendment 1.

Mr. Murphy, do you want to introduce that?

Mr. Brian Murphy: Thank you, Chair.

Throughout the testimony we were struck I think by the idea that in some cases we would like a judge to have the discretion, as the bill indicates, to go up to 50 years—and I'll talk about first-degree murder first—in terms of parole ineligibility, if there were two murders, say.

I was also struck, however, that the judge would have a choice between 25 and 50 in the case of first degree. It was very telling testimony from a seasoned defence lawyer, and I don't think there was any bias in his remark when he said that given the choice between 25 and 50, in most circumstances a judge is going to choose, under the principle of judicial restraint, the 25. I thought the baby would go out with the bathwater. If we wanted to give judges real discretion, the idea would be to give them something between 25 and 50.

I'm mindful, and I know my friends on the other side are going to say this, that many of the other pieces of testimony—the witnesses for victims in particular—said they would like to keep with the 50. I understand that because they would like to see a longer period before eligibility for parole. My point is this. As legislators, I think we have to be mindful of the fact that the victims' desires may not be met by doing what they're asking you to do. In a case where you know that judicial restraint is going to be used, a judge may use the 25-year period instead of the 50-year period.

I have to come back to what I kept telling you was an example in my community about two police officers in 1974 who were killed, murdered in cold blood, premeditated in the most heinous way, and buried in a shallow grave. I grew up with one of the children. He ended up being an NHL hockey player, and he's a great guy. But my gosh, that was horrible for the community. I would think that the judge, having been given the opportunity, might have used the 50 years. Fine, but in many cases of double murders, and we went through it in our briefs, there are crimes of passion, there are drug-related murders, and it doesn't excuse them for sure, but a judge just may use discretion between 25 and 50 in a certain case. I think it achieves what the government wants to do, which is to give, apparently, judicial discretion on further periods of ineligibility. If this amendment doesn't go through, I think the government will lose what it's trying to do, which is to try to maybe get further periods of ineligibility in cases because judges will use judicial restraint. I guess it all comes down to whether you believe judges will use judicial restraint. I think we heard nothing else but that they would.

That's my pitch, I guess, to the government, because I think I know how this is all going to unfold. The problem I might have is with the responses that I anticipate: if you want this bill to be less powerful—and I suspect you'll hear it—you will vote against my amendment because you know that judges will use judicial restraint. So wait for the speeches, but this is actually an amendment that I think the government should consider.

I don't know how to explain the amendment other than to say that it's 10 to 20, and in some cases 10 to 35, and 25 to 50, and anywhere in between. I certainly didn't draft this. I got a lot of help drafting this, from some of the brightest minds in the Library of Parliament, not me, so I'm fairly convinced that this is the way to write this. It is consistent with what the government bill intends to do, and I'm of course very much in support of it.

Thank you. I'm sorry I went on for so long.

● (1635)

The Chair: Thank you.

We have Monsieur Ménard and then Mr. Dechert.

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: I understand the problem that has been raised by the Liberals very well and I see it the same way. I think we should all see it the same way.

I considered it for at least a good half-hour. It isn't easy to be sure that the bill achieves its goal. Its goal is clear. If there are two murders and the judge has a choice between imposing a 25-year sentence and imposing a 50-year sentence, there is a risk that judges who would like to be able to impose a 35-year or even a 40-year sentence will opt for 25 years rather than 50 years. And that is what the law does now: it offers a choice between a 25-year sentence and a 50-year sentence.

That is also true when we see that a majority of multiple murders are crimes of passion. They are family situations for which there are certainly deep psychological explanations that do not amount to the degree of mental illness that is required in order to absolve the person of responsibility.

We have had two cases of this type in Quebec in the last year. There was the one of a surgeon married to a woman doctor, who apparently made a very good couple. The surgeon, in particular, was very highly regarded in the community. She decided to leave. When she left, he killed the two children. We can clearly see that this was an extreme reaction in passion, or something pathological, even if it is not excusable. In my opinion, a judge would consider imposing a sentence of 25 years to 50 years, and will opt for something closer to 25 years, but might give a little more.

There was also the case of a desperate couple in Lac-Saint-Jean, I think. The parents had tried to get help, from friends, from family, but ultimately they were desperate, probably wrongly, because I think the social security system could have helped them more. In any event, they decided together to kill the entire family. So they amassed enough sedatives for the whole family. They all took them, they went to sleep, and three of them never woke up. The mother woke up in spite of everything. There again, those are crimes of passion. They aren't outlaws. But she stands accused of three murders.

There are generally a lot of degrees in the severity of crimes of passion. I am absolutely convinced that in these cases, judges would probably impose a sentence of only 25 years. But there are degrees between those extreme cases and the case of outlaws like Mom Boucher.

Mom Boucher is lucky because when the person he asked to kill two prison guards went to kill the second, his firearm jammed. So Mom Boucher was sentenced for only one murder. In any event, that doesn't mean that if he was eligible for parole in 25 years he would get it.

When the Liberals explained that, I didn't understand, but now I understand perfectly, like them, that rather than giving judges a choice between imposing a 25-year sentence and imposing a 50-year sentence, let's give them the option of imposing a sentence higher than 25 years, that is, of adding five years or 10 or 15 or even 25 years to the initial 25-year sentence.

● (1640)

I am saying that it takes time, when we read the amendments, to make sure they in fact achieve their objective. It took me a half-hour, but I'm satisfied. I think they do achieve the objective. That is why I am going to vote in favour of this amendment.

[*English*]

The Chair: Thank you. We'll go to Mr. Dechert.

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

First of all, could we perhaps hear the Department of Justice official's views on this amendment?

Mr. John Giokas (Counsel, Criminal Law Policy Section, Department of Justice): I don't have any statements to make about the policy of this bill, but I would point out that it is recognized—and this committee has discussed it—that the circumstances of multiple murderers are quite varied. The criteria that have been imported in Bill C-48 are designed to recognize that the mental state of those who kill, even those who kill more than once, can carry varying degrees of moral culpability and varying degrees of remorse.

The criteria in the bill are designed to militate against the imposition of these kinds of orders, except in the most extreme cases of remorseless serial killers or the type of organized crime killers whom Mr. Ménard has just mentioned. These are people who are unlikely candidates for parole in any event.

I would suggest that the criteria in the bill will limit the number of times a judge will impose such an order. That's a technical matter having to do with the criteria I discussed when I gave my evidence the last time I was here.

As a technical matter—I'm no drafter and I only received this motion a short while before I came to committee—I would point out that if this motion is adopted in the terms in which it is drafted, I see three technical issues, and I wonder whether I could ask the committee for its indulgence while I go through them. It won't take very long.

The first is that it appears to me on the face of it—and I want to say again that I'm no drafter and I have yet to confer with our drafters—when you look at proposed 745.51(1)(b)(i) and (ii), saying in the case of a first-degree murder in proposed subparagraph (i) that the period may not exceed 25 years, and in proposed subparagraph (ii), the case of a second-degree murder, that the period must be at least 10 and not more than 25 years, it's entirely possible on the face that a judge could give one year for a first-degree murder and would have to give ten years for a second-degree murder, on the wording of this.

The very first period of parole ineligibility, for the first murder, would be between 10 and 25 years, depending on whether it was a first- or second-degree murder. If the second murder was a first-degree murder, the judge could conceivably give one year, because it would “not exceed twenty-five years”, according to the wording of proposed subparagraph (i). But if it were a second-degree murder, the judge would be obliged to give ten years as a minimum.

I see that as being an anomaly.

Second, I would point out that the wording of the motion refers to...for example, in proposed paragraph 745.51(1)(b):

> but the period with respect to the conviction that is the subject of sentencing under section 745 is of such duration as the judge deems fit in the circumstances

As I explained the last time, section 745 is mandatory, so the reference to section 745, I would suggest, brings in the mandatory 25-year periods that I discussed when I was here the last time.

In the same way, it seems to me that the same problem arises with respect to proposed subparagraph (ii), because it also mentions "section 745.4". Section 745.4 refers to the period determined by a judge for a second-degree murderer. Section 745.4 says "at the time of the sentencing" in accordance with section 745. So once again section 745.4 imports the mandatory nature of section 745.

Proposed paragraph 745.51(1)(b) says that a second, third, or fourth second-degree murder automatically gets 25 years, but here we're saying that a judge has the discretion to make it between 10 and 25.

The third point I would mention is that if we were to adopt this motion, we would need to make some other amendments to Bill C-48. Clauses 3 and 9 will have to change to give a right of appeal to the crown, because the way they're worded right now, the crown may only appeal the imposition of the order and may not appeal the length of time.

● (1645)

The wording of the appeal provisions for the offence is a little bit different. If the judge is going to make such an order, I'm assuming—and I stand to be corrected—that he or she will want to read a notice to the jury asking for their advice on the length of time. That will require another amendment to clause 4, because the judge will be asking the jury two questions: "Should I make the order, and, if I make the order, how much time should I give?"

As I say, I'm making that assumption about the reading of a notice, but I may be wrong on that.

Let me just say finally that, as I said, I haven't had a chance to talk to the drafters, so I don't want my comments to be taken definitively, but these are my preliminary views based on what I've been able to see on the face of the motion.

Thank you.

The Chair: Thank you.

Mr. Dechert, are there any further comments?

Mr. Bob Dechert: Yes, but first I'd like to ask you a question. You mentioned several times that you haven't had a chance to speak to the drafters yet. Does that mean that at this point in time you can't offer us any potential fixes to these technical issues you've pointed out?

Mr. John Giokas: I can't give you language, but I would suggest that clauses 3, 4, and 9 would need to be amended as well to accommodate this.

Mr. Bob Dechert: Okay.

Then, Mr. Chair, I'd like to say that for three reasons I'm not supporting the amendment.

The first reason is that, as Mr. Giokas pointed out, the bill requires the judges to consider these additional parole ineligibility periods when they're dealing with a remorseless serial killer or a contract killer. Those are the most serious kinds of crimes that are committed in our country. We're seeking to amend public policy and to amend the legislation to reflect that these are the most abhorrent kinds of crimes a person can commit against an individual or victims in our country.

We want to make a case that each life taken is equal, and we feel that the need for public confidence in the criminal justice system requires us to allow the judges to make multiple parole ineligibility periods in cases of remorseless serial killers such as Clifford Olson, Robert Pickton, Russell Williams, and, unfortunately, a few others. These situations aren't going to arise very often, but when they do, the public requires us to deal with these people harshly and to give the judges the ability to impose those kinds of sentences.

As a member of Parliament, I have surveyed my constituents many times on this issue. My constituents tell me consistently that these kinds of sentences are required in those kinds of serious, heinous murders. For that reason, I think it would be irresponsible for us to agree to this amendment.

Third, we've said from the very beginning that our focus here is to address the concerns of victims and their families. We heard from victims. We heard from two of the families of Clifford Olson's victims. This question was put to them, and they said very clearly that they did not agree with that kind of amendment. We asked the same question of the victims' ombudsman, Sue O'Sullivan, who represents all victims in Canada and has canvassed many victims for their views on this proposed legislation. She's a career police officer, and she said she also did not support such an amendment.

For those reasons, I would encourage the members of this committee to vote against this amendment.

Thank you.

● (1650)

The Chair: Mr. Rathgeber is next.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Mr. Chair, first I have a question. I don't know if I should address it to Mr. Giokas or to Mr. Murphy.

I'm having difficulty with the drafting of his amendment, specifically with proposed subparagraph 745.51(1)(b)(i). Section 745.51 is long to begin with, but when you get to the additions, it is proposed that lines 35 and 37 be deleted, and then there are the additions of paragraphs 745.51(1)(a) and 745.51(1)(b), and then subparagraphs 745.51(1)(b)(i) and 745.51(1)(b)(ii). It's subparagraph 745.51(1)(b)(i) that causes me great concern.

Mr. Murphy acknowledged that this was written by draftspersons smarter than he is, and they must be a lot smarter than I am, because when I read to the bottom of subparagraph 745.51(1)(b)(i), I'm left with the indelible impression that the maximum parole ineligibility cannot exceed 25 years. Where am I wrong?

Mr. Brian Murphy: Just briefly, it's goes up to paragraph (b) where they talk about the conviction that is the subject of the sentencing, so it is the second.... If this is first-degree murder—in subparagraph (i), it's a first-degree murder conviction—the first one is an automatic 25-year ineligibility. The one that is the "subject of" is the subsequent one, so in other words it cannot exceed 50 years; it cannot exceed 25 years. It's a single sentencing, or ineligibility, so it could be between 25 and 50. I mean, that's the way I was told....

Here's what I did. I told them what I wanted to do. It would be no surprise to anyone here because I've suggested it a number of times. I wrote it out myself, and it made sense when I wrote it. When it came back it was different, but I understood there were other sections to deal with.

Certainly I'm comfortable with proposed paragraphs (a) and (b) and subparagraphs (i) and (ii). I did not think of clauses 3 and 9, the coordinating amendments, and that's probably my fault. I don't agree with Mr. Giokas. I asked Mr. Giokas to see if that was possible and he said it wasn't possible. So it's not like he's new to this.

What I'm getting is that for policy reasons you're not going to go for it anyway, so why don't we just put us out of our misery here.

It's a valid attempt, and I tried.

● (1655)

Mr. Brent Rathgeber: No, I don't think that's fair, Mr. Murphy. Technically, I want to know what we're voting on. I do also have some policy concerns. But I do see what you're trying to do. You're trying to give a trier of facts some discretion to go somewhere between zero and 25 years on a subsequent conviction. I think it's admirable that you see some possibility where a judge might not use his discretion to give the additional 25 years when given the choice. You want to allow him to cut it down the middle.

I'm not sure that your drafting persons in the Library of Parliament have done this correctly, and I want to ask the technical experts from Justice. When I read all the way to the bottom of what is now a very long proposed section 745.51, the last sentence is "as long as (i) in the case of a first degree murder conviction, the period does not exceed twenty-five years".

Is Mr. Murphy correct that he is talking about the second murder conviction, or is that a totality sentence of parole ineligibility? Or, as a third option, is there some confusion that a court might interpret it the way I seem to be?

Mr. John Giokas: I want to preface my remarks by saying I'm no draftsman, but proposed section 745.51 talks about making all of the relevant parole ineligibility periods consecutive. Let's not forget that that's all Bill C-48 does. It takes the existing rules in paragraphs 745 (a) and (b), as I've explained, which call for a mandatory 25 years, and it allows the judge to make them consecutive.

In this particular instance we're talking about all of the parole ineligibility periods. But as I mentioned, the reference to section 745 confuses me. The periods in section 745 are mandatory, and proposed paragraph 745.51(1)(b) purports to make them optional as the judge deems fit in the circumstances. I see a contradiction there. As I went on to say in the case of a second murder and a second parole ineligibility period, if this is right, then the judge could theoretically give one year.

Mr. Brent Rathgeber: Mr. Chair, I think we need to consider whether or not this motion is even in order. The bill is aptly named "ending sentence discounts for multiple murderers".

What the government has proposed to do is allow the discretion to a trial judge to give a period of 25 years of parole ineligibility for each and every conviction of first-degree murder.

Mr. Murphy is attempting—and I say this with all deference because I think his amendment is well intentioned—to allow some sort of prorated discount, whereas on a subsequent conviction for first-degree murder, for example, a trier of facts who is so disposed could give half of the 25 years of parole ineligibility, or one year, or 23 years, or anything in between. I think that is a sentencing discount, and I think that is counter to the express objectives of the bill. I'd ask you to consider it out of order.

The Chair: Well, I'm going to rule that it is in order. I have consulted with our clerk and it is in order.

Mr. Brent Rathgeber: That being said, I agree with my friend, Mr. Dechert, that the members of this committee ought to vote against this amendment for the reasons Mr. Dechert explained.

The whole argument that judges will be reluctant to grant an additional 25-year sentence is not only overstated, but we haven't heard any evidence that that's the case. We've heard some speculation from an eminent defence lawyer, but certainly we haven't heard any judges, for example, who came before the committee and opined that they might be reluctant to do it.

This bill is specific to the most heinous of criminals. We all know who they are: Olson, Pickton, Williams.

The cases that have been cited were the crimes of passion, or they're drug deals gone bad where there might be more than one victim. Those situations are covered by the discretion in the unamended bill, where a judge who doesn't want to give consecutive periods of parole ineligibility doesn't have to, but can for the most heinous criminals.

I just want to close and remind all the members of this committee of the very compelling evidence of Ms. Rosenfeldt, who was here on Tuesday, I believe. When specifically asked by my friend, Ms. Jennings, whether she would support an amendment that would allow for something in between zero and 25 years of a consecutive period of parole ineligibility for a multiple murder situation, she unequivocally said no, she would not support that amendment. She supports the bill as written, and so do I.

Thank you, Mr. Chair.

● (1700)

The Chair: Thank you.

Any further discussion?

An hon. member: [*Inaudible—Editor*]

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I won't be intimidated, not at all.

The Chair: Mr. Lee, and then Monsieur Lemay.

Mr. Brian Murphy: I didn't mean to intimidate you.

Mr. Derek Lee: Well, you tried.

Shall I speak quickly or...?

Mr. Brian Murphy: No, please take your time.

Mr. Derek Lee: I also sympathize with the objective that Mr. Murphy is trying to accomplish here.

Mr. Rathgeber feels the same way, but he feels that every one of these multiple murder scenarios is the same. And while I can only agree with him totally that the circumstances he has mentioned are all the most heinous, it's not clear to me that every multiple murder scenario is going to be that way. I think about a recent case—without mentioning any one, so again, generically—where a mother kills her two children. Now, you could say to me that this section provides for this because there is discretion on a judge imposing a second consecutive 25-year period of ineligibility. You hate comparing these kinds of cases because they're all so very sad.

I see the possibility of an unintended impact here that we haven't thought of. We haven't gone through all of the possibilities. So a judge at some point would be crying out for some kind of a way. He has looked at the circumstances and would say that two 25-year consecutive periods were not a very good fit. Then the judge is either going to exercise his discretion to not impose the second one, which might be okay. The alternative is that he or she is looking for some kind of a compromise between the 25 and the 50 just because he or she thinks it's the just thing to do. You might have an entire community—and you think of a small community somewhere—that will say, yes, the judge is right on this one. But the judge would be stuck.

So Mr. Murphy's objective is a good one. The technical drafting issues confront us, and I'm sorry that it isn't easier to accomplish.

I'll stop there.

The Chair: Thank you.

Monsieur Lemay wanted to speak, I believe.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, I will address two points.

Regarding Ms. Rosenfeld, who testified, certainly the bill can unfortunately not apply to her, even if it was enacted at top speed, because Mr. Olson has already been serving his sentence for over 25 years. So clearly he can come back. And in any event, this bill is not retroactive.

However, I admit that Mr. Giokas's comments gave me pause, I have to admit it. Like my colleague Mr. Ménard, I too have studied it carefully. It seemed to me that it might respond to a number of fears, but mainly it responded to the objective... In other words, the judge could—and I would not want to repeat everything said by my colleague Mr. Ménard—impose a "graduated" sentence, under paragraph 745.21(*b*) that it is proposed to add by amendment LIB-1.

To start with, certainly amendment LIB-1, concerning paragraph 745.21(*a*) that it is proposed to add, deals with consecutive sentences, and so the eligibility periods are consecutive.

If I'm not mistaken, Mr. Giokas, it seemed to me that when I interpreted amendment LIB-1 and paragraph 745.21(*a*) and then subparagraphs 745.21(*b*)(i) and (ii) that it proposes to add, it met, or at least it avoided what you pointed out.

I would like to hear you on that question. I may not have understood correctly. However, it seems to me that we have to interpret paragraph 745.21(*a*) of amendment LIB-1 and then subparagraphs 745.21(*b*)(i) and (ii).

● (1705)

Mr. John Giokas: I have to say I'm a little puzzled myself because as I said before, it's the reference to section 745 and subparagraph (*b*)(ii) that confuses me a little.

As you probably know better than I, in section 745, the 25-year period isn't optional; it's something the judge must impose.

Mr. Marc Lemay: Excuse me, Mr. Giokas. Under the decision associated with section 745, it's imprisonment for life.

Mr. John Giokas: There we are.

Mr. Marc Lemay: So it says in the Criminal Code, under section 745, that an eligibility period of 25 years can be imposed. That is the reason, isn't it?

Mr. John Giokas: Yes.

Mr. Marc Lemay: Right. Excuse me for interrupting you.

Mr. John Giokas: As I was saying, it seems to me that there is a contradiction. Paragraph (*b*) refers to section 745 and says it is optional. The length of time referred to in section 745 is 25 years. However, paragraph (*b*) refers to section 745, but at the same time it says that the judge may decide the length.

There may not be any problems. As I said, I'm no drafter, but it's something that leaps to the eye on the face of it, as I said in English.

Mr. Marc Lemay: Thank you, Mr. Giokas.

Out of respect for the committee, Mr. Chair, could we have an overview? Could we not put this over to next Tuesday so we can have more information? Because it's important. I think Mr. Murphy's amendment is good, but I note Mr. Giokas's comments, which also seem to me to be valid. Could we not have a few hours, a few days more? Is it urgent that we adopt this amendment today? Could we not adopt it on Tuesday, so we have the time to look at it properly between now and then?

[*English*]

The Chair: What's the wish of the committee?

Mr. Brian Murphy: I appreciate the sometimes tepid and sometimes strong support I've received around the table, but I really don't think I have any interest in prolonging this.

I was really trying to fix what I saw was a gap, to the benefit of victims. If that's not acceptable, it's fine with me. I'm quite okay with it—that is, with moving ahead.

The Chair: Okay.

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: There is one little comment I often make: poorly drafted laws are often poorly understood and then poorly applied.

[*English*]

The Chair: Okay. We have Liberal amendment number one before us. I will call the question on it.

(Amendment negatived)

The Chair: Now we move to Liberal amendment number two. You should have that in front of you.

Ms. Jennings, do you want to introduce it?

● (1710)

Hon. Marlene Jennings: Yes.

I would like to move this amendment.

This amendment would make it mandatory for the judge, whether he decides to make an order under proposed subsection 745.51(1) or not to make an order under that subsection, to give the reasons for that decision, either orally or in writing. The only thing it changes in the bill is that the bill, as it now stands, only requires a judge to give reasons orally or in writing when the judge makes a decision not to issue parole ineligibility on a second or subsequent first-degree murder conviction—if I can use that as an example—to be served consecutively. So if this bill were adopted, as it's now written, the judge who says that for a second conviction of first-degree murder or a third conviction of third-degree murder, the parole ineligibility of 25 years will be served concurrently, he or she will now have to give the reasons orally or in writing. But if the judge says it will be served consecutively, the way the bill is written now, the judge does not have to do so.

So my amendment simply says, regardless of the judge ordering multiple convictions for first-degree murder and parole ineligibility to be served concurrently or consecutively, in both cases the judge shall give his or her reasons orally or in writing.

The Chair: All right. Is there any further discussion?

Mr. Dechert.

Mr. Bob Dechert: Just briefly, Mr. Chair, I don't believe this amendment is necessary.

My view is that any judge who is going to impose multiple parole ineligibility periods in the neighbourhood of 50 years is going to provide reasons. I don't think we need to tell them that.

But having said that, the opposition is being consistent in proposing amendments that support the rights of criminals rather than the rights of victims, which of course is what this bill is trying to do.

Having said that, I would encourage all members to vote against this amendment.

The Chair: We have Mr. Rathgeber, Mr. Lemay, and then Mr. Ménard.

Mr. Rathgeber first.

Mr. Brent Rathgeber: I'm good.

I had a question for Ms. Jennings, but I think it's been resolved.

The Chair: Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: I support the amendment because it is a decision that can be appealed. So there could be a judge who might say that the judge is required to give reasons, orally or in writing, their decision is not to make an order, but if the judge makes an order, we don't know what they're basing it on, how they're doing it, and bang. That can happen.

So I think we should vote for the amendment.

[*English*]

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: Personally, I support the amendment because it seems to me that the wording of this provision is insulting to judges. We are well aware of this kind of distrust of the judiciary, that the judge has to justify not being harsher. So in my opinion, the amendment restores the balance. Judges have to justify what they do in both cases.

[*English*]

The Chair: Thank you.

Is there anybody else?

Hon. Marlene Jennings: Thank you.

I simply wish to state that given that a conviction can be appealed, and taking note of the statement of the legal counsel of the justice department that, had Mr. Murphy's amendment gone through it would have required amending other sections in order to ensure the crown would have an opportunity to appeal, I find Mr. Dechert's comments offensive. I don't mean offensive to offenders but offensive to our judicial system and to all Canadians. We have a judicial system that is built on the basis that it is better that 99 guilty people go free than one innocent person be convicted. It's based on law and order. I heard that being stated by members of the government.

So to say that bringing this amendment in—which would require a judge to give reasons orally or in writing for either decision that's been made and not just when the decision has been made in one way—is indicative of Liberals again being on the side of criminals rather than Canadians.... I hope to God that no one in his circle of friends ever gets caught up in the justice system, because if they ever do, they will be happy that there are protections for their rights under our Charter of Rights and Freedoms and built into our Criminal Code.

I move that we vote.

● (1715)

The Chair: I can't do that.

Mr. Comartin, and then Mr. Murphy.

Mr. Joe Comartin: It's interesting to listen to the parliamentary secretary. You obviously didn't hear the advocate for victims in this country and the points I've tried to raise on a number of occasions about making absolutely sure that the maximum amount of information goes to victims. This section would guarantee that. I agree, I can't conceive of very many judges who wouldn't, in the circumstances that they were going to apply this law, give written reasons. Quite frankly, if they didn't give written reasons, they would be admonished by the court of appeal for not having given written reasons.

More importantly, setting that technical part aside, the victims will hear very clearly from the judge why this person should get an extra 25 years with no opportunity for parole. That's the reason we should support this section. Government should support it as well.

The Chair: Mr. Murphy, you had one last question.

Mr. Brian Murphy: I'd ask the technical expert. I gather from the documents from the government that there'd be an appeal if the decision were made by the judge not to grant the 25 years.

That's a “yes”, right?

Is there an appeal when the decision is to make the order as well? You know enough about how courts work. Wouldn't it be better to appeal a decision for which there are reasons than for which there's no reason?

Mr. John Giokas: Yes.

Mr. Brian Murphy: Okay. I just wanted to know that.

Wouldn't it therefore be a perfect ground for striking down the law that in one case you said there had to be reasons and in the other case there didn't? This passed a charter opinion. Did you do the charter opinion, or somebody higher up in the DOJ? If you did it, I suppose it did pass.

Mr. John Giokas: No, I didn't do the amendments.

Mr. Brian Murphy: Oh, you didn't. Okay.

The Chair: We're dealing with LIB-2, and I'm going to call the question on that.

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

(Clause 5 as amended agreed to on division)

(Clauses 6 to 11 inclusive agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

Some hon. members: No.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

Some hon. members: On division.

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

Some hon. members: Agreed.

Some hon. members: On division.

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

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Thank you to our witnesses.

The meeting is adjourned

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