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Chair

Mr. Dave MacKenzie

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● (0920)

[*English*]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call the second meeting of the justice committee of the 41st Parliament to order and welcome the Minister of Justice, Minister Nicholson, appearing before us today.

For the committee, this is a bit different, in that the bill got referred to us before the committee was constituted, as happened a few minutes ago, but we're pleased to be able to work with all sides of the House to move this along.

Minister Nicholson, if you would like to make an opening address to us, we would be more than happy.

My understanding is the minister is only here until 9:40.

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada): As far as I know—that's what I've been told, Mr. Chairman.

Thank you very much, Mr. Chairman. I am pleased to be here with Anouk Desaulniers, senior counsel with the Department of Justice. Those of you who have been on the committee know Catherine Kane, who is senior counsel, criminal law policy section of the Department of Justice.

This is your second committee meeting already. Yours is going to be a busy committee, Mr. Chair. Congratulations on your election to this role.

And my best wishes and congratulations to everyone who is serving on this committee.

I am pleased to appear before this committee on the Fair and Efficient Criminal Trials Act, also known as the mega-trials bill. Mega-trials are those that involve serious major crimes, such as those that involve organized crime, gang-related activity, white-collar crime, and of course terrorism.

Due to the magnitude and complexity of the evidence, the numerous charges against multiple accused, and the need to call sometimes many witnesses, mega-trials can take up a lot of court time and generate excessive delays, increasing the risk of mistrials. Mega-trials may be hard to avoid, but the way they function can and must be improved for the benefit of all Canadians.

The amendments included in this legislation pack are aimed at ensuring the criminal justice system handles these cases more efficiently by providing tools to strengthen case management, reduce the duplication of processes, and improve criminal procedure.

First, to strengthen case management, we are proposing the appointment of a case management judge who would be specifically empowered to impose deadlines on parties as well as to encourage them to narrow the issues and make admissions and reach agreements.

Stakeholders, as well as the Air India commission, agree that stronger judicial control of the proceedings, particularly with respect to the preliminary stages of a trial, is extremely important to ensure that long, complex cases are concluded in a timely manner. The case management judge would also be empowered to decide preliminary issues such as admissibility of evidence, charter, and disclosure motions. Currently, as you know, only the trial judge may rule on these issues.

Second, the bill would make processes more efficient by allowing preliminary motions in related but separate cases that involve similar evidence to be heard jointly. As well, if a case ends in a mistrial and a new trial is ordered, decisions on certain preliminary issues would continue to bind the parties unless the court were satisfied that this would not be in the interests of justice.

Finally, over the last decade the time required to hear criminal trials has steadily increased, especially in those cases we refer to as mega-trials. This can affect the jury's ability to render a verdict, since it is not uncommon for jurors to be discharged in the course of a long trial. In order to improve this process, the bill would increase the number of jurors hearing the evidence from 12 to a maximum of 14, where circumstances warrant. This proposal would ensure that if jurors were discharged throughout the course of the proceedings, the jury would not be reduced below the Criminal Code minimum requirement of 10 jurors, and therefore a mistrial would not be ordered.

If, at the time of deliberations, more than 12 jurors remain, this number would be pared down to 12 by a random selection process.

The bill includes provisions that would have jurors called by their number in open court and make calling them by their name the exception. This would ensure the jurors participate in the criminal trial process without fear of intimidation, which may be of particular concern in organized crime or terrorist cases.

Also, where circumstances warrant, access to jurors cards or lists could be limited by the court.

Finally, I would like to reiterate that the measures outlined in this legislation would also help to streamline the prosecution of terrorism offences, which was one of the recommendations of the Air India commission.

The amendments outlined in our bill would help streamline the procedure so that justice would be delivered swiftly and our streets and communities would be safer. I encourage you to support the bill, which would make a significant improvement in the efficiency and the effectiveness of our criminal justice system.

● (0925)

Thank you, Mr. Chairman. Those are my comments.

The Chair: Thank you, Minister.

Now, as we just passed a few minutes ago, we do have a rotation.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Minister, for being here—although I was surprised with your opening comments about the fact that you seem to be suggesting you only do what you're told. That has not been my experience with you, sir. You tend to be a bit more independent than that.

Hon. Rob Nicholson: No, no, that's right; and I departed from that for once.

Mr. Joe Comartin: One issue that has been raised—I hope I'm not stealing the thunder from the Liberals here—has been the issue of the overuse of the case management judge in the sense of not having any criteria or clear definition of what a mega-trial is.

I have to say at the outset that my own inclination is to accept that the senior judges in the regions would be the best to determine this, but I know that the Canadian Bar Association is concerned about an overreach on the use of this.

I wonder if you have any comments about that.

Hon. Rob Nicholson: I think this will generally be welcomed. You're quite correct that it will be the chief judge or the chief justice who will make the decision on whether many of these provisions would kick in with respect to mega-trials, but the application could be made by the defence counsel. It could be made by the crown. Or the judge himself or herself could make this application in a decision.

One of the points that I think everyone agrees on is that it's in everyone's interest to help expedite these matters. We want people to have a trial within a reasonable period of time. Everyone has an interest in making the criminal justice system work. Again, having that decision made on an application I think is a good one.

Mr. Joe Comartin: Does the department know how many mega-trials are going on in Canada at any given time?

Hon. Rob Nicholson: Again, I suppose it goes back to your definition. Is it a mega-trial when you have three people, or is it thirty people? I guess we all know it when we see it.

This is one of the issues raised with me when I get together with my provincial and territorial counterparts with regard to the challenges they've had in the last couple of years with these, so I'm pleased that they are supportive of moving forward. Of course, you saw the recommendations in the Air India commission as well as the Code-LeSage report, which specifically dealt with these issues.

So it will be well received.

Mr. Joe Comartin: I've not identified any opposition to this bill overall. Has the department?

Hon. Rob Nicholson: I don't know of any. I mean, sometimes questions are raised, and I'm prepared and we're prepared to answer those questions.

I think you have the brief by the CBA, and I think they're generally supportive of doing these.

Sometimes we may get a question such as "Why not just have the trial judge do everything?" There are some logistical challenges with having one individual see this through from beginning to end, and we're trying to address these. But I've received basically nothing but good feedback on this.

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

The Chair: Okay.

From the Conservative side, Mr. Goguen, please.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Mr. Minister, the CBA's position is basically quite favourable. They've identified I guess a few gaps in definitions. Is it your sense that the evolving case law will be sufficient to fill those gaps and that the procedures that will flow from that will effectively take care of any of those gaps?

Hon. Rob Nicholson: I'm not sure if I'd call them gaps. My understanding of the brief is that they're looking for clarification, or they're just wondering how in effect this will work.

I can say that this has been carefully and well thought out. As I say, I would point to a couple of commission reports in which this is specifically raised. It will be well received by those in the business of prosecuting individuals and those in the business of defending them or those in the business of adjudicating on them. It will be well received.

Mr. Robert Goguen: Thank you.

The Chair: You used a minute.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Minister, you mentioned the Air India commission. I was wondering if you could just elaborate on how this responds to some of the recommendations in the Air India commission.

Hon. Rob Nicholson: It certainly goes beyond what was the specific focus of the Air India commission. The Air India commission report was focused on terrorism and terrorist activities. As you can see, this bill deals not just with the challenges in a terrorist trial but goes beyond that to all aspects of organized crime, whether we label that terrorism or not.

The provisions of this bill are consistent with the challenges that have been identified in that report—that is, dealing with cases of this magnitude and this complexity. Even the provisions with respect to increasing the number of jurors; you get a long, complex case, and many times it's very difficult for an individual juror to continue for any number of reasons. Even the provisions with respect to protecting the identity of the witnesses; this is something I am very supportive of, of course. You get these cases where the individuals might be threatened, so we take this extra step to try to protect their identity and to support them.

Ms. Kerry-Lynne D. Findlay: Thank you.

An hon. member: How much time do we have left, Mr. Chair? We're sharing the time.

● (0930)

The Chair: You still have two minutes.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you.

Thank you, Mr. Minister. I have to tell you what a thrill it is to be on this committee and to work under your tutelage on this particular file, especially because, I understand, it's very well received.

I have a couple of things. You mentioned that there will be 14 jurors. Is there any opportunity for the case management judge in particular circumstances to have more than 14 jurors?

Hon. Rob Nicholson: It's limited to 14. The way it would work is that at the conclusion of the trial they would draw lots or have some sort of random selection among them to decide who would be the 12. The challenge we have, of course, is that the Criminal Code says that if you slip below 10, you're looking at a mistrial. So what we're doing is having these extra ones there. We hope to preclude the possibility of a mistrial, which of course is in no one's interest, and certainly not in the interest of the administration of justice.

Again, ultimately we maintain the long-standing tradition in the common law of having 12 jurors decide criminal trials. We maintain that, but we have put this extra cushion, if you will, in there to make sure that we have sufficient jurors to make the decision.

Mr. Brian Jean: You also mentioned, Minister, that the jurors are going to be identified by numbers instead of names.

Hon. Rob Nicholson: Yes.

Mr. Brian Jean: In that particular process, obviously the numbers would remain confidential for the case management judge or—

Hon. Rob Nicholson: This will be something that will be worked out, of course, with the chief judge or chief justice in terms of the actual mechanics. But I think it's important to provide that provision so that you reduce the possibility of someone taking action against a particular juror.

Mr. Brian Jean: Absolutely.

Thank you.

The Chair: Mr. Hsu.

Mr. Ted Hsu (Kingston and the Islands, Lib.): Thank you, Mr. Chair.

Minister, I am substituting today for Mr. Cotler, who is away on a trip, as you know.

You might also know that he has some concerns about this legislation. One of them is what Mr. Comartin brought up: the lack of a definition of "mega-trial".

Not being a lawyer myself, I'm looking at the Canadian Bar Association's document and their suggested amendments, which suggest some language. They suggest amending clause 4 by adding a little phrase:

> ...a case management judge will be assigned if the judge hearing the application believes it necessary for the proper administration of justice, having regard to the length of the trial, the complexity of the issues and any other factor the judge deems relevant to have a case management judge assigned.

This is a suggested criterion.

If this committee decided to amend the legislation and just added that little clause, is there a danger in doing that? It's just to provide some guidance and maybe reduce the chance that we have to come back and put that in if—

Hon. Rob Nicholson: It's a fair comment. I look very carefully at any suggestion that comes from Mr. Cotler.

The reason why it's phrased as it is there is that it's in direct response to the Code-LeSage report, which recommended against putting in a statutory or, as they termed it, "monolithic definition" of what may constitute a mega-trial. They said that for the proper administration of justice it's necessary to designate this; they would have confidence in the chief judge or the chief justice.

Again, when we were putting these together, we could have gone against what they were saying, but it seemed to me to make sense to not narrow it down. As you pointed out, in my response to Mr. Comartin I said that sometimes it's very difficult. Just because you have more than one accused, it doesn't mean it's going to be overly complex or that it could come into what we refer to as a mega-trial.

But again, I'd rather have this decided on a case-by-case basis. It's open, of course, to defence counsel, the crown, or the judge himself or herself to make that application, so we thought we'd go with what the Code-LeSage report says and—

● (0935)

Mr. Ted Hsu: So you don't think it's necessary to reference, say, simply the length, or something general like that?

Hon. Rob Nicholson: Again, you can have something that starts off with a large number of accused and that in some instances might collapse very quickly. I won't go into examples, but again, when we had a look at what the Code-LeSage report says, I said that it seemed to make sense to not put in, in their terms, "a monolithic definition" of what a mega-trial is. I have confidence in the administration of justice that they'll make that decision on a case-by-case basis—

Mr. Ted Hsu: Do you think some defence counsels will try to slow things down by asking for the appointment of a case management judge and extra jurors?

Hon. Rob Nicholson: I think the vast majority of people who are involved are responsible.

Are you saying that a defence lawyer would ask for it to be designated as a mega-trial? I think that might expedite the process, but again it's a decision that would be considered.

I think it's in everyone's interest to have an expedited and fair trial—and all these measures. So I don't think somebody would use this to slow it down. It seems to me the exact opposite, and they might want to have the trial moved forward.

Mr. Ted Hsu: So I guess the conclusion is you believe that trial judges will use their good judgment to try to reduce the length of trials and the overall cost of our criminal justice system, and they'll probably succeed.

Hon. Rob Nicholson: This is a step in that direction. One time I was here before the committee and was asked, "How much is it going to cost?" I said, "Well, my belief is this will save money".

Streamlining the process and not clogging up our judicial system is a step in the right direction in protecting and saving resources. We get this identified on a fairly regular basis. Have a look at comments made by many people involved with the criminal justice system. Bills like this are steps in responding to the challenges that have been identified—specifically with respect to Code-LeSage and the Air India commission—and with what provincial and territorial attorneys general have raised with me. So this is a response to that.

Mr. Ted Hsu: If this legislation were delayed until September or October—and this goes back to Mr. Comartin's question—how many trials do you think might be affected?

Hon. Rob Nicholson: It's hard to say. I'm not in a position to make a guess on that. These things are generally dealt with by provincial resources, provincial crown attorneys. But if it's a good idea—and again I can tell you I've had overwhelming support from my colleagues across Canada, and good response—I say, let's get it passed; it makes sense. This will be welcomed by all those involved with the legal process.

The Chair: Your time is up. We'll go back to the Conservative side.

Mr. Woodworth.

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

Thank you, Minister, for your attendance here today.

I just want to say how happy I am that the House has directed this bill to committee to be dealt with expeditiously. I think that Canadians across the country were very dismayed by events at a recent mega-trial. This bill responds to that, and I think Canadians want to see it passed.

I notice that in the Canadian Bar Association submission there's an interesting comment about rulings after mistrial. The bill before us gives the judge who hears the second trial discretion to allow the evidentiary rulings that were made previously to continue.

I find it ironic at the very least—having sat on this committee for two years, and having heard the Canadian Bar Association tell me over and over again that they are in favour of judicial discretion—that this is a case where they seem to not be in favour of giving a judge that discretion. Instead they are suggesting that if there were a mistrial—even if evidentiary issues were fully litigated with the same crown and the same defence, and decided—they would not want to give the judge hearing the second or ultimate trial the discretion to accept those evidentiary rulings. Instead they would want to give everybody the chance to go back and have a second bite at the apple, and allow them to try to argue that the initial ruling was wrongly decided.

I don't know what the implications of that would be in slowing down these mega-trials, but I'd be grateful for your comments on why the bill includes that discretion for a judge.

● (0940)

Hon. Rob Nicholson: Again, in putting this bill together we heard from a number of different sources that people everywhere want to have a fair but expeditious hearing of the issues. It seems to me that if that decision has been made and it's perfectly applicable to the instance, it's appropriate for that to continue. But that could be challenged. We don't close the door for individuals, but we direct the judges to make that decision as they deem appropriate. So yes, we give that discretion to the judiciary, and I think it will work well.

The Chair: We're at 9:40. That was the time we had been allotted for the minister to be here.

Hon. Rob Nicholson: If there's another question from this side, I don't mind waiting another minute or so.

The Chair: We still have two minutes left on the Conservative side. We'll finish that off, and then we'll come back.

Mr. Jean.

Mr. Brian Jean: Thank you for that, Mr. Chair.

I have a couple of questions. The first, of course, is in relation to the public response, especially in Quebec, relating to this. Has there been a public response—and not just one from the Canadian Bar Association and other trial associations across the country—to the department or to the minister's office?

Hon. Rob Nicholson: My understanding is that the Attorney General of Quebec, like attorneys general across Canada, is supportive of moving forward on this. As I said, I've dealt with a number of attorneys general in a number of the provinces here, and there has been a consensus in the meetings I've had with them over the last couple of years that responding to issues like mega-trials is something they're very supportive of. So it actually makes our job at the federal level a little easier when we can bring forward legislation that is widely accepted and supported, and rightly so. We write the legislation at the federal level, but for the most part it is administered at the provincial level using provincial resources, provincial crown attorneys, and many times provincial judges. I think it's important to listen to what they have to say and do what we can to respond to their concerns.

Mr. Brian Jean: Obviously the provinces were consulted.

The other question I have is in relation to the change-of-venue application. I notice that it was identified as something that was going to be changed. What's the difference between a normal change-of-venue application under the common law or under the Criminal Code and that for this new mega-trial? Is there any difference?

Hon. Rob Nicholson: I'll ask Ms. Desaulniers to answer that.

Ms. Anouk Desaulniers (Senior Counsel, Criminal Law Policy Section, Department of Justice): As the minister mentioned earlier, Bill C-2 would allow the joint hearing of related motions presented in separate trials. When some of these separate trials are held in different jurisdictions, the chief judge appointing a case management judge to this joint hearing would also need to identify in which jurisdiction the joint hearing would take place. It's in that context and that context only that, for the single purpose of holding a joint hearing, a trial may be held in part in another jurisdiction.

Mr. Brian Jean: My final question—

The Chair: Time is up.

Mr. Brian Jean: —is not going to be asked.

The Chair: Mr. Stewart.

Mr. Kennedy Stewart (Burnaby—Douglas, NDP): Thank you, Mr. Chair.

It's a great honour to serve on this committee.

I thank the minister for taking his time and giving a little extra time.

Because I'm new to this, I did call the B.C. Attorney General's Office yesterday just to see what their perspective was, and they were indeed in favour of this.

I do have a few questions. The way this has been framed, it deals with organized crime or domestic terror cases, but I'm wondering about how this would apply to more domestic cases, such as the riots we've seen in Toronto or in Vancouver. As we know from the news this morning, in Toronto there were 1,100 people initially charged, and now there are only 24, so most of those charges have been dropped. In Vancouver we've had 117 people charged and there are many more charges possibly coming.

I'm just wondering how this mega-trial bill would apply to something like that, which is not a domestic terrorism or organized crime case.

● (0945)

Hon. Rob Nicholson: I don't presuppose how any case not yet before the courts will be treated, but in any criminal proceeding, it would fall to the defence lawyers, the crown, the crown attorney, or the judge himself or herself to make that application if they deemed that in a case before them it was appropriate to have the provisions of this bill kick in. So it will be dealt with on a case-by-case basis.

Mr. Kennedy Stewart: I'm concerned, because I'm wondering about the treatment of youth under this act. We have specific provisions for protecting youth offenders or young offenders that kind of give them a little extra protection under the law. I'm just wondering whether this is in some way an end-run around the Young Offenders Act or whether youth will be provided the same protections that they are currently.

Hon. Rob Nicholson: There's no question about that. They are protected under the Youth Criminal Justice Act, and all of those provisions will continue.

Mr. Kennedy Stewart: But will the case management judge give special considerations to youth offenders, or is that not something that's been kind of considered in the construction of this act?

Hon. Rob Nicholson: I would ask Ms. Kane for that. It seems to me that it would make no difference whatsoever insofar as the act still applies.

Ms. Catherine Kane (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): Exactly.

The case management judge will help control the process within all the parameters of the Youth Criminal Justice Act, if it's a trial of young persons, and all the same protections would apply. This is a procedural mechanism to control the management of the trial only, not to impact on any of the rights otherwise available. Everything still applies, as it would if it had not been designated a case that required the case management judges.

Mr. Kennedy Stewart: I do notice under proposed section 551.3 that the case management judge has considerable powers. He or she has the powers to assist and encourage, but there are also powers to establish and to supersede trial judges. I'm wondering, if there's a conflict between the case management judge and the trial judge in youth offender cases, what the outcome of those might be, and whether that was specifically considered in the construction of this act.

Ms. Catherine Kane: There wouldn't be a conflict, but my colleague is better placed to perhaps go through the powers of the case management judge as opposed to the trial judge, because that may be of more assistance to you.

Ms. Anouk Desaulniers: The case management judge steps in at the preliminary phase of the trial, where the trial judge, per se, has not yet stepped in. If this case is proceeding before a youth court, of course this case management judge would need to come from that court as well. The case would only involve young offenders and it would not involve any adults, as was pointed out recently in 2009 by the Supreme Court of Canada. You can't have a joint trial with an adult and a young offender.

Mr. Kennedy Stewart: But can you have cases managed by one judge that are both youth offenders, so you could have youth and adults included in this management system?

Ms. Anouk Desaulniers: No, you couldn't. The YCJA clearly states that young offenders must be treated in a separate system, and that was reinforced again in 2009, when the Supreme Court of Canada stated that you can't join on a preferred indictment young offenders and adults. Young offenders have the right to be treated in a separate system, and that will remain.

Mr. Kennedy Stewart: So in the case of the G-20 or the Vancouver riots, you might actually have two mega-trials on the same issue. Might we have a youth one that's coordinated by one case management judge and an adult one that's coordinated by another case management judge?

Ms. Anouk Desaulniers: I'm not aware of the details of the proceedings in Toronto. Of course my main point is that, indeed, the current difference between the adult system and the young offender system will remain.

Mr. Kennedy Stewart: Right. And was this something that was considered—

The Chair: Time is up.

Mr. Kennedy Stewart: Okay. Thank you.

The Chair: Mr. Minister, I tried to save you the wrath of the whip a few minutes ago, but we're in your hands.

Hon. Rob Nicholson: Yes. If there's one more question from the opposition or the government side, I don't mind taking that.

I'm in your hands, Mr. Chairman, but you're right, I have to be back for ten o'clock.

The Chair: Okay. It goes back to the Conservative side now by the rules here.

Mr. Rathgeber.

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

Thank you, Minister, for your presentation.

I'm assuming the judges have been part of the consultative process and they're in favour of these types of administrative changes.

Ms. Anouk Desaulniers: Many of these recommendations stem from a report prepared by the Steering Committee on Justice Efficiencies and Access to the Justice System. Six representatives from the bench sit on this committee. As well, I can say that the former version of this bill, Bill C-53, was presented in January of this year to the National Criminal Justice Symposium, where 80 executive members from different portions of the criminal justice system were invited, including representatives from the bench, and the symposium publicly endorsed Bill C-53.

● (0950)

Mr. Brent Rathgeber: I just have a couple of mechanical, technical questions.

Who makes the decision whether or not a specific trial will qualify as a "mega-trial" and therefore be subject to this case management system? Is it the case management justice or the—

Hon. Rob Nicholson: The chief justice or the chief judge.

Mr. Brent Rathgeber: It is the chief justice.

Hon. Rob Nicholson: That's right, or the chief judge.

Mr. Brent Rathgeber: I'm assuming that the case management judge is thereafter disqualified from being the trier of fact in that specific case.

Ms. Anouk Desaulniers: That's not specifically provided. I can tell you, however, from experience that chief justices or chief judges usually don't conduct large and complex cases because they're otherwise called by their administrative duties and other duties. That's usually left for their colleagues.

Mr. Brent Rathgeber: Great. Thank you.

Hon. Rob Nicholson: Thank you very much, Mr. Chairman.

The Chair: Thank you, Minister.

I wonder if some officials would stay as we go through the clause-by-clause.

Hon. Rob Nicholson: I'm sure they'd be glad to.

The Chair: Thank you, Minister.

Marco Mendicino, president of the Association of Justice Counsel, appeared this morning. He'd like to have five minutes of the committee's time, but for him to appear it would have to be with the consent of the committee.

Mr. Stephen Woodworth: Can we possibly hold anyone to five minutes? I would like to ensure that we get through clause-by-clause this morning. If the individual really thinks five minutes will do the trick, then I have no objection to it.

The Chair: We have consent. You're held to five minutes. The clock has started.

Mr. Marco Mendicino (President, Association of Justice Counsel): First of all, thank you very much to the members of the committee for indulging me on short notice.

I am the president of the Association of Justice Counsel, which represents the working interests of some 2,700 federal lawyers and prosecutors who work at the Department of Justice and the Public Prosecution Service of Canada, as well as other federal agencies and tribunals across the country.

I'm very pleased to come to this body today to speak to you about Bill C-2. I would commend the committee for turning its quick attention to this bill before Parliament adjourns for the summer. There have been some references to recent cases in Quebec and other jurisdicitions that have raised some concerns about the state of the criminal justice system, and in particular, whether or not the criminal justice system is properly resourced. I think as a general proposition this bill represents a very strong, constructive step in the right direction to address those concerns. With that, I think we would be happy to join in the chorus of offering support for this legislation.

The current state of the criminal justice system is at the same time stressed, and I think that needs to be said. Within the last five years a number of judges, including Mr. Justice Michael Moldaver of the Ontario Court of Appeal, have put it at no less than a state of crisis. Again, I think this bill is a step in the right direction to address that state of crisis.

The causes of that crisis have been attributed to three broad factors. One is what we call a deluge of pre-trial charter applications. There have been significant changes in the rules of evidence and law, and there have been many changes to the Criminal Code, which have seen new offences created, in particular involving criminal conspiracies as well as terrorism. As we have brought in the prohibited zone of conduct, investigations have become more sophisticated, complex, and time-consuming, and we have seen more charges laid. We've seen more contested trials laid as we test the outer boundaries of these new laws.

It should come as no surprise to the members of this committee that when you study the reports for plans and priorities from the most relevant departments to your work—the PPSC, the Department of Justice—you see those caseloads and those files going right off the chart. The PPSC published just last week that it had over 75,000 files in the hopper. Just to put this into the context of the bill you're considering today, in real terms only about 1% or so of all those files were related to mega-trials. But on the flip side, we spent over one-fifth of our dedicated resources on those mega-trials.

It goes to show you that mega-trials absorb a disproportionate amount of our time and energy. Again, this bill attempts to address that. It attempts to address that by setting up a framework for very proactive case management. It has been documented by numerous reports from committees, which have included very venerable members of the judiciary and the bars, that active case management is a very effective way to address backlog and to address the chronic delays that plague our system. This bill addresses that as well.

We have three very narrow observations we would like to offer this committee for its consideration. The first has to do with the presumptively binding provisions. There are three sections in the bill effectively requiring that certain rulings, either from a case management trial judge or a trial judge proper, be binding, except where the interests of justice require reconsideration. On a very plain reading, that section is obviously intended to discourage parties in a mega-trial from bringing frivolous motions.

● (0955)

The reality is, save and except for the one enumerated ground of the coming to light of fresh evidence—the introduction of evidence that wasn't previously available—there are no other enumerated grounds in the text of the bill that would give guidance to the case management judge as to when the interests of justice actually call for a reconsideration of a prior ruling. So in the end you may have a set of binding rulings that are a push in terms of workload and whittling down the actual number of motions that are brought because this residual, traditional discretion, which is proper, confers a very broad category of factors that can justify reconsidering prior rulings.

The second observation we would offer relates to a point that was raised earlier when the Minister of Justice was offering his testimony, and that is, when it is appropriate to convene a case management joint hearing. That could result in the bifurcation of some proceedings. I believe the CBA has made some comments about how we can address the situation where we have a large trial involving adults and youths, and the Supreme Court of Canada has spoken very definitively and very recently on that. There is no way around it. You could have a single case management judge convene a case management hearing or conference, have all the parties there, and then close the hearing and reconstitute it as a youth court justice hearing.

I'm getting the signal from the chair. I'm going to wrap this up very quickly.

In effect, you could actually realize some efficiency there, but there are other areas where bifurcation is inevitable—for example, when we are talking about managing disclosure involving the assertion of national security privilege and the Canada Evidence Act, which presumptively takes it to a different court. That's another area where in mega-trials, particularly those involving terrorism or criminal organizations, we will run into a fork in the road.

The third and final comment, Mr. Chair, I will make very quickly. This is a tactical amendment that we would suggest, and I haven't had the benefit of seeing the CBA's submissions. It seems to us, on our reading of the text of the bill, that the rights of appeal have not been clarified. What we would suggest is that, in order to tie up some interpretive loose ends, section 673 of the Criminal Code, which is the definitions portion under "Appeals—Indictable Offences", be amended to read as follows:

> "trial court" means the court by which an accused was tried and includes a judge or a provincial court judge acting under Part XIX

—and here is the operative part—

> or a case management judge who exercises his or her powers as a trial judge under subsection 551.3(1) under Part XVIII.1.

I stand to be corrected on the Roman numerals.

Those are my submissions.

● (1000)

The Chair: Thank you.

I've given you about 50% over that five minutes. I do apologize to Mr. Woodworth, but it was important to hear Mr. Mendicino's comments.

That ends this portion. We will now go to clause-by-clause consideration.

Mr. Brian Jean: On a point of order.... I am not sure this is a point of order, but I'm wondering if the department, unless anybody has an objection to it, would comment on the proposed suggestion by the witness we just heard in relation to the definition section of this section of the Criminal Code.

The Chair: We are in the hands of the committee. We have to get through the clause-by-clause—

Mr. Joe Comartin: The initial problem is that section 673 is not dealt with in the bill—

Mr. Brian Jean: It's in the code.

Mr. Joe Comartin: —so the amendment is going to be out of order.

Mr. Brian Jean: That's why I am suggesting that the department, if they do have a question in relation to that, comment.

[*Translation*]

Ms. Anouk Desaulniers: If I may, I can....

[*English*]

Mr. Ted Hsu: Are we finished with the previous...? I wanted to speak later, when we were finished with that.

The Chair: Ms. May wanted to ask a question. I need the consent of the committee for Ms. May to speak.

Mr. Brian Jean: Do we have the time, Mr. Chair, if we want to get to clause-by-clause?

The Chair: Just give me a no, then—yes or no.

No. Okay.

Mr. Ted Hsu: Before we go to clause-by-clause, I'd like to raise a point of order.

Do we get to question the witness at all? If not, I don't know why —

The Chair: We're going to be out of time; that's our problem. I think the bill's going to go back as it came to us if we don't get through the clause-by-clause.

Mr. Ted Hsu: Okay. But as a general point, when somebody speaks to the committee, is there normally a chance to—

The Chair: Normally, you would, but you're kind of in uncharted territory with this particular issue. The answer would be yes, and it would go in the normal format back and forth.

Mr. Ted Hsu: Could I have it on the record that I asked to be able to question the witness, but there isn't enough time to do it? It seems—

Mr. Stephen Woodworth: I'd like to speak to that point of order and make it plain, as I thought I did before, that my consent to allowing the witness to speak was on the condition that this would be a five-minute intervention. Clearly, that wouldn't allow time for questioning. There was no suggestion made by Mr. Hsu at that time that he would want extra time to question the witness. It was only about five minutes for the witness to make a presentation.

The Chair: We now are up to almost 12 minutes, so if we could move on to the clause-by-clause I think it would be appropriate, given the circumstances.

Mr. Marco Mendicino: Mr. Chair, I thank the members of the committee, not only for the time allotted but for the extension as well.

The Chair: We'll carry on.

Pursuant to the order of reference of Thursday, June 16, 2011, we are dealing with Bill C-2, an act to amend the Criminal Code for mega-trials.

Pursuant to Standing Order 75(1), consideration of clause 1 is postponed.

(Clause 2 agreed to on division)

(Clauses 3 to 5 inclusive agreed to)

The Chair: Shall clauses 6 to 17 carry?

● (1005)

Mr. Kennedy Stewart: Mr. Chair, I have a question about inserting a definitional section into the act, and what clause that might be inserted under.

The Chair: You'd have to do an amendment, but it wouldn't be in these clauses we're talking about.

Mr. Kennedy Stewart: Okay, so there's no definitional section at all that could be amended to include at least some guidance to judges as to what cases might be appropriate to include.

The Chair: My understanding is that would need to have been prepared beforehand. You can't draft it here at this meeting.

Mr. Kennedy Stewart: So we're going to proceed without a definition of mega-trials. There's no opportunity to define this more, or at least to—

The Chair: You would have to have done it before you got here, to do that. That's my understanding.

Mr. Mike MacPherson (Procedural Clerk): We would need an amendment in writing for what you're proposing.

Mr. Brian Jean: Mr. Chair, point of order.

I don't think that's in order at all. I understand the 48 hours' notice in relation to substantive motions, but this is not a substantive motion. This is in relation to a bill that we're considering clause by clause, and amendments can come from the floor. I do not want to set a precedent in relation to that. I certainly would like to hear from the department in regard to that particular definition. Mr. Stewart and I are both in the same category. After hearing from the witness, we'd like to know exactly what that would be.

The other question is.... I would suggest it would be beyond the scope of the bill to add a definition section that's not within the section, as Mr. Comartin said, unless.... Of course I haven't seen the definition that Mr. Hsu put forward, or the definition section that he put forward that would be appropriate, but I would think it would be beyond the scope of the bill itself.

The Chair: My understanding is that I can't rule it out of order because there has been nothing proposed, nothing put before the committee.

Mr. Comartin.

Mr. Joe Comartin: But Mr. Jean is right: this is not one that requires 48 hours' notice; we're dealing with clause-by-clause. I agree with Mr. Jean; I'm quite concerned about this being a precedent.

With regard to an amendment, what's being suggested, by Mr. Cotler in particular, is that in section 551—clause 4 of this bill—we could insert a definition. I'm not saying I'm supporting this, but that's where it would go. In that paragraph in which we're talking about mega-trials, we would insert the definition, of course, of criteria.

Mr. Stephen Woodworth: Point of order.

Mr. Joe Comartin: So that's where it would go.

Again, Stephen, I want to be clear. I'm not supporting—

Mr. Stephen Woodworth: We've already passed clause 4, as I understand it. I thought we were on clause 6.

Mr. Joe Comartin: Right. Mr. Stewart tried to get the chair's attention as we were doing that. We understand we've gone through that clause, but we didn't get a chance to get your attention, Mr. Chair.

I'm not being critical of you.

The Chair: The law clerk tells me you have to have the original drafted and presented here. It's not an amendment on the floor; it has to be drafted.

Mr. Joe Comartin: That was the concern both Mr. Jean and I had.

Mr. Brian Jean: It could be read into the record, drafted here in English and then read into the record as an amendment. We've done that many times in many different committees.

I apologize to the analyst, but I would hate to set a precedent of that nature; I've never seen it done before. To suggest that we have to find mistakes in the legislation that happen before we actually deal with the bill and hear from witnesses is, in my mind, quite frankly a travesty of justice. I'm not prepared to accept that.

The Chair: What the law clerk is saying is that he's not going to draft the legislation. Somebody has to have it and present it.

Mr. Brian Jean: Absolutely; we can read it into the record.

Mr. Robert Goguen: I'm not sure this would be precedent-setting. This whole scenario is somewhat unusual, in the sense that the legislation was sent back to us without the committee's having been constituted. I think it's an extreme circumstance; I don't think it would be precedent-setting as a ruling.

These are just my thoughts on it.

● (1010)

The Chair: Mr. Woodworth.

Mr. Stephen Woodworth: There are two bottom lines. As point number one, I think this whole discussion is out of order, because we have already passed clause 4 without amendment. Secondly, I didn't hear Mr. Kennedy propose a particular amendment. All he has done is ask whether an amendment might be proposed.

Oh, I'm sorry; it's Mr. Stewart. I was thinking of my old friend Mr. Kennedy. I apologize to Mr. Stewart. I'm sure that's an invidious comparison. I didn't mean to make it.

Some hon. members: Oh, oh!

Mr. Stephen Woodworth: In any event, Mr. Stewart hasn't actually proposed an amendment. He has only asked if one could be proposed. I suppose that, at least from this point forward, if he has an amendment to propose, he knows he could, provided he has the wording.

But I don't actually see an amendment on the table. And it would be out of order anyway, since we passed clause 4.

The Chair: Again Ms. May has her hand up. I need the consent of the committee for her to ask a question.

Do we have consent?

Voices: No.

The Chair: Okay.

(Clauses 6 and 7 agreed to)

The Chair: I understand that with the consent of the committee, we could group the rest, from clause 8 through to clause 17.

Mr. Joe Comartin: Could you give us just a minute, Mr. Chair?

The Chair: Surely.

(Clauses 8 to 17 inclusive agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Mr. Ted Hsu: I have a question as to what exactly the title is. Is it "An Act to amend the Criminal Code (mega-trials)"? Is that what we're talking about?

The Chair: Is that the long title?

Mr. Ted Hsu: Is that the title we're voting on?

The Chair: And is this the short title?

Mr. Brian Jean: Is the short title the "Fair and Efficient Criminal Trials Act" in clause1 of the...?

Mr. Ted Hsu: Yes, and the title, which I think is what we're considering now, is "An Act to amend the Criminal Code (mega-trials)"? Is that the title we're voting on now, which contains the term that's not defined?

The Chair: The law clerk tells me that technically the title is "An Act to amend the Criminal Code (mega-trials)".

Mr. Ted Hsu: Could I have my vote recorded on this?

The Chair: Sure.

Ms. Kerry-Lynne D. Findlay: Aren't all votes and all comments recorded in these proceedings?

The Chair: No. We would have to take a recorded vote, and the clerk does that.

Mr. Ted Hsu: I'm opposed to the title.

The Chair: Shall the title pass?

(Title agreed to: yeas 10; nays 1)

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

Some hon. members: Agreed.

The Chair: I think that brings our second meeting to a conclusion.

I want to thank everybody for confusing me entirely.

Ms. May, sorry.

Again, I have to ask for the consent of the committee for Ms. May to speak to the committee.

Some hon. members: Agreed.

● (1015)

Ms. Elizabeth May (Saanich—Gulf Islands, GP): At least, Mr. Chair, now we can't have the concern that we don't have time to get through clause-by-clause.

I congratulate you on your election to the chair of this committee.

I appreciate members allowing me to join as an observer.

I merely want to observe that the Canadian Bar Association criminal law subsection, which was our only independent witness outside of federal government counsel, noted that the bill as written would not achieve its stated goals. I would ask this committee to be open to the possibility of revisiting this to insert the needed definition clause, to revisit how to handle mistrials, and to consider subsequent amendments, because I agree that the bill is important to pass. I would have preferred to see this committee pass it with amendments.

Thank you.

Mr. Stephen Woodworth: Mr. Chair, on a point of order, I find this very egregious that we have an observer who is making a suggestion that we should revisit decisions we've just made. I think that's highly inappropriate. Quite frankly, if that's what's going to happen, you're not going to be getting my consent to hear from Ms. May very often.

The Chair: Thank you.

Ms. Elizabeth May: I think I knew that.

The Chair: Certainly the bill will go back for third reading in the House.

The Clerk: It was adopted at all stages.

The Chair: Oh. This bill was adopted at all stages, when it goes back. I apologize.

The meeting is adjourned.

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