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Monday, February 28, 2011

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'll call the meeting to order. This is meeting number 50 of the Standing Committee on Justice and Human Rights. For the record, today is February 28, 2011.

All of you have the agenda before you. We're dealing with two different bills.

First of all, we'll complete clause-by-clause review of Bill C-54, which we started before the break. Once clause-by-clause is completed, we'll continue our review of Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts.

We have with us a number of witnesses.

From the Department of Justice, and standing by to help us, we welcome back Carole Morency, acting general counsel, criminal law policy section, as well as Matthias Villetorte, who is also counsel with the criminal law policy section.

When we last adjourned, we had completed discussion of an amendment to clause 3, which was negatived. We returned to clause 3. There was some debate that took place about clause 3. I'm wondering if there is any further debate on clause 3 before I move to the question.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Are we still doing a vote on each one?

The Chair: I believe we had a discussion that grouping would be permitted. We're going to do a recorded vote, but I understood that after Mr. Petit had raised some objections, he agreed that we could group clauses that aren't contentious—

Mr. Joe Comartin: There are any...?

The Chair: —or clauses upon which there's no desire to have further debate.

Is there any other discussion? We're on clause 3 right now.

Then I'll move to the question: shall clause 3 carry?

(Clause 3 agreed to: yeas 10; nays 1)

The Chair: You'll note that for the next four clauses, there are no proposed amendments; that is, for clauses 4, 5, 6, and 7. Is it your will to group those in one vote?

An hon. member: *Oui*.

The Chair: Seeing no objection, we'll do that, and I'll call the question on clauses 4, 5, 6, and 7. Shall those clauses carry?

(Clause 4 to 7 inclusive agreed to: yeas 10; nays 1)

The Chair: So clauses 4, 5, 6, and 7 carry, and now we move to clause 8.

(On clause 8)

The Chair: We have a Liberal amendment.

Mr. Lee, do you want to present that amendment?

● (1535)

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Mr. Chair, I drafted the amendment because on my reading of paragraph (d) I found the wording arguably too vague, from two perspectives. One was the wording of the code itself, the actual wording of the provision. Secondly, in the hands of a court later, would the wording give rise to other potential ambiguity or vagueness there? I think members would accept that a material vagueness or ambiguity, either in the statute or in the court orders that would flow from it, would undermine the enforcement and the viability of those.

I was looking for greater precision in the order. Right now it reads “using the Internet or other digital network”. When you think about it, there are hundreds and hundreds of digital networks surrounding us. We're probably surrounded by half a dozen now as we sit in this room. Our automobiles are digitally network-connected. Our transportation is. Our heart monitors probably are. Our home burglar alarms are. It goes on and on. Our office communications systems are. Our telephones are. The list can go on.

I just found this much too vague. If a court were to adopt the wording here.... For example, if the court says “I'm ordering that you be prohibited from using the Internet or any other digital network for two years”, what would that mean to an offender when it came to enforcement? It could apply to any digital network.

I'm not saying that a judge is going to do that, but a judge could. If this is the wording of the code, a judge could simply take the wording of the code and use it in an order. We'd have all kinds of potential litigation about what networks should be included and what should not.

My amendment simply adds the words “specified by the court” after the term “digital network”. If an individual is going to be prohibited from using or relying on—even if it involves saving his own life—a digital network, the court must specify which digital networks are going to be prohibited. That's all my little phrase does: it attempts to force the code and the court to be specific and to specify.

The Chair: Thank you, Mr. Lee.

Now, first of all, before we move on with some debate on that, you may have noticed that amendments Liberal-1 and Liberal-3 are linked; they're similar. They deal with a similar issue. Unfortunately, in committee the chair has no authority to group amendments for debating and voting purposes, as the Speaker does at report stage.

Committees consider amendments one at a time and proceed in their examination of the bill from clause to clause. A dilemma exists when an amendment has consequential relationships with other amendments. If the committee is to take consistent decisions on these amendments, the voting on one ought to be linked with the others. The problem is that the clause may not be open yet for discussion.

A practical solution that has been followed by the chair in the past is to make a statement identifying those consequential amendments. What I'm suggesting is that if the first amendment, Liberal-1, is negatived, then the third amendment, Liberal-3, should also be negatived, as the committee has then already decided on the matter. If the first amendment is adopted, then the third amendment will be deemed adopted, as the committee is bound to take consistent decisions.

I need to have some agreement on how we're going to approach that. What is your will?

● (1540)

Mr. Derek Lee: I'm okay with that.

The Chair: Mr. Lee is okay.

Mr. Derek Lee: It's the same concept for both—

The Chair: The Bloc's okay with that. Mr. Comartin's okay. The government is okay with that.

Good, we have agreement on that. We're dealing essentially with LIB-1, but it also impacts LIB-3.

We'll go to Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Yes, thank you, Mr. Chair.

I would just like to ask the department officials for their comment on Mr. Lee's amendment.

The Chair: Ms. Morency.

Ms. Carole Morency (Acting General Counsel, Criminal Law Policy Section, Department of Justice): In response to one of my earlier appearances, I was asked to provide some information to the committee that provided an understanding and a definition of what was meant by the term “Internet or other digital network”. We did provide that information.

From that response, the committee will see that the language does have a consistent meaning and understanding in that it involves a network that is connected to another network for the purpose of communication. That additional part of the term, “other digital network”, was included to ensure that networks that are not based on the TCP, the protocol on which the Internet itself is run, would be caught too.

For example, in the 1990s, bulletin boards were commonly used and frequently accessed by individuals. That network does not run on that TCP, on that protocol, but if the operation of that network results in the same as with the Internet...in other words, if an accused can communicate with another person through that means for the purpose of facilitating their offending conduct, then the intention with this terminology in the bill before you was to catch that.

The suggestion was made that, for example, there are many other networks. I'm not a technical expert on this; I don't think, though, that the digital system that might operate a car in terms of its electronics constitutes a network in that sense. There may be, in a car, a network that communicates outside through communications, as in a phone or something else, but that would be certainly consistent with the terminology you have before you in Bill C-54.

So the language, in terms of specifying by the courts, would it have an impact...? The direction in Bill C-54 is consistent with what's in section 161 of the Criminal Code right now. In other words, it tells the court at the time of sentencing that it must consider imposing a condition. It has language to suggest to the court that it could use; it's not determinative of the issue, though, and a court is always going to be free to use the language there or put on other restrictions that are appropriate in the circumstance.

So if the words were not there, a court could still do it. If the words are there, it's further guidance to the court.

I would note, though, that there is a slight distinction between this amendment and the one under amendment LIB-3. It's because of the framing.... I know that the intention is to be the same, but it's the way the wording appears in amendment LIB-3 and the clause that it is purporting to amend. There is a reference to a court in amendment LIB-3, whereas the offence, the provision itself, is talking about the judge. So there is a distinction there that would technically be inaccurate from a drafting perspective, although I appreciate that the intention is to have consistent treatment.

The Chair: Mr. Dechert.

Mr. Bob Dechert: Ms. Morency, in your opinion, is the amendment that's being suggested here necessary?

Ms. Carole Morency: Well, as I say, I think the courts already take the guidance of what's in section 161 right now, use the language that's there, and tailor it as appropriate in the circumstances. So they're not constrained by the words on the paper. They may be able to go beyond that in the particular case. I would say that it has included the ability to do that, and that the terminology, “Internet and other digital network”, for the purpose of communicating, is also fairly clear.

Mr. Bob Dechert: Thank you.

Mr. Chair, it seems to me that it's a little interesting to note that typically the opposition members are telling us that judges should be given greater discretion and are actually, in most cases, in disagreement with the government's view that there should be mandatory minimum penalties in various parts of the Criminal Code because they feel that the courts properly and validly exercise their discretion on a regular basis. Yet in this particular amendment, it appears that the opposition would like to restrict the court's discretion.

My personal view is that this provision is meant to be part of a penalty that is imposed on a person who has sexually exploited a child. It's clear from the context that any Internet or digital network use that is being referred to as part of the conditional sentence on that individual is meant to refer to use of the Internet or a digital network in a situation that would potentially sexually exploit a child.

I think it's highly unlikely that any court in Canada would say to a convicted offender, "You can't set the security alarm on your home because that's a digital network and we don't want you to use digital networks". It's obvious that the person was convicted because they had in fact sexually exploited a child using the Internet or other digital network, so this is simply a condition that will hopefully prevent them from doing that yet again.

For those reasons, I would urge the committee to reject this amendment.

Thank you.

● (1545)

The Chair: Thank you.

We have Ms. Jennings on the list, and then Mr. Lee again.

Ms. Jennings.

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

Maître, I'd like to know, just for better clarification, given the existing wording in the section of the Criminal Code that we're discussing today through the amendments in Bill C-54, does the amendment that my colleague Mr. Lee is proposing in any way enhance the legislation for the courts and for the judge? Does this make it any clearer, or is it redundant?

As the wording now stands, both in the Criminal Code and in Bill C-54's clause 8, it's worded well enough and is clear enough that it would allow a judge to limit, to specify, and to expand or not expand orders that he or she may issue to an offender in the sentencing. Does this enhance in any way or is it essentially redundant or not needed?

Ms. Carole Morency: I think there's one risk that occurs to me when I look at the language. If a court, at the time of sentencing, has in mind the Internet, we all have a common understanding of what that means, but if there are other networks that we don't turn our minds to because we don't think about them as distinct from the Internet.... In the undertaking, the example given would be a land area network that's just within a close geographic area.

If you don't specify that, then the question is, was the intention for that condition to apply to it? If the court only specifies "the Internet" because they don't know what other networks might exist, is there a bit of an opportunity to lose the benefit of the condition? I think there is a risk.

Hon. Marlene Jennings: What I'm understanding from you is that this particular amendment, which Mr. Lee has presented, does not in any way enhance the authority of the sentencing judge and in fact might cause some unintended consequences should this amendment be adopted by this committee.

Is that correct?

Ms. Carole Morency: That's correct—

Hon. Marlene Jennings: Thank you.

Ms. Carole Morency: —and to the extent that a court wanted to specify, they would not be precluded from specifying with this language.

Hon. Marlene Jennings: Thank you.

The Chair: Mr. Lee.

Mr. Derek Lee: I just wanted to ask a question of Ms. Morency about the content of a judicial order prohibiting the use of a digital network. Right now in section 161, for example, the code refers to prohibiting an offender from "using a computer system within the meaning of...for the purpose of communicating with a person under the age of 16 years." So you have a specific reference to a computer system and to communicating with a person under 16 years.

When we add the new paragraph (d), which I'd like to amend, there's no reference to communicating with a person, any person, and there's no reference to anything, even to communicating. It is simply prohibiting the person from "using the Internet or other digital network". That's the same thing as saying "any digital network". My question to you is that if a judge is asked to do this, is there a risk here that a judge may simply issue a prohibition order using the words of the section, so that the judge's order, the court's order, will read, "You're prohibited from using the Internet or any other digital network"?

If your answer is yes, a judge may do that, my reaction is no, I don't want judges to do that, because we won't be able to enforce that. It doesn't stand a snowball's chance in hell of being enforceable. There's not enough clarity. If we're to prohibit a citizen, albeit a convicted citizen, from using a digital network, I think we ought to know which digital networks he or she is prohibited from using. My question is. will a judge simply adopt the words of the section? Could a judge simply adopt the words of this section in making a prohibition order?

● (1550)

Ms. Carole Morency: Is it possible for a judge to simply adopt the wording of the condition? It is possible, but the condition as proposed by Bill C-54 also says "in accordance with conditions set by the court". So number one, it's built into the condition.

Number two, you're quite right in terms of looking to what's in section 161 right now, which is only a condition against using a computer system for the purpose of communicating with a young person. That condition was added in 2002 when the Internet luring offence was created, because that offence was addressing the use of the means, the computer system, to communicate with a young person.

But what Bill C-54 recognizes is that offenders use the Internet computer systems for all sorts of reasons. Yes, they use it to communicate directly with a young person, and we catch that already, but they use it also to offend, in their offending pattern, whether it's to access child pornography, for example....

So the idea with Bill C-54 is to require a court to turn its mind to this each time it is sentencing a person who is convicted of one of these child sex offences and to consider whether in that instance, with the offender before them, given the nature of the offending pattern and the conduct before the court, there should be a restriction on that individual's access to the Internet or other technology that would otherwise facilitate his or her reoffending.

Courts right now do this as a matter of practice with, for example, probation orders. What the offender may do in that situation, for example, is to say, "I need to have access to the Internet for my job because my job is this...". So the court routinely will build into that. Again, often it's under supervision determined by the probation officer—or they can designate another adult who is aware of the individual's offending history—to ensure there's adequate supervision.

Could more be provided to give greater direction to the court? I guess the concern is that the more specific you are, the greater the risk you might leave something out. The intention was to leave this in the hands of a sentencing court to determine what's appropriate in the circumstances, with submissions by the crown in terms of how you better protect the community from this offender and also by the defence counsel in terms of what's needed in that specific instance.

Mr. Derek Lee: Mr. Chair, thank you very much.

We've had enough discussion on this. I'm only asking for the court to specify which digital networks the person is prohibited from using so he or she will know. If members think that's a bit too specific, fine, but I'll move the motion and members can—

The Chair: I believe Monsieur Ménard wanted to get a comment in.

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I have practised law long enough to know that some judges often make a number of decisions on some kinds of crimes on the same morning. I have to tell you that formulae can be extremely vague. I can easily see situations where a judge would…

● (1555)

[*English*]

The Chair: We're not getting anything through on the English translation. We're not hearing anything. Could you say something...?

[*Translation*]

Mr. Serge Ménard: Usually, I talk too much, but this time it's good, I am talking just enough.

[*English*]

The Chair: We can hear now.

[*Translation*]

Mr. Serge Ménard: So as I was saying, I have practised law for a long time and I have certainly heard lawyers argue enough cases to know that there are times when judges render a huge number of decisions. It can go up to 50 decisions on the same morning. It happens with the chief judge, or the one sitting in his place, the one who gets all the guilty pleas. Sometimes, sadly, the tendency is to use tried and true formulae.

I can see perfectly how the danger that Mr. Lee describes can be real. Judges can issue an order prohibiting the use of the Internet or any other digital network, with nothing further added. That seems to me to be quite a significant danger. In normal life, professional life, we have access to various networks, and if we are afraid that a convicted person will be using some digital networks for pornographic purposes, we should tell the judge that. Then the judge can add to his ruling a prohibition from using the Internet, or such and such other digital network, for certain purposes.

My fear is also that a judge will stop there, meaning that he will go no further than "or other digital network". That forces crown prosecutors—and I see nothing wrong with this—to express their concerns and to specify to the judge the digital networks that the convicted person should not use.

So Ms. Morency's explanations convince me that the expression is too general and, in practical terms, people who want to prohibit things must be obliged to specify what it is they want to prohibit, rather than just allowing prohibitions of an extremely general nature.

So the addition to the bill proposed by the member for Scarborough—Rouge River is a good one, and I plan to vote in favour of it.

[*English*]

The Chair: Thank you.

We'll go to Mr. Comartin.

Mr. Joe Comartin: I must admit I'm not clear, Ms. Morency, from the comments you made on the amendment, whether this is somehow limiting the discretion of the court in the range of penalties they can impose. Mr. Dechert suggested that, but I actually didn't hear you say that.

Can you comment on that? Are we limiting the judicial discretion here on the sentence that could be imposed around the access to this type of communication by the convicted individual?

Ms. Carole Morency: I think my previous answer was that there is a risk that it would be limiting. If the wording was as proposed, "using the Internet or other digital network specified by the court", then the expectation would be that the court would specify what other networks are not included in the Internet.

The information I've provided to the committee.... I'm not a technical person, but my understanding of the Internet is that it includes, for example, the land area networks, the LANs. It includes the example I gave before, the one about the bulletin boards and all of that. But the technical people say that technically that is not included in the Internet per se, so that's why the other language....

The question really is, what is the intention? What do we catch here? One is that you want to make sure that the court turns its mind to considering the need for such a condition. Two, the court should turn its mind to what conditions, what parameters, should be imposed along with that condition. The way it's worded now, I would suggest that the court would have ample opportunity to make it as specific, as broad, or as narrow as is appropriate in the circumstances.

Would the proposal to add "specified by the court" limit that? As I said, the only risk that occurs to me is that if an individual judge did not turn his or her mind to it and perhaps didn't realize that those other technical networks that don't run on a TCP, on that protocol, may not be considered to be part of the Internet that we talk about commonly. I think that at the end of the day, either way, a sentence in court is going to be very much informed by the submissions made to the court by the crown and the defence: what's appropriate in this circumstance and what's the intention?

We see this right now. Courts do this right now as part of sentencing on probation orders, without any of these directions, because they tailor it. If it goes too broadly, there would be a concern about charter risk. If they make the condition overly broad, going beyond what is needed to safeguard the community against sexual reoffending by this offender, there could be a risk. Courts are very mindful of that.

● (1600)

Mr. Joe Comartin: Again, after representation from the crown, wouldn't you expect the judge to talk in terms of "using the Internet or other digital network", and then, with this wording, specify perhaps an additional forum? Wouldn't that be the normal way a judge would respond to this part of the sentencing?

Ms. Carole Morency: I think that's a possible interpretation. I'm just trying to assist the committee in the sense of explaining what the intention is, how the wording works or could be interpreted.... Obviously, I'm not in a position to say it will necessarily...that the risk will materialize or that a court wouldn't be so inclined to interpret it, because as I say, if you read it all together, the provision already says unless the offender does so in accordance with the conditions set by the court, so the direction is there to the courts.

Does this help the court more? It certainly could, but as you say, I still think there is more risk. The question is, is that a big risk?

Mr. Joe Comartin: I'm certainly not a technical person either, but some of the reading I have done suggests to me that at some point we'll be moving beyond the definition of either the Internet or a digitally based one into a whole different technology, but still one that could be used in this fashion, and by using this amendment, we would be giving the court authority to specify that.

So in that light, Mr. Chair, I'm going to be voting in favour of the amendment.

The Chair: All right.

We have two more speakers: Mr. Petit and Mr. Lemay.

[*Translation*]

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

My question is for Ms. Morency.

In your explanations earlier, you said that it would perhaps amount to the same thing. This is the wording of the proposed addition: "using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court." The phrase "conditions set by the court" sounds awfully like the phrase "specified by the court". The words "specified by the court" are the same as "conditions set by the court".

I come back to the fact that, for a given offender, a judge will impose or repeat those conditions. If we take the amendment as it is worded, the judge would use the words "or other digital network specified by the court". But consider a case where the court forgot to specify those conditions. If ever a person is caught again—there is a risk of reoffending—defence counsel could tell the judge that, because the networks that his client could not use were not specified, he cannot be convicted or charged again, nor be accused of having failed to meet the conditions imposed.

So the fact of requiring the court to specify the conditions would allow the defence to appeal at any time if the judge has not specified the networks that cannot be used. We know very well that the Internet has all kinds of networks, like Wi-Fi, and electronic and telephone systems, not to mention any other networks that could be invented between now and the time the bill gets through the Senate.

If the wording actually says "specified by the court", the danger is that we will be dealing with offenders who have started to make contact with children under 16 years old again but who will tell the judge that they cannot be convicted again because no one told them specifically about the networks that they were prohibited from accessing. So that is going to limit the judge's power of decision.

With our current wording, "using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court", aren't we giving greater latitude to the judge to tell the offender what is prohibited, simply by repeating the exact wording? In that way, when the person is convicted—we are still talking about children under 16—all networks will be prohibited because the offence was committed through one of those networks. If a network is forgotten, he could use it to reoffend and say that he had not been prohibited from using it. Could that happen, with Mr. Lee's amendment?

● (1605)

[*English*]

Ms. Carole Morency: Well, I think I've tried to answer that already, in the sense that the starting point is that the court looks at the condition before it. The condition says to either consider restricting the use of the Internet or other digital network, or, as has been proposed, specified by the court.... The court is going to interpret it. It could use exactly the same words. It could say, in this instance, that the appropriate condition would be against the Internet, period, or it could specify.

If you had, for example, the motion...if it was adopted and that language was in the condition and an offender reoffended and tried to argue, “Well, I wasn't specifically told not to use this”, I guess you would have an argument before the court: is there a common understanding that the Internet includes this or does not include that? Is it possible to have that...? Yes. It is possible to have that argument.

Again, I think the Internet has more of a common understanding; there is a dictionary understanding there, but as I say, the intention here was not to compound that, but to provide direction for a court to turn its mind to it.

The Chair: Thank you.

We have Monsieur Lemay now.

I just want to remind everybody to please keep your questions short if they are addressed to Ms. Morency or Mr. Villetorte, because we may run out of time again on this clause-by-clause. We do have two Bill C-4 witnesses that are going to be appearing somewhere around 4:30 p.m., so as brief as you can keep your comments.... I would very much appreciate it.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Personally, I think we have to vote for the amendment. Sometimes, people who do not practice law a lot forget that 80% of people represent themselves in court and do not know what this means. If we pass this clause without the amendment Mr. Lee is proposing, a person representing himself will not be in a position to know precisely what is meant.

Perhaps some members of the committee are more familiar with the Criminal Code than I am after my 30 years of practising law. But I think that the amendment must be passed. Then the crown prosecutor will be able to clearly stipulate to a person, especially one representing himself, that such and such a behaviour is prohibited. At least the person representing himself, one of the 80% of those appearing in court, will have no excuse.

I think we have to pass Mr. Lee's amendment.

[*English*]

The Chair: All right.

Mr. Dechert.

Mr. Bob Dechert: Very briefly, Mr. Chair, I just wanted to clarify this for Mr. Comartin, because I think he misunderstood the point I was making earlier. The point I was making is simply this. We're dealing here with sentences of people who have been convicted of sexually exploiting a child in some way. A condition has been imposed by a judge. Now the opposition is saying that it needs the judge to actually specify every network these individuals are not allowed to utilize, so that if in the future they're found to be using some digital network, another judge won't find them not to be in compliance with their sentence conditions.

That strikes me as being the opposite of the argument they're typically making on the other side of this room, which is that we can rely on the discretion of the courts, that we don't need to tie their hands because they know the circumstances of the case, and that they're going to use their discretion judiciously so we can rely on them to impose the right sentence and we don't have to say in our legislation that it should be any kind of a minimum sentence. Yet in this case, they think that some judge is going to say—if I can use Mr. Lee's example—“Oh, this offender set his home alarm system, which operates over a digital network, so we're going to find that he's not in compliance with his sentence condition”. Then what...? Send him back to jail because he set his home alarm system?

That strikes me as saying they don't have much confidence in the discretion of the court. That was the point I was trying to make. I just want to clarify that for Mr. Comartin.

● (1610)

The Chair: Okay.

Anybody else?

Monsieur Ménard.

Then we'll go to Mr. Comartin again.

[*Translation*]

Mr. Serge Ménard: I have a very simple question. These days, all taxi companies have their own communications systems. Are they digital networks?

[*English*]

Ms. Carole Morency: I can refer the committee back to the undertaking written response that I provided, where I provided our understanding. If it's a network that facilitates communication from one to another—you can have public-private—I'm not sure if that's a network in the same sense.

[*Translation*]

Mr. Serge Ménard: Okay. Truckers have the same kinds of systems; they use them to communicate. Let's say that a person working as a cab driver is convicted of something. I am sure that the judge is going to let him use the cab company's digital network. But, if he loses his job, he cannot get another one as a truck driver because he will no longer be complying with the condition. I think that is clearly an abuse. The general nature of the court's order is an abuse.

When you want to restrict someone's rights, you must be more specific than vague. That is why Mr. Lee's proposed amendment is perfectly appropriate and justifiable. I gave you the example of the person who wants to move from driving a cab to a truck, maybe even a truck in a mine. All three of those jobs involve working with digital networks with which employees communicate with each other.

If you want to prohibit someone from doing something, you have to tell him exactly what it is. If you don't, you have prohibited him from using all networks when you wanted to prohibit him from using one. The objective of the section was to prohibit access to one network, but it actually prohibits access to all other networks of the same kind.

In my opinion, the amendment that Mr. Lee has introduced is an important one.

[*English*]

The Chair: Mr. Comartin.

Mr. Joe Comartin: Well, I think my comments are fairly similar. As opposed to Mr. Dechert's viewpoint of this amendment, it seems to me that what we're doing is just the opposite. We're saying to the judiciary, "You have this additional authority and we would like you to use it".

Mr. Lemay's point is very well taken in terms of the convicted person knowing what they can't do, but it also allows the judges to be very specific. If we do get that new technology, I believe the wording—the government wording in the existing bill, plus this amendment—would allow the court to say that it's not just the Internet, that it's this whole new system, and you're not allowed to use that either, except under these conditions. That's really the way I see this amendment and why I think we should support it.

The Chair: Thank you.

Ms. Jennings.

Hon. Marlene Jennings: With all due respect to my colleagues, Maître Ménard, Maître Lemay, and Maître Comartin, I cannot agree with them. Any judge or crown prosecutor who takes his or her responsibilities seriously would in fact make a sentencing case as to which digital networks should be included in any order in the sentencing. Even where an individual represents himself or herself... and I'm not sure that in 80% of criminal trials the accused defends himself or herself. I'd like to see that particular figure. I do understand that in civil cases we have a high percentage. But I would like to see that figure. That's a separate argument.

Let's say an individual is in the situation that Mr. Ménard is talking about. You're a taxi driver and you may become a truck driver. From there, you may become a delivery guy for some mining company or other transport company. I cannot believe that an individual would not be in a position, when it came to sentencing, to explain to the judge, "I need to be able to communicate on this because I'm a taxi driver and, by the way, I also have my licence to drive heavy trucks, so that may be a secondary employment for me".

But any judge.... I mean, Maître Ménard has been in positions of authority in the past; as a minister, I cannot believe he did not take his responsibilities seriously. I know he did. I am confident that crown prosecutors, even in Quebec, as underpaid and overworked as they are—and I certainly agree they are, in comparison to their counterparts in other provinces—would not make a case for orders by the court, by the judge, that would be so broad as to deny an offender the possibility of being able to be employed, to keep their employment, and, if that offender were not represented by counsel, that the offender would not in fact make the case. If the offender is represented by a lawyer, it's incumbent on that lawyer to make the case as to exactly what kinds of networks this individual, this offender, needs to have access to in order to be gainfully employed.

So Liberals will not be supporting this amendment.

● (1615)

The Chair: Thank you.

Monsieur Lemay.

Mr. Joe Comartin: I'm sorry. I have a point of order. Is Mr. Lee withdrawing the amendment?

The Chair: I'm not sure that's—

Mr. Joe Comartin: Why are we having the debate if he's going to withdraw the amendment?

The Chair: Mr. Lee, are you withdrawing the amendment?

Mr. Derek Lee: No, I didn't say I was withdrawing the amendment.

I'm not too sure that my colleague got the label right either. There's at least one Liberal who will be supporting the amendment.

The Chair: All right.

Hon. Marlene Jennings: Well, the official opposition, which is represented by—

The Chair: All right. You know what...?

Monsieur Lemay, can you make it quick?

[*Translation*]

Mr. Marc Lemay: I can be very quick, Mr. Chair.

The point that my colleague has just raised really causes me some difficulty. To make a point like that, she really cannot have gone into too many courts very often, especially in recent years and especially to see criminal cases.

Ms. Jennings, the latest figures that we have available show that 80% of people in court represent themselves. With probation or prohibition orders running to three or four pages, the court has to explain it all line by line to the person on whom the penalty is about to be imposed.

I am trying to convince my colleague not to let things be too open-ended at this point and thereby have the person appearing in court again with another request, or even being arrested again and having another trial. One simple amendment passed here today would be specific enough to allow the court to actually make a decision. The amendment seems to me to be so simple and so useful. I find it deplorable that the Liberal party, at least a part of it, is opposed.

[*English*]

The Chair: *Merci.*

We'll go to Ms. Jennings and then Mr. Comartin.

● (1620)

Hon. Marlene Jennings: Yes. Simply to correct the record, the official opposition will not be supporting this amendment. A Liberal MP is proposing the amendment and has made it clear he will be voting in favour of it.

The Chair: I think we understood.

Mr. Comartin.

Mr. Joe Comartin: I have two quick points, Mr. Chair. I don't think we want to prolong this given the inevitability that's coming.

One, you have to appreciate that what we're trying to do here—those of us who are supporting this—is to make it easier for police and prosecutors to be able to prosecute breaches of this type of conduct. The more specific it is, the better chance they have of being able to lay the charge and getting a conviction. The more general it is in terms of the wording, the more difficult the job they're going to have.

I will make one final point with regard to our judiciary. I've been as supportive as anybody on this committee of our judiciary. I have the greatest respect for them, but I also know they're not perfect. Using one example in terms of legislation we've historically passed that required judicial determination, I'll use the requirement to order DNA samples to be taken. In the first four years of that law having been passed, in only 50% of the cases where DNA was mandatory did our judges do it. It was overlooked. Our crowns were way too busy. They didn't draw it to their attention. The judges missed it.

To expect that somehow magically in this case, as was suggested by my colleague from the Liberals, they are automatically going to do this is way beyond the reality of how our courts function.

The Chair: Thank you.

We're still dealing with amendment Liberal-1.

I will call the question on the amendment and we'll do a recorded vote.

(Amendment negatived: nays 7; yeas 4)

The Chair: We'll move to the actual clause 8 as unamended.

(Clause 8 agreed to: yeas 10; nays 1)

The Chair: You'll note that clauses 9 through 14 do not have any proposed amendments. I'm proposing that we group those.

Shall clauses 9 through 14 carry?

Mr. Joe Comartin: Mr. Chair, I wouldn't see clauses 13 and 14 being included in this. I understand why you would group clauses 9, 10, 11, and 12, but we're creating new offences in clauses 13 and 14. Those are substantially different.

The Chair: That's why I asked the question. They may be different, but there are no amendments proposed to them. If you do wish to have them separately, we're prepared to do it on that basis.

Mr. Joe Comartin: I don't have a problem, Mr. Chair, with clauses 9 through 12, as I said, but I would want clauses 13 and 14 voted on separately.

The Chair: All right. I will call the question on clauses 9 through 12.

(Clauses 9 to 12 inclusive agreed to: yeas 10; nays 1)

The Chair: We'll move to clause 13. We'll do that separately.

(Clause 13 agreed to: yeas 11; nays 0)

The Chair: We'll do clause 14 separately as well.

(Clause 14 agreed to: yeas 10; nays 1)

(On clause 15)

The Chair: Clause 15 has a Liberal amendment, LIB-2.

Perhaps, Mr. Lee, you could introduce that.

● (1625)

Mr. Derek Lee: I'm not moving that amendment, Mr. Chair.

The Chair: All right. There is no amendment on Liberal-2.

Mr. Derek Lee: I have a question, though. I'd like to ask Ms. Morency about clause 15, and specifically proposed section 172.2. That's a rather long and technical section intended to enable the.... What's the right word? “Entrapment” is the wrong word, but it's about the evidence and conviction of someone who is attempting to lure an underage person, a person under 18, and other scenarios.

As I read it, it seems to take away a lot of the protections that are built into our Criminal Code for our citizens. It does it in a rather conspicuous way because it creates a presumption, which is not normally part of the Criminal Code but does exist in some circumstances. Proposed subsection 172.2(3) creates a presumption in the absence of evidence to the contrary that the accused knew such-and-such. Proposed subsection (4) removes a defence; it is not a defence to say that you didn't know how old the person was unless you took “reasonable steps”. Then, proposed subsection (5) says it's not a defence if the person who you were dealing with was a police officer or a peace officer, and proposed paragraph 5(b) says that it's not a defence even if there really wasn't a real young person there.

So what I'm going to ask you about is whether the Department of Justice actually walked through.... By the way, I shouldn't be taken as disagreeing with the objective of this section, which is to trap, charge, try, and convict somebody who is trying to commit a criminal offence involving a young person.

But I am asking whether or not the Department of Justice did any kind of scenario test, a walk-through, a real-life situation, to determine that an innocent person would not be entrapped and convicted unwittingly with the removal of all these *mens rea* types of conditions. Because as I read it, you could get a conviction here with no victim, by being set up by people simply accusing you. The fact that you thought something different wouldn't even be a defence. Because there isn't even a real person, you wouldn't have taken any steps, and you wouldn't have been able to take any steps, to reassure yourself of the contrary in terms of your perception of age.

My question is this. As we've just set up this elaborate system to trap and convict somebody, even using non-existent people and specifically managed by police, has the Department of Justice vetted this and analyzed it for the purpose of making sure we haven't set up some system here that's going to trap an innocent citizen?

● (1630)

Ms. Carole Morency: The proposed new offence in proposed section 172.2 addresses a gap in the existing law that the existing law right now addresses only through the luring a child offence, in section 172.1, where an accused communicates directly with a young person through the use of a computer system for the purpose of facilitating the commission of a sexual offence against that young person. For example, if you have two adults—it doesn't have to be two adults—speaking directly to each other and their discussion is all about committing a sexual offence against a third person, a child, we can't catch that right now in the preparatory stages as we can with the existing luring a child offence.

So the first point I would make about the proposed new offence in proposed section 172.2 is that it is to address that gap.

Secondly, in terms of the scenario that the new offence could apply to, could attach to, the example that is given is the police undercover, and that's a possibility, but it's equally possible that you have adult A talking to dad B or to a tour operator somewhere else about providing a child for adult A to sexually abuse. In that case, there's a meeting of the minds. There's an agreement or there's an arrangement being made by those two people and there is perhaps an actual child in mind to facilitate the commission of the offence.

The proposed new offence wants to get at that before the child is actually sexually abused, much as we do now with the luring a child offence. It could happen, though, that you would have an undercover situation, as you've already described, where adult A is talking to someone, to adult B, about finding and having an opportunity to sexually abuse a child, and adult A doesn't know that adult B is an undercover officer. I appreciate the concerns about whether we are setting up this offence to normalize an entrapment situation. My written remarks in the undertaking to the committee were to attempt to reassure...or my comments were to reassure the committee that entrapment as a defence still remains alive now under the existing Internet luring offence and would equally under the proposed new offence.

Why are there all these defences? Because if you have two adults, adult A and adult B, who are actually communicating for that purpose, there's a meeting of the minds. When you have an undercover situation that doesn't fall within the entrapment scenario, a defendant could argue he didn't really mean it and he didn't really agree with me because, one, he's an undercover cop, and two, there isn't an actual child that he's going to make available to me.

So what the offence does is to parallel the approach we have right now in the Internet luring offence. As for the presumption you referred to, we have that right now in the Internet luring offence. On the reasonable but mistaken belief in age, we have that in section 150.1, and it's because it relates to the age of consent regime that we have. This offence is being superimposed on the existing age of consent regime.

So if the accused believes in his mind that he is communicating specifically for the purpose of finding a 10-year-old child so he can sexually abuse the child, his belief in the age is relevant. That's what this provision is doing to speak to that, because it has to put in the context of for the purpose of...it's going to be to commit a sexual offence against that child.

So what is different, and what you don't have in the Internet luring offence that you do have in Bill C-54 for this new offence, is the part you have pointed out in proposed subsection (5), which is that even if the other person is an undercover officer, or even if there isn't a real child that's being offered up, you could make out the offence. It does not mean that the defendant could not try to rely on the defence of entrapment under the common law, not at all. It is a common practice for police to go online in an undercover capacity, not to entrap—if it happens, the courts have said the defence is available—but to go into websites where offenders actually go looking for this kind of opportunity. They're talking with like-minded....

The committee heard from the OPP officer who said that this is a real concern. It's a real issue. I provided the committee with two cases, one where, in an Internet luring situation, the entrapment defence was available in the circumstances, and in the other where it was argued, but the court determined that it was unsuccessful and was not available in those circumstances.

● (1635)

So yes, the Department of Justice did walk through the scenarios of how this new offence might apply and who it might catch. The minister indicated in his remarks that the intention here is to get at the preparatory conduct, because you can't meet the threshold of a conspiracy offence unless you do something like this. When the Internet luring provisions were enacted in 2002, it was the same thing: it couldn't get at the attempt threshold, so the new offence was intended to address the situation before the steps got so far that the child was actually sexually assaulted or on the verge of being abused.

Mr. Derek Lee: Thank you for your candour. That was a fairly complex answer to a foggy question.

I applaud the determination to catch these predators before they do their harm, but what I see here is the statutory construction of a trap. I've avoided the use of the word “entrapment” because entrapment is actually a defence, but is what we've constructed a statutory trap? Everyone around the table would agree that it has been designed for a particular purpose, but I'm asking you if the department has actually turned its mind to whether or not this trap might trap other fish if it is put in the wrong hands and used in bad faith. If the police can't get the guy on bank robbery, they could set him up under this one. They're going to set the guy up and they're going to get him one way or another.

This is a statutory trap, and I actually don't see another one like it in the whole Criminal Code. Maybe it's a pity we can't do it for bank robberies, murders, and all the other conspiracy offences and catch the guys before they do it, but this is a statutory trap, and I'm only asking for some reassurance from the department or the government that they've looked at this trap and that it's not going to be abused to trap otherwise innocent citizens.

Ms. Carole Morency: To reiterate, we think this does address a gap. We have turned our minds to the issues and the different scenarios that might apply, and there are safeguards in place in the offence and at common law, so that in the remote off chance that somebody does try to use it in an inappropriate way, the courts do have the tools to ensure that an accused in that situation is acquitted. The case that I provided to the committee, the 2010 R. v. Sargent decision from the Provincial Court of Alberta, provides an example in which an entrapment defence did not work, but it did work in the R. v. Bayat 2010 decision of the Ontario Superior Court of Justice.

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

The Chair: Thank you.

Go ahead, Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chair.

I want to be on the record that because of the mandatory minimums that are included in proposed sections 172.2 and 173, I will be voting against it. However, I also want to be very clear that this amendment proposed by the government, in spite of the problems with mandatory minimums, is in fact a good development, one that we absolutely need in terms of giving both our police and our prosecutors the ability to catch this type of activity within the scope of the Criminal Code. I just want to recognize that.

However, the rest of it, in terms of the mandatory minimums, just flies in the face of all the evidence that we've heard about the need. These kinds of offences are getting jail times anyway, but there is an absolute need, I believe, that we reserve the discretion to our judiciary to impose the proper sentences, both short term and long term, and leave that within their hands.

● (1640)

The Chair: Thank you.

We'll move, then, to call the question on unamended clause 15. We will have a recorded vote.

Hon. Marlene Jennings: Since there is no amendment to be voted on, I suggest that we vote a block of clauses.

The Chair: Mr. Comartin has named a number of clauses that he doesn't want to do by block. We have those here, and as soon as we can, we'll group them.

Hon. Marlene Jennings: Fine.

The Chair: We have a recorded vote, Madam Clerk, please go ahead.

For the record, Mr. Petit said yes. He said no and then changed it.

Mr. Joe Comartin: On a point of order, Mr. Chair, I propose that we adopt a motion that we unanimously agree to let Mr. Petit change his vote.

The Chair: Mr. Comartin moves that we allow Mr. Petit to change his vote from *non* to *oui*. Does everybody agree?

(Motion agreed to)

(Clause 15 agreed to [See *Minutes of Proceedings*])

(Clauses 16 to 19 inclusive agreed to: yeas 10; nays 1)

(On clause 20)

The Chair: Mr. Comartin wants to speak to clause 20.

Mr. Joe Comartin: I'm okay for the next clauses 20 to 30 going as one, but I have two questions of the staff.

First, Ms. Morency, most of these are sections that we're including. Can you explain—I just want this on the record—what we're doing from clause 20 through to clause 27?

Second, in clause 29, we're listing Bill C-16, which is yet to come. If that title changes, what do we then do? Do we have to retroactively amend this legislation?

Ms. Carole Morency: I'm sorry. Was your last question about clause 29 with the coordinating amendment with Bill C-16?

Mr. Joe Comartin: Yes, if the title changes.

Ms. Carole Morency: Okay. Now I understand. Sorry. It's changed now when it comes forward....

Mr. Joe Comartin: Yes.

Ms. Carole Morency: Okay. I guess I would have to take that under advisement. I think the intention is clear that there would be a coordinating amendment between this bill and that number. I think the bill number actually carries weight in terms of indicating even if the title changes, but I think our drafters and maybe the clerk might advise if there is another issue there.

● (1645)

Mr. Joe Comartin: Okay.

Ms. Carole Morency: But certainly I think the intention of the coordinating amendment is to be as specific as possible in identifying which other bill in which session. Even if it has a different title, we still know it's Bill C-16 in this session.

Mr. Joe Comartin: Okay.

My other question...?

Ms. Carole Morency: On the other question in terms of what Bill C-54 does generally from clauses 20 through to 27, in clauses 20 and 21, the amendments are to list the new offences proposed in Bill C-54 in the provisions that apply right now dealing with facilitating testimony by child victim witnesses in criminal proceedings. Recalling that one of the overarching objectives of Bill C-54 is to ensure that we have a consistent approach, where a child victim of any of the other child sex offences can benefit through the aid of testifying behind a screen and so on, those are going to be available to victims in these cases as well.

Clause 22 deals with a consistent approach, again, in terms of how we deal with like offences for the collection of DNA for criminal conviction purposes. Clauses 22 and 23 deal with the Sex Offender Information Registration Act. They are about having a consistent approach.

For these clauses, you'll see that there is a coordinating amendment at the end of the bill to coordinate changes already made to those provisions by what was Bill S-2, which has received royal assent and will be proclaimed into force. The intention of these clauses and the coordinating amendment is to ensure that once both laws are in force, the new offences will be added in and we'll have a consistent approach to the treatment of these offences as reordered in Bill S-2.

Clause 24 deals with the dangerous offender provision of the Criminal Code. We're adding in the new offence of agreement or arrangement for a sexual offence against a child as well as the procuring offences—there are two of them—dealing with child victims. Again, we're trying to ensure consistency. Over the years, when you amend here or there, sometimes some things are not caught. We're trying to have a consistent approach.

Clause 25 deals with the long-term-offender provisions. The listing here—

Mr. Joe Comartin: That does the same as clause 24, doesn't it? It is just the separate offence.

Ms. Carole Morency: The intention is the same, but there are—

Mr. Joe Comartin: There are many more.

Ms. Carole Morency: —additional offences that aren't there right now, and that we're adding, again to ensure a consistent approach throughout when we're dealing with child sexual offences, but the intention is the same.

Clause 26 proposes a similar amendment to the peace bond provision we just discussed in LIB-1. It would enable the court to consider imposing the two new conditions being proposed when there are reasonable grounds to believe that a person before them might commit one of the enumerated offences. Here, we would be adding the two new offences proposed by Bill C-54 as well as.... It's the two conditions and the two offences.

Clause 27 is amending Form 5.04, which deals with an order to take a DNA substance. Again, it's because we've amended the provisions that authorize the taking of it for the two new offences.

Sorry, was that...?

Mr. Joe Comartin: That's it. You don't need to go into clauses 28 and 29.

Thank you, Mr. Chair.

The Chair: Thank you.

I'm going to call the question. I think we have consent to deal with the next group all in one. That will be clauses 20 to 30 inclusive.

(Clauses 20 to 30 inclusive agreed to: yeas 11; nays 0)

The Chair: So clauses 20 to 30 are carried. We'll move now to the short title. Shall clause 1 carry?

(Clause 1 agreed to: yeas 11; nays 0)

The Chair: The next three clauses should be non-contentious. Do we need a recorded vote?

● (1650)

Mr. Derek Lee: Just go through them quickly.

The Chair: Okay.

Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: It is carried on division.

Finally, shall I report the bill to the House?

Some hon. members: Agreed.

The Chair: Thanks to all of you.

We're going to suspend for two minutes to allow the new witnesses to take their places.

● (Pause)

●

The Chair: I will reconvene the meeting.

We are now moving to further consideration of Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts.

We have with us two witnesses. First of all, representing the Association des policières et policiers provinciaux du Québec, we have Jean-Guy Dagenais, president.

We also have with us the Canadian Criminal Justice Association, represented by Hirsch Greenberg, member of the board of directors.

Welcome to both of you. We apologize for bringing you on a little bit late. As you can see, we are trying to finalize clause-by-clause consideration of a bill, but thank you for coming.

Each one of you has been given some time to present. You will present and then we will open the floor to questions from our members.

Why don't we start with Monsieur Dagenais?

[*Translation*]

Mr. Jean-Guy Dagenais (President, Association des policières et policiers provinciaux du Québec): Thank you, Mr. Chair.

First, I would like to thank you for the invitation and for your attention to our presentation.

The Association des policières et policiers provinciaux du Québec represents more than 5,200 unionized police officers in Quebec. We feel that the amendments to the Youth Criminal Justice Act will result in greater protection for the public from crimes of violence.

We must stress the importance of focusing on violent offences. As police officers, we feel that it is our responsibility, when we are investigating serious crimes committed by young people, to gather enough evidence so that the judge can order detention where appropriate.

The bill seeks to amend the act by reducing the burden of proof, which will help us in our job of getting repeat violent offenders off the streets.

Because of the new requirements that Bill C-4 will bring with it, additional financial and staffing resources must be provided.

The establishment of a central registry will assist police forces like the Sûreté du Québec in our work. Information must be standardized in order for coordination to be better.

Adult penalties must be considered only in cases of violent crimes.

Police forces firmly support the possibility of lifting publication bans. Young people must not be able to commit other violent crimes. They may end up in areas where public protection is important.

For example, a neighbourhood may find a sexual offender living there. The public interest must be protected, and, by so doing, more crimes, repeat offences, can be prevented. Young offenders must be made aware that they have committed serious crimes; we feel that the amendments to the bill will right the wrongs done to victims who for too long have been ignored.

Young people do not have the same level of development as an adult; they are impressionable; they can be influenced. The amendments to the act must make them aware of the gravity of their actions.

As police officers, our primary role is to protect society and we must have the tools we need to carry out that role. Young people who commit serious crimes must answer for their actions when warranted by the circumstances of the offence.

Some of our investigations into serious crimes committed by young people compel us to feel that they must be made aware of the seriousness of their actions. Releasing them, often too soon, does not serve the interests of the community, a community that deserves to be able to live in safety.

Young offenders must be discouraged from offending again. We are of the opinion that the current act has shortcomings and that amendments are warranted. We support the idea that protecting society must be made the main goal of the act. Without amendments, the act does not meet the objective of living safely in our society and would not match our expectations and our values.

Some young people will not hesitate to resort to violence and intimidation for criminal purposes; in our opinion, this poses a major threat to Canadian society. Some young people, although they may not have the developmental level of an adult, will be driven to commit serious crimes; whatever the nature of those crimes, the amendments to the act must convince them not to reoffend.

As investigators, we must not be deprived of the tools that allow us to have access to the various provisions of the Criminal Code that we could use in the course of our inquiries.

With the passage of time, we believe that there is a way to develop regulations governing serious crimes committed by young people. This will allow the police and prosecutors at various levels to use the provisions in the Criminal Code to their full extent in order to reduce the threat to public safety.

Thank you, Mr. Chair.

● (1655)

[*English*]

The Chair: Thank you.

We'll move to Mr. Hirsch Greenberg, please.

Mr. Hirsch Greenberg (Member of the Board of Directors, Canadian Criminal Justice Association): On behalf of the Canadian Criminal Justice Association, I would like to thank you for the invitation.

I'd like to start my comments by trying to frame our general understanding of the thrust for the proposed amendments, that is, that the young offender be held accountable, and that of protection of society.

But we would argue that there needs to be a paradigm shift in applying these principles as required, as the amendments proposed will have little effect on the ground, either to hold youth accountable or to make us safer from crime, and in particular, youth crime.

To accomplish this, Canada and the provinces need to start with an accurate evidence-based view of youth crime. What does youth crime look like nationally? Where is crime most likely to occur and by whom? More importantly, what does it look like locally? How does the public experience crime? And what does it look like for the victims, the victims' families, the young offender, and the young offender's family?

A second important element to engage in the conversation for youth accountability and public safety is that youth crime is not the exclusive property of the justice or the correctional systems, that youth crime is not simply a criminalized, individualized youth problem, that punishment is not equivalent to safer communities, and that incarceration or other punishment is not the primary mitigating arbiter of safer communities. Being “tough on crime” may be desirable in some quarters. I haven't heard an argument that we should be weak on crime, and I don't know why one would take such a stand. I think this is a false choice that is presented.

We need to explore what works rather than how much harm we can impose on a young offender. We are challenged to meet the needs of Canadian society, those of our communities, and those of our children and youth, to prevent crime, and to intervene after it occurs, all the while meeting the needs of the young offenders and their victims. The shift here is to move toward the more effective paradigm: that these needs of Canadians, our communities, the victims, and the young offenders are not mutually exclusive. They are woven together in complex social, economic, cultural, and psychological ways, and they should not be isolated in silos as if they occur or can be understood independently.

We cannot define youth as criminals if we wish them to behave differently. Youth are not responsible for the creation of crime. Adults are. Why do we look to the individual young person with threats of retribution and threats of punishment and then expect a self-confident, healthy individual to emerge? We need to ask what we must change in the lives of youth to prevent crime before it occurs, what needs to change after a youth commits a crime, and what is the role of suppression for future crime behaviours.

The proposed amendments ask, how do we denounce and deter? A paradigm shift would ask how to effectively change youth crime behaviour through an internalized sense of accountability by rebuilding a sense of self.

A proposed amendment asks how to increase pre-trial detention to keep youth off the street. A paradigm shift would ask what youth are doing on the street, why they are not in school, and how we can better understand youth crime behaviours.

A proposed amendment asks how to redefine violence. A paradigm shift would ask how to understand the trauma that youth experience when their behaviours lead to violence.

A proposed amendment asks how a youth can be shamed: naming the youth who is convicted of a serious crime. A paradigm shift would ask how a youth who commits a violent act can be less vulnerable to future violent behaviours.

As a final comment to shift the paradigm, I would quote Chief Justice Robert Yazzie of the Navajo Nation. He states: What is an offender? It is someone who shows little regard for right relationships. That person has little respect for others. Navajos say of such a person, "He acts as if he has no relatives." So, what do you do when someone acts as if they have no relatives? You bring in the relatives!

Thank you.

● (1700)

The Chair: Thank you.

We'll open the floor to questions. First of all, we'll go to the Liberals.

Ms. Jennings, seven minutes.

[*Translation*]

Hon. Marlene Jennings: Thank you very much for your presentations.

Mr. Dagenais, you are the president of the Association des policières et policiers provinciaux du Québec. I would like to ask you if you and your association are aware of a Nova Scotia commission of inquiry, headed by Mr. Justice Nunn, into the case of a young offender. As the result of this young person's deplorable activities, people demanded a public inquiry. In the course of the inquiry, Justice Nunn looked at the Young Offenders Act and the Youth Criminal Justice Act in detail. He made a number of recommendations, some of which affected only the provincial government, such as youth protection or services of that kind. But six recommendations dealt with the Youth Criminal Justice Act. Are you aware of those recommendations?

Mr. Jean-Guy Dagenais: Right off the bat, I would say no, I am not aware of them.

Hon. Marlene Jennings: In 2007, in a previous life, I was the official opposition's justice critic. I asked for the executive summary of the report to be translated. So I am in possession of a translation of the report, including the recommendations. I would like to provide you and Mr. Greenberg with a copy.

At the time, I sent the report to several major players in Quebec. The response to Justice Nunn's recommendations was quite favourable. I would like you and Mr. Greenberg to provide written comments and send them to our chair, so that all members of the committee can have the benefit of your expertise in the area, your analysis of and take on Justice Nunn's recommendations.

● (1705)

Mr. Jean-Guy Dagenais: Ms. Jennings, you said that you had sent copies of the report to various organizations. I gather that we were not on your list at the time. Which year was it?

Hon. Marlene Jennings: It was in 2007. I have to say that the Association des policières et policiers provinciaux du Québec was not on my list. At the time, the government had no interest in reviewing the current act.

Mr. Jean-Guy Dagenais: I would be delighted to provide comments on the report when I get a copy.

Hon. Marlene Jennings: My distribution list at the time was quite limited.

Mr. Jean-Guy Dagenais: As soon as I get the document, I will be happy to comment on it.

Hon. Marlene Jennings: Thank you very much, Mr. Dagenais.

[*English*]

Mr. Greenberg, for you, it's the same thing. I have the executive summary. I can also provide you with the links where you can get the full report online. It's written in English. It's an excellent report and I have to say that the recommendations with regard to actual amendments to the current law were very considered.

Unfortunately, the government's Bill C-4 does not follow those recommendations. It's unfortunate, because the report came out in December 2006, I believe, if I'm not mistaken, so the government has had a number of years to study the report, to consider it, and to do their consultations.

It has decided not to implement those recommendations, in fact, notwithstanding that at the time there seemed to be a real consensus across Canada. I consulted with different stakeholder groups across the provinces, including the Attorneys General, and there seemed to be a real sense that yes, Justice Nunn's recommendations were what was needed—nothing else.

Thank you.

The Chair: Thank you.

We'll move to Mr. Ménard for seven minutes.

[*Translation*]

Mr. Serge Ménard: Thank you.

Mr. Dagenais, you say that you are in favour of making it easier to publish the names of young offenders. Some people have testified at this committee that some leaders of youth gangs would be only too happy to have their names published, and even happier to be identified as gang members on the front page of the *Journal de Montréal*. Don't you think that it will make them more intent on pursuing a life of crime?

Mr. Jean-Guy Dagenais: What we are seeing, Mr. Ménard, is that there seems to be more serious crime. You mention street gangs. They are often going to make use of younger people. I would not go so far as to say that it is because young people must be less accountable for their actions. After all, we are talking about serious offences like premeditated murder. In cases like that, we also have to protect society, as I mentioned in my brief. Victims often do not know that people like that are living in their neighbourhood. If the information were made public, the people could be recognized. I understand that they might be happy seeing themselves on the front page, but you have to think of the victims too.

In some adult cases, identities have been made widely known and it has even been difficult to send them to half-way houses because of it.

Right from the moment where the judge decides that the young person has committed a crime, it is important that the identity be made known in order to protect the public, as I mentioned in my brief. We are often talking about sexual predators, and, unfortunately, there are young ones too. Making identities known, be it sooner or later, is about protecting society.

● (1710)

Mr. Serge Ménard: As a parent, if you find that a young person who has had his name revealed is in fact the child of one of your neighbours, what are you going to tell your children about him?

Mr. Jean-Guy Dagenais: If I had children and found that a young person living two blocks from me had committed a serious sexual offence—this is always about serious crimes—there would be a need to make the neighbourhood safe. Too often, people like that are released quickly, get back into society and live unnoticed. That is when they can reoffend.

Definitely in the case of serious offences—I insist once more that the offence must be serious—the offender's identity must be made known and people must be alerted. People must be protected and must protect themselves by making sure to report incidents to the police.

When I was working as a police officer in smaller communities, people very often told us that a person like that was back in their neighbourhood. People were protecting themselves. You also have to think of the victims. That is how victims go about protecting themselves.

That is why I said that it is good to make the information public. It does not have to be done in all cases, but certainly with serious offences.

Mr. Serge Ménard: Do you understand why the bill is called Sébastien's Law?

Mr. Jean-Guy Dagenais: Yes, I do, I know that a young person of that name lost his life in a neighbourhood in Laval because of a group of young people. I have met his parents too. That is why the bill is called Sébastien's Law.

Mr. Serge Ménard: And the young person who murdered Sébastien was sent to adult court.

Mr. Jean-Guy Dagenais: Yes.

Mr. Serge Ménard: He was sent to prison for life.

Mr. Jean-Guy Dagenais: Yes.

Mr. Serge Ménard: I can't see how the law can be applied more severely than that.

Mr. Jean-Guy Dagenais: He was sent to prison for life. He won't be getting out anytime soon.

But you know as well as I do how many times sexual predators have been released, unfortunately. There was another case in Sainte-Foy, near Quebec City. A sexual predator was released and his identity was not revealed. Thanks to the actions of a good Samaritan who reported having seen a sexual predator putting a child into the trunk of his vehicle, the Quebec City police were able to make the arrest. We have that witness to thank for that.

If identities are revealed, members of the public can definitely become witnesses. Can you really be against that?

Mr. Serge Ménard: It wasn't a sexual predator in Sébastien's case.

Mr. Jean-Guy Dagenais: You are right.

Mr. Serge Ménard: Some kids were arguing over a girl.

Do you understand that the goal of the bill is to amend the act so that what happened to Sébastien Lacasse never happens again?

Mr. Jean-Guy Dagenais: It may have been an argument over a girl, but it was still a serious crime. There is still...

Mr. Serge Ménard: So what can be changed in the act? We can't give him more than life.

Mr. Jean-Guy Dagenais: Prison is one thing, but I sometimes wonder whether the worst of the penalty is to be identified as an offender and having that information published. No one has an easy time with that. When you commit a serious crime, prison is one thing. But you know as well as I do that people often get out of prison very quickly. They do not all stay there for life.

Mr. Serge Ménard: Is that what happened to Mr. Labonté, who killed Sébastien Lacasse?

Mr. Jean-Guy Dagenais: I'm not saying that it is what happened to Mr. Labonté. That was a one-of-a-kind case. But you can look at other cases of young people committing serious crimes. Serious crimes...

Mr. Serge Ménard: But it is why the solicitor general decided to give this bill its title.

If I am not mistaken, it would be harder today to send Labonté, Sébastien's killer, to adult court under the proposed bill. Do you support the provisions of the bill that would make it harder to convict Sébastien Lacasse's murderer?

● (1715)

Mr. Jean-Guy Dagenais: I am not saying that it would be harder to get a conviction. That was a one-of-a-kind case. But how many young people commit serious crimes and are not imprisoned for life, but are released back into the community without their identity being revealed, and then reoffend? We should look at preventing them from reoffending.

[*English*]

The Chair: Thank you.

We'll move to Mr. Hyer.

Welcome to our committee. This is a first for you. You have seven minutes.

Mr. Bruce Hyer (Thunder Bay—Superior North, NDP): Thank you very much.

I'm going to pass, but thank you very much for offering.

The Chair: You're very welcome.

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

[*Translation*]

Mr. Daniel Petit: Thank you very much, Mr. Chair.

Good afternoon, Mr. Dagenais. Thank you for coming. You told me that you had to brave the storm, so I'm very happy that you made it here safe and sound.

I would like to focus on some of the statements you made. You said that, in general, this could make the work of the police easier. Given the way in which the bill has been prepared, a serious offence is not any old crime, like shoplifting, that occurs every day. We are talking about serious offences. These usually involve property with a value greater than $5,000, offences that endanger the life of another person, public mischief, unauthorized possession of a firearm, and so on. Those are serious offences. They are what we want to come to grips with first.

I would like to know what you think about another point. In Quebec, just like in the other provinces—it is wrong for us to imagine that we are somehow different—when a young person has committed a number of offences, there are lot of extrajudicial measures. You know as well as I do that it is very hard to find out what kind of extrajudicial measures have been imposed on the person. A person can have been to court up to seven times and have received extrajudicial measures without anyone knowing, because everything is confidential, they are not transferred, and so on.

First, are you in favour of the justice system being informed about extrajudicial measures that have been imposed on young offenders so that the progression can be seen? Quite often, judges are not aware. Today, they are never aware, and that will not change unless records like that are kept.

You say that it will make police work easier. Do you think that it could help you to know which extrajudicial measures have been imposed on the young offender, say, in the last eight years?

Mr. Jean-Guy Dagenais: You are right, Mr. Petit.

Too often, we have been in court on cases where there were no records, because we were dealing with a minor. That is when they reoffend. Young people do not generally read up on the law, but when they are in front of a judge, they know that they will be released after their sentence. So you get one offence after another. They see themselves as having a kind of immunity.

Crown prosecutors have to meet the burden of proof, but the police have to do the investigation and come up with enough evidence to have charges brought. Often with minors, with no records, reoffending is easy.

As I mentioned in my notes, it is important to make young people who commit serious offences realize that, sooner or later, there will be consequences for them. The registry is a good starting point that will help the police investigate. It is not easy for us.

Mr. Daniel Petit: Take the case of a young person in front of a judge who knows that he has been in youth court regularly over the last 10 years and has had extrajudicial measures imposed. Do you think that knowing the record of those extrajudicial measures could help the judge come to a better decision? As a police officer, you have that information and you can go and see the crown prosecutor and explain the situation.

Mr. Jean-Guy Dagenais: We still have to meet the burden of proof. We work with the crown prosecutor. With those of the age of majority, we always provide what we call the “plumitif”, the record of criminal offences. We can tell the prosecutor that this is the fourth time that an individual has been arrested for the same offence; the individual is a re-offender. We would do the same thing for young people. We are talking about repeated offences. We are not talking about exceptional cases.

Police officers often notice that we are always arresting the same people in the same places in the same neighbourhoods. The same names come up time and time again. With the registry, we can tell the prosecutor that this is the fourth time that the person has been arrested for such and such an offence, and that he is a re-offender in such and such a place. A young person may re-offend out of town or outside the province. So it is important for police to tell the prosecutor that this is a specific repeat offence for the third, fourth, fifth or sixth time. That is why having records available is important, as I said, because we must meet the burden of proof.

● (1720)

Mr. Daniel Petit: Mr. Dagenais, you know that, at the moment, when someone wants to appear in adult court, the crown prosecutor has to make that request to the trial judge, if he feels that the case should be heard in adult court.

Under the new bill that we are proposing, that would be automatic for murder, attempted murder, manslaughter, aggravated sexual assault, and so on. The crown prosecutor would have to tell the judge why he does not want to send the case to adult court. Would you agree with me that, for those four very serious charges, it should be automatic, and the opposite would be possible; that is, that the crown prosecutor might decide that the young person should not go to adult court? What do you think about that proposal? After all, I would never want a young person to have to go through that process; it is traumatic and his life is at stake.

Mr. Jean-Guy Dagenais: As police officers, we agree. Given the information that the crown prosecutor has, he can decide that the young person must not go to adult court.

But, as I mentioned in my remarks, the role of the police is to protect society. Unfortunately, as you have very rightly pointed out, very serious offences must be considered. We are in agreement with that.

[*English*]

The Chair: Thank you.

We have time for one more round of about two to three minutes per person.

Ms. Jennings, you have two minutes.

Hon. Marlene Jennings: The Minister of Justice conducted a series of public but private consultations across Canada with a number of stakeholder groups; as far as I'm aware, we don't have a list of the groups that participated. Were either of your organizations part of these consultations on Bill C-4?

Mr. Hirsch Greenberg: Not to our knowledge.

[*Translation*]

Hon. Marlene Jennings: How about your organization, Mr. Dagenais?

Mr. Jean-Guy Dagenais: Not about Bill C-4.

Hon. Marlene Jennings: Thank you.

[*English*]

The Chair: Thank you.

We'll move on to Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Let me catch the ball that Ms. Jennings threw. Mr. Dagenais, I am very surprised. There was a national round table. According to documents in our possession that we finally managed to get from the governing party as part of the in-depth review of the Youth Criminal Justice Act, Mr. Nicholson, the Minister of Justice, invited provincial and territorial ministers. The consultations began in Vancouver and continued from there. Participants came from the following groups: the judiciary, prosecutors, defence counsel, legal aid program representatives, police forces and the RCMP.

Are you telling us today that the largest police force in Quebec did not participate in this national round table on the Youth Criminal Justice Act? Is that correct?

Mr. Jean-Guy Dagenais: I am not speaking on behalf of the RCMP. I am speaking—

Mr. Marc Lemay: No, no; I mean yourself.

Mr. Jean-Guy Dagenais: No, provincial police officers did not participate in that round table; at least, I did not, as the president of the association.

Mr. Marc Lemay: But did someone from your organization participate? I am not talking about the RCMP; I am talking about the Association des policières et policiers provinciaux du Québec. You represent the Sûreté du Québec, you operate all over Quebec, and you are telling me that you did not participate in the round table?

Mr. Jean-Guy Dagenais: Maybe the Sûreté du Québec did, but not the Association des policières et policiers provinciaux du Québec. I represent the union.

Mr. Marc Lemay: Whom do you represent?

Mr. Jean-Guy Dagenais: I represent Sûreté du Quebec officers; the union. Perhaps someone from the senior management of the Sûreté du Québec participated in the round table.

Mr. Marc Lemay: I am sorry, but you represent the unionized members of the Sûreté du Québec who—according to what you have just told us—have to deal with these problems every day. And you are telling us that you were not aware of it. That surprises me a great deal. If that is the case, it is really a shortcoming—

Mr. Jean-Guy Dagenais: You must not confuse the Association des policières et policiers provinciaux du Québec and the Sûreté du Québec. If anyone participated in that round table, it would be the senior management of the Sûreté du Québec. You are telling me that there was a bill and a round table was organized to discuss it. I know that representatives of the Sûreté du Québec were there, but not from our association.

● (1725)

The Chair: Thank you.

[*English*]

We'll move on to Mr. Norlock for two to three minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much to the witnesses for coming in today.

Mr. Dagenais, police officers are the first people called when a crime is committed. The first people they meet, of course, are the victims. Usually they follow the victims right through the whole criminal justice system, and many times afterwards, especially these days, when we tend to spend a little bit more time taking care of victims, although many of us feel that we need to do more.

We're dealing specifically here with the most serious of crimes, not petty crimes. We're dealing with serious assaults, serious property crimes, and sexual crimes. We often forget that the victims usually spend a lifetime in counselling, and that if they are living in homes where there have been large break and enters or home invasions, they put up bars on their windows, especially the elderly.

Could you comment on your experiences and the experiences of your membership when it comes to dealing with victims, what they've gone through, and how it has changed their lives?

[*Translation*]

Mr. Jean-Guy Dagenais: I know that the rights of the accused have to be taken into account when a bill is considered, but, as I mentioned earlier, we too often forget the victims. They have to bear the consequences of the crime that has been committed for the rest of their lives. I have met people who have been assaulted, unlawfully confined, and I have met attempted murder victims. As soon as they leave court, they are left alone with themselves. They have had to go for counselling. After two or three months of counselling, those victims, people who had been assaulted at work, had to go back there. Afterwards, they were constantly afraid of being assaulted or followed. Sir, that can last a lifetime. I have known a number of people in that situation.

We are asking for stricter laws because, as police officers, we know the victims. They should be given priority. When I say that we have to get criminals off the streets, it is because of the victims. Laws are often designed to protect the rights of the accused and we are not against that. But I have seen cases where assaults occurred maybe 20 years previously and the victims are still experiencing the same trauma. They could not go out in the evening, they felt that they were being followed, and so on. That is post-traumatic shock. Some come out of it well, but others do less well, especially if they find out that they might bump into their attacker in the street. I have certainly seen cases where the defendant was in prison for 10 years or so and where the victim, knowing that he had been released—and I will spare you my comments about that—began to be afraid again. We have to consider that too.

The Chair: Thank you.

[*English*]

I want to thank both of our witnesses for appearing. Your testimony will be part of the public record and will help us move ahead with Bill C-4.

Thank you to all of you.

We're adjourned.

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