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## Tuesday, November 22, 2011

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## Chair

**Mr. Dave MacKenzie**

# Standing Committee on Justice and Human Rights

**Tuesday, November 22, 2011**

● (0850)

[*English*]

**The Chair (Mr. Dave MacKenzie (Oxford, CPC)):** We'll get the meeting under way. This is meeting 13, dealing with Bill C-10 , the clause-by-clause. I think we're at clause 8.

There's a Liberal amendment on clause 8.

Mr. Cotler.

(On clause 8)

**Hon. Irwin Cotler (Mount Royal, Lib.):** Thank you, Mr. Chairman.

Continuing with the amendments with respect to this bill, I just want to say by way of quick preface that I remain in support of the bill. I proffer the amendments only with the view to refining both the protection for the victim and the liability of the perpetrators.

With regard to clause 8, the purpose here is to amend Bill C-10 by replacing lines 22 to 37 on page 7 with the following:

> section 6.1, the Minister of Finance and the Minister of Foreign Affairs shall, within the scope of the powers and to the extent that is reasonably practicable, assist any judgment creditor or the court that has rendered the judgment in identifying and locating the property of that foreign state or any agency or instrumentality of the foreign state.
>
> (1.1) In this section, "instrumentality", in respect of a foreign state, means a legal entity
>
> (a) that is separate from the foreign state; and
>
> (b) in which the foreign state has a direct or indirect controlling or majority ownership interest.

The rationale for this amendment, Mr. Chairman, is that the states that are successfully sued should not be able to shield their assets through instrumentalities or proxies they direct or control.

Again, the purpose of this amendment is in order to increase the effectiveness of the proposed legislation, section 12.1 of the State Immunity Act should expressly reference legal entities formally separate from the state but in respect of which the state has a beneficial or direct or indirect controlling or majority ownership and interest. It just really is to facilitate the execution of judgments in that regard where a suit is successful.

**The Chair:** Thank you, Mr. Cotler.

(Amendment negatived)

**The Chair:** Liberal amendment 12. Mr. Cotler.

**Hon. Irwin Cotler:** Mr. Chairman, this is continuing along the same lines, with the purposes of making the execution of judgment more effective.

I move that Bill C-10 , in clause 8, be amended by replacing lines 26 to 37 on page 7 with the following:

> creditor in identifying and locating property—namely, financial assets that are held within Canadian jurisdiction or property situated in Canada—of the foreign state or any agency or instruments thereof, unless the Minister of Foreign Affairs believes that to do so would be injurious to Canada's international relations or either Minister believes that to do so would be injurious to Canada's other interests.

Again, the definition of "instrumentality" remains the same. The amendment is being offered for purposes of making more effective execution of judgment.

**The Chair:** Thank you, Mr. Cotler.

(Amendment negatived)

**Hon. Irwin Cotler:** I want to mention by way of addendum that I understand these motions are failing. I just want to acknowledge both the witness testimony and the work of the Canadian Coalition Against Terrorism, which provided the background, the rationale, and the purpose of character for these amendments.

**The Chair:** Thank you, Mr. Cotler.

Mr. Harris.

**Mr. Jack Harris (St. John's East, NDP):** Just for the record, Mr. Chair, although we didn't speak to these amendments, we supported these amendments. We're not having recorded votes on them, but I just want it on the record that we supported the work that has been done to try to improve this legislation, and I want to thank Mr. Cotler for bringing the amendments.

**The Chair:** Thank you.

So there is nothing further?

(Clause 8 agreed to)

(On clause 9)

**The Chair:** On clause 9, Mr. Cotler, I believe you have an amendment.

**Hon. Irwin Cotler:** Yes, I do, Mr. Chairman.

I would move that Bill C-10, in clause 9, be amended by replacing lines 13 to 16 on page 8 with the following:

> agency of a foreign state or in respect of proceedings that relate to terrorist activity or the support of terrorism engaged in by a foreign state.

Mr. Chairman, I basically spoke to this the last time we met as part of my overall discussion, so I will not engage in any more discussion on it.

● (0855)

**The Chair:** Thank you, Mr. Cotler.

Mr. Harris.

**Mr. Jack Harris:** Thank you, Mr. Chair.

We support this particular amendment because it does in fact replace the existing wording that refers to the list, and as we said on the last occasion, when we debated the merits of this last Tuesday, we take the position that this list is not an appropriate way to deal with the addition of a civil remedy. So we will support Mr. Cotler's amendment because it talks about foreign states in general. As a result, we will support the amendment but then vote against the clause because of the contents of it.

**The Chair:** Thank you.

(Amendment negatived)

**Hon. Irwin Cotler:** Again, Mr. Chair, the purpose of that amendment is to make sure this legislation is more effective. And I just invite the government MPs to maybe revisit this at report stage or otherwise, because this is all being offered for the purposes of strengthening the legislation, the government legislation, in this regard.

(Clause 9 agreed to)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** Mr. Chair, I have a motion that clauses 10 to 31 and clauses 35 to 38, inclusively, be voted on together or severally.

The reason is that we have no amendments to propose to these clauses. There appears to be a general consensus that the offences against children are ones that should be dealt with separately, that the increase in penalties and the creation of new separate penalties are desirable. I'd like to speak to them as a group, and perhaps that procedural aspect could be dealt with first.

On the reason for separating out clauses 32, 33, and 34, one would have to ask the drafters, but it appears that everything from 10 to 38 deals with the sexual offences against children, but clauses 32, 33, and 34 are related to other aspects of conditional releases and not necessarily in the same category. So if that's acceptable to the committee, I would propose to have them discussed afterwards. It's out of order, out of sequence, but if we can do clauses 10 to 31 and clauses 35 to 38 together, which would involve ultimately one vote, I would propose to speak, but I would speak perhaps for a little longer than ten minutes, since we're dealing with approximately 25 clauses.

**Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC):** Would you do clauses 32 to 34 immediately afterwards? Is that what you're saying? Or what do you propose?

**Mr. Jack Harris:** Yes, I'd suggest we do clauses 32, 33, and 34 immediately afterwards.

**Mr. Robert Goguen:** Sir, I have no objection to going with that.

**The Chair:** Is there consent that we deal with clauses 10 to 31 and clauses 35 to 38 as a basket right now?

**Some hon. members:** Agreed.

**The Chair:** Having heard the discussion, shall clauses 10 to 31 now carry?

**Mr. Jack Harris:** No, Mr. Chairman, I want to speak to it.

**The Chair:** You want to speak to it first?

**Mr. Jack Harris:** Oh gosh, yes.

**Ms. Françoise Boivin (Gatineau, NDP):** But in a block.

**Mr. Jack Harris:** I would suggest this was a procedural—

**The Chair:** I thought we were moving quickly here, Mr. Harris.

● (0900)

**Mr. Jack Harris:** Well, it's always nice to be optimistic, but the idea was that—

**The Chair:** I was very.

**Mr. Jack Harris:** —if you needed to do two separate votes at the end, clauses 10 to 31 and clauses 35 to 38, that's fine.

**Mr. Robert Goguen:** If you want to bank your time on the other clauses, 34, etc., that's fine.

**Mr. Jack Harris:** Yes, and the other one will go afterwards. But I do want to speak to these as a group, if I may.

**The Chair:** Mr. Harris, perhaps I could interrupt you for one minute. I see one of the officials would like to add something to the discussion.

**Ms. Catherine Kane (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice):** Pardon me. Would you also consider clause 49 in that group, because of the way the clauses are ordered? In the order that they amend the Criminal Code, clause 49 also deals with the provisions related to child sexual offences. It's a consequential amendment but it's still related to the child sexual offences amendments.

Alternatively, you can wait until we get there, bearing in mind that it is linked.

**Mr. Jack Harris:** Yes, it is linked, but there may be some other aspects of the Criminal Records Act that we'd like to discuss at that point, so perhaps we can deal with that. But thank you for that suggestion.

**The Chair:** Go ahead, Mr. Harris.

**Mr. Jack Harris:** Thank you, Mr. Chair.

I want to thank my colleagues on the committee for their agreement to deal with these as a group. It will obviously save some time, because based on our agreement on Thursday, each party has been allocated ten minutes per clause, and we're dealing with 25 clauses here as a group, so we will obviously be more efficient. I may be speaking for more than ten minutes, but I'm not going to speak unduly long.

I did want to speak to this particular section for a number of reasons. It's extremely important because we have a number of clauses increasing the sentences for sexual assaults against children. This is an abominable situation, and an abominable crime, and I think there's a consensus in our society as to the abhorrence of this particular type of criminal activity.

I want to speak to it, as well, to point out, for those who may not know, that we, as a party, offered on at least two occasions to take this particular part out of the bill and have it dealt with speedily. This was done some time ago, most recently by me in a motion in the House of Commons on October 26. It was a motion that was designed to allow this to be removed from Bill C-10 and fast-tracked, as it were, to ensure that this would get speedy passage, and not get bogged down in the debate we've been having about other aspects of the bill that are contentious and on which we've heard a lot of evidence. So it's very important that it be known that this was something we did.

In getting caught up in the rhetoric of all this, we've heard some pretty horrific statements, unfortunately, by people in significant positions of power, such as the Minister of Justice, suggesting that members of the opposition—and even, in some cases, identifying people by name—are supporting child molesters, child rapists, and criminal sexual offenders. I find that extremely offensive, and unworthy of the people who make those kinds of comments.

I say that as someone who has had considerable experience in seeing the effects of child sexual assault and child sexual abuse. I have a great deal of experience. Through most of the nineties—from about 1989 to 1997—I was a lawyer advocating for, working for, and supporting victims of the child sexual abuse that took place at the Mount Cashel Orphanage.

I saw first-hand, over a considerable number of years, the consequences to these individuals of the child sexual assault they had received at the hands of those who were in a position of trust in relation to them. I saw the consequences of post-traumatic stress disorder. I know far more about post-traumatic stress disorder and its consequences than anyone would want to know. I saw the effect on their lives, and how this changed their lives, how their own futures were affected by the consequences of child sexual assault and untreated—for the most part—post-traumatic stress disorder.

I saw evidence of the self-medication through drugs and alcohol. I saw the inability to form meaningful relationships in many cases. I had the task of trying to provide evidence and proof that their circumstances were related to the effects of the child sexual assault, and it was an era in which there was not a great deal of recognition of the consequences of child sexual abuse. To obtain a civil remedy for these individuals through the courts in lawsuits against the organization that ran the orphanage and against the Government of Newfoundland and Labrador was a long and tedious task, made more difficult, of course, by having to deal with the consequences to the individuals throughout.

● (0905)

So I have a great deal of sensitivity to post-traumatic stress disorder, to child sexual assault, and I find it objectionable and abhorrent to hear it suggested that in dealing with this legislation our party is somehow advocating for sexual abusers and offenders. I can't find the right words to express how abhorrent that notion is, that we would be here, in this House and in this committee, trying to find ways to prevent the proper dealing with sexual offenders, against children in particular, that are set out in part 2 of this bill.

There is somewhat of an issue here with respect to minimum mandatory sentences where in most cases they're already there. We're not creating new minimum mandatories in most parts; we're increasing them for sexual interference, for invitation to sexual touching, for sexual exploitation, and the prohibition orders are being changed. Some significant changes are being made in this bill, the creation of new offences, which are unique in that they have a preventive role. When I talk about that, there's a new offence, for example, of making sexually explicit material available to children.

This comes under the category of what is known as grooming, that perpetrators and predators on children sometimes go through a process as part of the luring and grooming of a child for eventual sexual assault; they do certain activities such as making pornography available, Internet luring that is now a specific offence, and agreeing or making arrangements to meet for the purposes of a sexual assault. These are now offences in themselves and they have a preventive role because they're designed to encounter and confront a perpetrator with criminal charges prior to an actual sexual assault, and that is important. It's extremely important to not just punish offenders, which obviously is one of the aims of the criminal law, but it's even more important to avoid the sexual assault itself. And I say that with great conviction, based on my own experience, as to what the consequences of that sexual assault would be.

These are important steps forward, and I want it clear, on the record, that we support this aspect of Bill C-10, that it can help prevent young people from encountering, as a victim, the sexual predation of adults on minors, which is unfortunately far too common.

Of the provisions that are included in here, the Internet luring offences are particularly important. We hear about cases, from time to time, where a police officer poses as a young person on an Internet website or chat site and eventually sets up some sort of a sting operation, which is very elaborate in nature, to provide the evidence of someone who's intending to commit an offence of this nature. That takes an awful lot of police power to undertake and is not necessarily as effective as the new offences that will provide an opportunity to prevent an offence from taking place by interfering far earlier and making some of the activities that are precursors to sexual assault offences in themselves.

● (0910)

I wanted to put that on the record, Chair, as an important step forward in the criminal law, and to make it very clear that we support these amendments. There are increases in mandatory minimums here. While we in general have significant reservations about mandatory minimums, we see there being a consensus in society about the abhorrence of these particular offences, as they not only affect the innocence of our children but also have extremely severe consequences, in many cases lifelong, for the individual victim of a child sexual assault.

When I was a lawyer in the 1990s I spent a great deal of my time dealing with and trying to assist and eventually being successful in getting a significant civil remedy for these individuals, who also had to undergo the trauma of trials and other court activity in order to pursue this and eventually receive a reasonable settlement. There were considerable effects on their lives in terms of their being able to complete a proper education or easily form relationships, and the consequences on their own future were great. This is not a simple matter of something happening and then someone moving on. It is something that takes a considerable amount of effort, time, counselling, support, and many other things to overcome.

I do want to ensure members opposite that these provisions of this legislation will receive our full support. If any anomalies appear as a consequence of mandatory minimums—I'm not sure what they might be—they will be subject to a review. We proposed one earlier. There's another provision later on in the legislation that calls for examination of the effects of the mandatory minimum provisions. There will be an opportunity to correct any anomalies that may show up. I find it important that we put on the record our support for these provisions and make it clear that on at least two occasions we sought and offered to fast-track these provisions so they would be put into place in a speedy manner. We don't know how long the rest of this bill is going to take to find its way through Parliament, through the Senate, and then back again. We wanted to take this out and ensure it was passed as speedily as possible. Unfortunately, it's still included in the rest of the bill. As my motion this morning indicates, we also want to see it speedily passed through this committee stage.

Those are my comments, Mr. Chair.

**The Chair:** Thank you, Mr. Harris.

Mr. Jean.

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** I'll be very brief, Mr. Chair.

I just wanted to say that I agree with Mr. Harris in relation to this. I don't think anybody can see these kinds of events first-hand and the effect they have without seeing the permanence of them. I also think Mr. Harris is right: these brand-new laws will create better safety for the community, especially with regard to sexual predators, who for the most part are not caught in the very beginning stages of their situation.

I unfortunately defended an individual who got two years less a day for sexually assaulting three of his daughters over a seven-year period. It was very disgusting, and I was troubled to see that he could actually receive a community sentence, first of all. I saw the effects first-hand on his daughters. I can assure the members of this committee that the effects those people have are permanent and definitely impair any ability they have to live.

I would agree with Mr. Harris that no one in this place would have anything but contempt for these types of criminals. I believe these new laws will mean better safety for the public.

● (0915)

**The Chair:** Thank you.

The plan was to deal with clauses 10 to 31 as a group.

(Clauses 10 through 31 inclusive agreed to)

**The Chair:** It is unanimous.

(On clause 32)

**The Chair:** We'll go to clause 32, and then we'll deal with the other three after that.

There is no amendment to that.

**Mr. Jack Harris:** These provisions, though, in subclause 32(1) are related to the prohibition of the possession of weapons as a condition of release for offences under the Controlled Drugs and Substances Act. These are adding conditions to release in the event of charges under sections 5 to 7 of the Controlled Drugs and Substances Act.

You don't have any comment on those?

(Clauses 32 and 33 agreed to)

(On clause 34)

**The Chair:** Now we have Liberal amendment L-14.

Mr. Cotler.

**Hon. Irwin Cotler:** Yes, Mr. Chairman.

**The Chair:** My understanding is if L-14 is adopted, then NDP-2 could not be moved, and if L-14 is defeated, then Liberal amendment L-15 cannot be moved. If Liberal amendment L-14 is adopted—

**Mr. Jack Harris:** If those are accepted.

**The Chair:** —the amendment NDP-2 could not be moved, amending the same line. If Liberal amendment L-14 is defeated, Liberal amendment L-15 cannot be moved because it refers to exceptional circumstances in the previous amendment.

[*Translation*]

**Ms. Charmaine Borg (Terrebonne—Blainville, NDP):** It does not say the same thing in English and French. In French, it says that amendment NDP-2 goes first.

**A voice:** Amendment LIB-14 should go first.

● (0920)

**Ms. Françoise Boivin:** We just want to know whether to look to the left or the right. We like knowing that. We are just pointing out that the correct version is on the left, that's all.

[*English*]

**The Chair:** Mr. Cotler.

**Hon. Irwin Cotler:** I'm just wondering if you're saying my amendment in clause 34 has been overtaken. I think it's still moveable.

**The Chair:** L-14, your amendment. That's what we're dealing with now. It's moveable, yes.

**Hon. Irwin Cotler:** Thank you, Mr. Chairman.

I move that clause 34 be amended by replacing line 8 on page 19 with the following:

> 742.3, if exceptional circumstances exist that justify the service of the sentence in the community or if

Standing alone, that may not make much sense, so let me just try to very quickly explain the rationale.

The whole approach here is to permit the sentencing judge to consider the imposition of a conditional sentence order, notwithstanding the restrictions in exceptional circumstances. The rationale for that is that by removing the possibility of a conditional sentence for so many types of offenders, it is expected that the judge may move towards what might be called the least severe sentence, whenever possible. Now, if a conditional sentence is no longer available, the judge may consider suspended sentences followed by a period of probation if incarceration is inappropriate. But in many cases, neither a suspended sentence nor a system of incarceration is appropriate.

To sum it up, judges, defence lawyers, and crown counsel may well face situations where a more reasonable and just result is simply unavailable. Now, given what might be called legislative creep and the erosion of conditional sentences, first in Bill C-9 and now in this bill, I am proposing—this is a recommendation that was made as well by the Canadian Bar Association and indeed is based upon their recommendation—that consideration be given to including safety-valve provisions, because in effect Bill C-10.... This is a specific case study that restricts and limits judicial discretion on sentencing. But that discretion has formed a fundamental part of our criminal justice system.

The U.S. experience with mandatory sentencing guidelines resulted there in a dramatic transfer of power from the judiciary to the prosecution service, which they are revisiting and reconsidering and are indeed moving away from as a result, in particular, of the U. S. Sentencing Commission report of just a week ago.

To sum up, Mr. Chairman, conditional sentences in Canada would give judges the capacity to shape sentences, based on their experience and the collective experience of other judges, for specific offenders who are convicted of specific offences. Any further limitations on that judicial discretion, regrettably, will tread too deeply into the important role judicial review plays with regard to the specificity of the offence, the specificity of the offender involved, and the ability to exercise that discretion appropriately, having regard for all the circumstances.

**The Chair:** Thank you, Mr. Cotler.

Go ahead, Mr. Harris.

**Mr. Jack Harris:** Mr. Chair, we prefer our own amendment and would rather use our ten minutes to talk about that.

**The Chair:** Having heard Liberal amendment 14, we will vote on the amendment.

(Amendment negatived)

**Hon. Irwin Cotler:** I look for vindication in history.

**The Chair:** Mr. Harris.

● (0925)

**Mr. Jack Harris:** Thank you, Mr. Chair.

I'll be sharing my time with Madame Boivin.

Our amendment suggests that the approach being taken by the legislation is unduly broad. We would seek to ameliorate that by our provision, which would include the phrase before all of the provisions here to say that a conditional sentence would be available:

> 742.3, if exceptional circumstances exist relating to the offence or to the offender that justify service of the sentence in the community or if

That would be inserted before the series of conditions here.

The rationale for this is that the government's proposal is to create a whole series of circumstances where a conditional sentence is unavailable. It's been criticized by a number of bodies, including the Canadian Bar Association, whose view we agree with. There's a whole series of listed offences here, for example, that would hardly ever attract the conditional sentence in any event. They're not used for serious violent and serious property offences. They're really a tool that the courts use to seek to rehabilitate an offender by perhaps having conditional sentence of service in the community plus a long period of probation that's aimed at rehabilitating an offender.

To use the approach as is contained here—any sentence with a maximum imprisonment of 14 years or more—as a tool is unduly broad. There are many offences that have a maximum penalty of 14 years or greater that hardly ever attract that particular sentence. It really is contrary to the normal principles of sentence, one of which is proportionality, which is designed to reflect the necessary balance that must be achieved in choosing a just sentence. According to the Canadian Bar Association, for the balance to contribute to the administration of a justice system it must make sense to the public it is intended to protect, and logic and fairness require an individualized proportional sentence.

That's what we pay judges for. They are paid a considerable amount of money. We make a great deal of effort in selecting people who are experienced and knowledgeable. If you talk to judges across this country, they say one of the most important things that they do is sentencing. That's what we're paying them for. If they make mistakes, there's an appeal process. That's what we pay appeal court judges and Supreme Court judges to do, if a provincial court judge makes a mistake.

We do have a system that responds to the individual and to an individualized offence. Much of this is actually unnecessary, because conditional sentences would hardly ever apply, if ever. We have to ensure, in our view, that there's provision for exceptional circumstances. A judge is the one we've asked, as a society, to play that role in determining when exceptional circumstances exist.

The list remains there as to the ones the government record supports as being not available for conditional sentences. If the amendment were made to allow that there may be exceptional circumstances that relate either to the offence or the offender that justify a community service sentence, they may be appropriate. It may have to do with diminished mental responsibility or diminished intellectual responsibility. It may have to do with the offence itself being perhaps technical in nature or a case of somebody being a party to an offence in law but not much of a party to the offence.

In fact, there are individual circumstances that you can't predict here but that would give rise to the desire to have a conditional sentence in a particular circumstance. We think that would be an improvement to the bill to allow for that discretion.

● (0930)

I'll pass it on to my colleague Madam Boivin to continue our period of time on this clause.

[*Translation*]

**Ms. Françoise Boivin:** Thank you, Mr. Harris.

I just want to reinforce the point that Mr. Harris made. In my opinion, the amendment we are proposing will just make this clause a little clearer for those called upon to impose sentences. As everyone who has talked to people involved in criminal trials knows, the most difficult aspect is often the sentencing. So it makes sense to provide the courts with good tools, fully accepting the fact that it is there that cases will be heard and it is there that the facts will have to be established and the situations analyzed in their entirety.

The idea is clearly stated in the case of a sentence of less than two years. So it would read: "if exceptional circumstances exist relating to the offence or to the offender that justify service of the sentence in the community or if". Mr. Harris has pointed out clearly that we are not removing in any way the conditions that the government is proposing to add to section 742.1 of the Criminal Code, because paragraphs *a* to *f* remain unchanged. It simply clarifies a condition that will perhaps make sentencing a little easier for judges.

The judiciary tells us, not without good reason, that, as legislators, we often put a lot on their plates. It is not easy to find the right balance. A sentence must clearly be a punishment for a person at the same time as it must make sure that it is possible for the person to be rehabilitated.

I think this gives a good balance. It is just a clarification. It does not change or get rid of the system. This amendment will just clarify what the government had in mind with its Bill C-10.

[*English*]

**The Chair:** Thank you, Madam Boivin.

Mr. Jean.

**Mr. Brian Jean:** Thank you, Mr. Chair.

I have done a lot of thinking about this particular issue and the minimum mandatory sentences, and I was just going to say that the act we've proposed does allow for less than a minimum mandatory sentence, if the accused, for instance, has drug counselling. First of all, there is an option for that, so if there is an issue with drugs—obviously a bad habit—the court can sentence the accused to something other than the minimum.

Also, most Canadians are shocked when somebody commits a serious crime and they serve their sentence in the community, such as the case I just mentioned with a person who committed incest and sexual assaults on his daughters from the time they were nine years to fifteen years. He was only caught some twenty years later, when he fondled another child who was the granddaughter of his friends.

When that sentence came about I was ashamed of it, first of all, but I think anybody who was in the court, and any of the people who were involved, were quite frankly dismal. They were very shocked and very surprised that a person who could commit that kind of offence could then serve the time in the community.

I think that's something this section goes with, and I think that across the country we clearly need to have consistency in sentencing, to send a clear message to these people. Although I sympathize somewhat with Mr. Harris and Ms. Boivin in relation to leaving it to judges, I think as legislators we clearly have an obligation to protect Canadians first and to have consistency across the board, to let the accused know that if they commit the crime they're going to do serious time.

That's why I would not support the NDP on this particular set of amendments.

**The Chair:** Thank you.

(Amendment negatived)

**The Chair:** We're at amendment NDP-3.

Mr. Harris.

**Mr. Jack Harris:** Thank you, Chair.

I can see by my own clock that I have at least a couple of minutes to devote to this particular one.

This is designed to remove lines 15 and 16 on page 19 of the bill, and would—

**The Chair:** No, Mr. Harris; you didn't start it on time.

**Mr. Jack Harris:** I didn't start it on time, but I'll take the chair's advice as to when I'm finished.

This is to effectively remove the mandatory minimums from the category here, basically for the reasons I just said.

I don't know when the case was that Mr. Jean talked about; I suspect that would not occur today. There are always individual cases that do get the attention of the media and the public from time to time, but there is a mechanism of appeal there, and surely one would expect the crown to appeal in any appropriate case. I don't think the legislature needs to deal with every case that comes before the courts.

(Amendment negatived)

● (0935)

**The Chair:** Now, Liberal amendment number 15 cannot go ahead because Liberal amendment number 14 failed, and amendment L-15 refers to "exceptional circumstances" in amendment L-14.

**Hon. Irwin Cotler:** Except it's a distinguishable approach to the exceptional circumstances, Mr. Chairman, because it's dealing here with the specific issue of where the offender may suffer from a mental illness or disability. It's a particularized application, Mr. Chairman, of what we referred to before.

**The Chair:** I think, though, that you have to have the term "exceptional circumstances" that you're referring to in here in the bill, and it's not in the bill. That was in your amendment L-14 that failed.

**Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC):** Absolutely.

**Hon. Irwin Cotler:** I know the amendment—

**Mr. Jack Harris:** I don't see much point in defining "exceptional circumstances" if they are not there. We can revisit the other amendment, though, if you want.

**Ms. Kerry-Lynne D. Findlay:** It's a package deal.

**Hon. Irwin Cotler:** It is and it is not. There's a generic approach to the "exceptional circumstances". That is what failed with regard to the regime. This has to do with the particularity of where the "exceptional circumstances" is caught up in the matter of the mental illness of the offender. The other one was more generic. This one is more specific, Mr. Chairman.

**Mr. Robert Goguen:** Maybe we should just vote on it.

**The Chair:** I think we should just vote on it, because we're going to end up—

**Hon. Irwin Cotler:** With a procedural haggle. We might as well just vote, because we know what the outcome's going to be in any case.

(Amendment negatived)

**Hon. Irwin Cotler:** That's quicker than procedurally going about it.

**The Chair:** Sorry.

Yes, Mr. Jean.

**Mr. Brian Jean:** On a point of order, I did have a comment on the last one. I just wanted to clarify with Mr. Cotler that of course he knows that the Criminal Code deals with mental incapacity already in relation to the intent to commit. So although he has set it out in this and it's been defeated, I believe the reality is that it's already contained within the Criminal Code.

**The Chair:** We've now dealt with the amendments.

(Clause 34 agreed to)

Mr. Harris, you were suggesting clauses 35 through clause 38....

**Mr. Jack Harris:** On clause 35 through clause 38, I don't think we need any further discussion on that group. That's part of the child sexual offences group, so we would propose to have a vote on that, which would be treated the same as the earlier vote on clauses 10 to 31. And we would be voting in favour of those clauses as a group.

(Clauses 35 to 38 inclusive agreed to)

**The Chair:** It is unanimous.

Now, on clause 39, I believe we have a number of NDP amendments and one Liberal amendment.

(On clause 39)

● (0940)

**Mr. Jack Harris:** I have a proposal, sir.

**The Chair:** Yes.

**Mr. Jack Harris:** As mentioned at the end of the meeting on Thursday, there was a group of amendments that relate to the mandatory minimum sentences, and in this particular case, the ones coming up would be clauses 39 to 43, which cover various aspects of the minimum mandatory sentences. I would propose to put them to the end of the current clause-by-clause discussion so that they would be debated afterwards, if that's agreeable to the meeting.

**The Chair:** Is that agreeable to the committee?

**Mr. Robert Goguen:** Fine.

**The Chair:** So to get this straight, those are clauses 39, 40, 41, 42, and 43?

**Mr. Jack Harris:** Correct.

**The Chair:** Okay. We'll stand clauses 39 to 43 inclusive. That gets us to clause 44.

Mr. Harris.

(On clause 44)

**Mr. Jack Harris:** Thank you, Chair.

We are supporting clause 44. There's no amendment being proposed by us or by anybody, I think.

It's important for us, because if one looks at it, it's a whole series of additions to schedule I of the Controlled Drugs and Substances Act, moving a number of items from schedule III to schedule I—schedule I being the drugs treated most seriously under the Controlled Drugs and Substances Act, and schedule III being the ones treated least seriously.

We are supporting this clause because among other things, it moves certain drugs to schedule I, amphetamines being one of them and the other being the date rape drugs, which are both particularly egregious in terms of their use in society. Amphetamines are drugs that are considerably seriously abused. They're prescription drugs, mostly, that find their way into use on the street and are particularly difficult to deal with. They're addictive. They lead to other aspects of crime and they should be treated the same as the many other drugs that need a greater level of control, and should be there.

The date rape drugs should not be treated flimsily. These are, as we all know, used in circumstances that involve the exploitation of young women almost entirely, I should think, and ought to be treated seriously, more seriously obviously than some other drugs.

We had a situation where amphetamines and the date rape drugs were treated less seriously than cannabis—marijuana—and we don't think that's appropriate.

I don't have much more to say about that, although my colleague Madame Boivin.... Are you leaving us?

**Ms. Françoise Boivin:** Finished. Sorry.

**Mr. Jack Harris:** I thought she might want to add something to that. Perhaps Madame Borg would like to add a few words to that, on the issue of moving the date rape drugs and the amphetamines to schedule I so that they would be treated more seriously under the Controlled Drugs and Substances Act. I've only used a few minutes of our allotted time, so perhaps one of my colleagues would like to add something to that.

That's the reason we're supporting it, Chair. We think it's a positive step.

**The Chair:** Madame Borg.

[*Translation*]

**Ms. Charmaine Borg:** Thank you, Mr. Chair.

Yes, we think that adding these drugs to the list is a positive step that will improve the Criminal Code. This is a concern, particularly among young women. It is a step forward, in my opinion.

I know that the Standing Committee on the Status of Women is also looking at this matter. They are also specifically concerned about violence against women.

So this is a positive step that we fully support.

● (0945)

[*English*]

**The Chair:** Thank you.

(Clause 44 agreed to)

**The Chair:** Clause 45. Mr. Harris.

**Mr. Jack Harris:** We support clause 45 as well, as a coordinating amendment to clause 44.

**The Chair:** Thank you.

(Clause 45 agreed to)

**The Chair:** Clause 46. Mr. Harris.

**Mr. Jack Harris:** Again, this is a coordinating amendment for clause 44, so we support that as well.

(Clauses 46 and 47 agreed to)

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** I notice that there are no amendments to clauses 48 through 53, unless I'm incorrect on that. Could we not deal with them as we suggested we would to expedite any clauses without any obviously conflicting interests?

**Mr. Jack Harris:** No. We may wish to talk on some of them.

(Clause 48 agreed to)

**The Chair:** On clause 49, Mr. Harris.

**Mr. Jack Harris:** Having had a chance to look at it, I thank Madam Kane for her suggestion that this is related to the amendments to the Criminal Records Act related to the new offences of making sexually explicit material available to a child under 16 or under 18 or under 14 for the purposes of the listed offences under the Criminal Records Act. We think that's appropriate, and we'll support it.

**The Chair:** Right.

(Clauses 49 to 51 inclusive agreed to)

(On clause 52)

**The Chair:** On clause 52, Mr. Harris.

**Mr. Jack Harris:** I want to speak briefly, Chair, in favour of clause 52. This is a clause that expands the definition of "victim" in the Corrections and Conditional Release Act. This is important with regard to the role that victims play in the corrections system and their right to participate in hearings, for example, in terms of the parole process, and with regard to their right to have notification of the whereabouts of the offender, as well as various other rights. Important changes made in clause 52 add those.

We support that, because it adds to "relative" a person who has de facto in law or in fact custody or who is responsible for the care or support of a dependant of that person. It expands it to make sure that virtually all victims would have someone who could assist them in ensuring that they have information and the proper notice that victims in general are entitled to. So we support the expanding of that definition.

(Clauses 52 and 53 agreed to)

(On clause 54)

● (0950)

**The Chair:** On clause 54, Mr. Cotler, you have an amendment, but the amendment is actually in the section already.

In clause 54, proposed section 3.1 says:

> The protection of society is the paramount consideration for the Service in the corrections process.

**Hon. Irwin Cotler:** I'll withdraw it.

**The Chair:** Okay. Thank you, Mr. Cotler.

Now we have Liberal-24.

The Liberal-24 amendment is along the same lines as NDP-23 and NDP-24. Therefore, if Liberal-24 is adopted, NDP-23 and NDP-24 cannot be moved.

**Hon. Irwin Cotler:** Mr. Chairman, can I speak to that now?

**The Chair:** Yes, please do.

**Hon. Irwin Cotler:** The whole approach here is that the service use measures that are consistent with the protection of society, staff members, and offenders and are limited to only what is necessary and proportionate to attain the purposes of this bill. It's basically for the purposes of overall protection of all the actors involved, as well as society as a whole.

**The Chair:** Thank you.

(Amendment negatived)

**The Chair:** We have NDP-23.

**Mr. Jack Harris:** Thank you, Chair.

NDP-23 is an amendment to proposed paragraph (c), which is similar to but more expansive than Mr. Cotler's amendment. It says:

> the Service uses the least restrictive measures consistent with the protection of the public, staff members and offenders;

There was considerable discussion at committee when we heard the witnesses on this issue. Professor Michael Jackson, who's a long-time writer, thinker, and intervenor on matters related to the law and correctional services, gave a very compelling presentation, drawing on the work of the Supreme Court of Canada, and tying it in with the protections that are expounded in the Canadian Charter of Rights and Freedoms and the notion that in the correctional services once a person is incarcerated that is the sentence. The sentence is one of incarceration.

The notion of the “least restrictive measures that are available, consistent with the protection of the public, staff members and offenders” is one that's been recognized as a test that can be used by the courts. For example, Mr. Howard Sapers, the correctional ombudsman, also appeared before this committee. He supported the notion and the use of the term “least restrictive measures” as being consistent with a way to determine whether or not excessive force is used in a situation where someone is in prison.

Now, I don't think we have a society that's regressive enough to say that when someone is incarcerated they lose the protection and they lose all of their rights. The rights that they have still ought to be consistent with law and with the principle of law. The test that's been used, the measure that's been used in the past and recognized by the courts, has been this notion of “least restrictive measures”.

In other words, you can't go overboard in restricting an inmate of a penitentiary or an inmate of the Correctional Service; you have to use that degree of measured response and balance that ensures that you're doing what needs to be done, but you're not doing more. I strongly recall the intervention of Professor Jackson, who said if you added those three words, “least restrictive measures”, you would be doing a service to the interests of the rights of all inmates of penitentiaries.

Unfortunately, we've seen very, very sad cases. The one that comes to mind is that of Ashley Smith, who was a young child of age 14 when she was first incarcerated. I believe the initial reason for her charge was that she was apprehended for throwing crabapples at a postal worker and ended up under the youth detention act, and she never got out. She ended up dying in a penitentiary at age 19, after having gone through a whole series of reincarcerations and re-sentencings for offences that took place inside the penitentiary.

She had significant mental health issues that clearly were not or could not be dealt with within the system, and she was subject to great restraints throughout her incarceration. She interacted with the system in a very negative way. When you see an individual like that, who has almost no hope, the only hope that individual will have, in some circumstances, is the protection of the law.

● (0955)

The use of the least restrictive measures that are consistent with the protection of the public, staff members, and offenders encompasses all the needs. The provisions and principles set out there on the protection of the public are very important.

Staff and correctional services have a very difficult role to play, and they are at risk too. We understand that and commend them for their job and their role. We had them appear before us as well. They need to be protected as much as possible. There's also the protection of offenders, because these offenders can fall victim to each other. The people who are inside a corrections institute are not there because they are the nicest people in society. Some of them are very dangerous. Offenders need to be protected from other offenders as well.

There is a choice of wording here that's already in the law, but it has been taken out and replaced by other wording. We think it's important to continue this wording. It is something that can be used as a test to measure whether or not our prison service is doing a proper job. I know that the corrections ombudsman, Mr. Howard Sapers, who has appeared before this committee and other committees, including the public safety committee on a number of occasions, also testified that the wording in this phrase is extremely important. It establishes a standard that is measurable and not subjective. It has been interpreted by the court and can be interpreted in a proper way—objective measurement of whether or not the prison service is looking after the actual rights of everybody. The only right that prisoners in a penitentiary, the inmates, lose is the right to their freedom. They have to obey the rules, but they shouldn't be treated more severely than necessary to protect the public, staff members, and offenders.

So I think it's important that we retain that wording in our law. This amendment seeks to achieve that.

● (1000)

**The Chair:** Thank you, Mr. Harris.

(Amendment negatived)

**The Chair:** NDP-24 has exactly the same words as defeated L-24; therefore it cannot be moved.

**Mr. Jack Harris:** Was L-24 already debated?

**The Chair:** Yes.

**Mr. Jack Harris:** Ours was the same. That makes sense. That was our fallback position, and it was put in before we saw the Liberal amendment.

**The Chair:** Now we're dealing with L-25.

**Hon. Irwin Cotler:** This is an attempt to reaffirm the importance of the principle of "least restrictive measures". That was the purport of my amendment and Mr. Harris's amendment. It really goes to the question of the protection of human rights and human dignity.

The whole idea here is that the charter protections in this regard do not stop at the prison door. They apply within corrections facilities. That is the whole import of this amendment. That is the whole import of the amendment I proposed before, and it was defeated. It is the importance of maintaining within the legislative framework, as we now have, a constitutional principle, because that's what "least restrictive measures" is all about. It's a constitutional protective principle with respect to human rights within the corrections facilities. As the courts have made clear, the rights in this regard and the right to human dignity do not stop at the prison door. They are within prisons as well. That's the import of this amendment.

**The Chair:** Mr. Woodworth.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Are we on L-25?

**The Chair:** Yes.

**Mr. Stephen Woodworth:** The two things that I perceive in amendment L-25 are, first, the addition of the word "privileges", and second, the deletion of the word "lawfully". If I am reading that correctly, I see no reason why anyone who is in custody should indeed be accorded privileges. I agree with what Mr. Cotler said about rights, but we get into difficulty if we begin to fuse rights and privileges into one concept. Moreover, I see no reason why we would remove the word "lawfully" from the government amendment.

Thank you.

**The Chair:** Thank you, Mr. Woodworth.

Mr. Harris.

**Mr. Jack Harris:** Mr. Cotler's amendment, L-25, underscores an important principle. These people are still members of society, even if they are incarcerated for committing a crime. The purpose of incarceration is twofold: the punishment of the offender, and the undergoing of a process that will lead to rehabilitation. There are other aspects of the bill that talk about rehabilitative efforts. When a person is released he is released in the hope that he would be a law-abiding citizen who can function and contribute to society. The way to do that is to ensure that society continues to respect a citizen's rights and that they don't end, as Mr. Cotler said, at the prison door.

In learning about the law in the first instance, one of the notions that you come across is that the treatment of people who may appear to be the least desirable is a reliable measure of a society. What basic rights do you have if you're not on the right side of the law? What do you have left that is the mark of your society? How prisoners are treated, how individuals who are before the courts are treated, is important as a measure of how civilized a society we are. You don't treat them as people who are eminently entitled. If you are incarcerated, you are incarcerated for a reason. You are separated from society. But you don't lose your human rights. You don't cease to be capable of exercising your rights as an individual.

This is stated in a more positive way, but the notion here is a good one: we don't treat prisoners or inmates as the scum of the earth; we treat them as persons who we hope are able to be rehabilitated. Even someone sentenced to a long sentence has human rights, and this recognizes that. I think it is appropriate that we do this.

● (1005)

**The Chair:** Thank you, Mr. Harris.

(Amendment negatived)

(Clause 54 agreed to)

(On clause 55)

**The Chair:** On clause 55, Mr. Harris.

**Mr. Jack Harris:** I will speak briefly in favour of this clause.

This clause relates to the importance of a correctional plan to be developed as soon as is practicable after reception of a prisoner into the penitentiary. This emphasizes the importance of a plan to achieve rehabilitation during the time they're in prison. I note the maintenance of the plan under proposed subsection 15.1(2) of this clause:

> The plan is to be maintained in consultation with the offender in order to ensure that they receive the most effective programs at the appropriate time in their sentence to rehabilitate them and prepare them for reintegration into the community, on release, as a law-abiding citizen.

We support that, and it does provide encouragement for inmates and offenders to see that there is an opportunity for rehabilitation and a life after the sentence. We would certainly not want to see these plans turn into something that could be abused, but if properly administered these plans could be very effective in seeking a safer society by ensuring that offenders, when released, are in a better position to be integrated into society.

**The Chair:** Thank you, Mr. Harris.

(Clauses 55 and 56 agreed to)

(On clause 57)

**The Chair:** Mr. Harris.

● (1010)

**Mr. Jack Harris:** We support these provisions. Clause 57 provides a means of knowledge about the name and location where a sentence is being served, and if there's a transfer taking place the reasons for that, or if there are disciplinary offences that the offender has committed, that knowledge is available to the victim of that particular offender.

I think that's a useful addition in terms of the victim's rights. We heard so much about that during our hearings, but we didn't hear much in the way of detail. This is one of the details we support, that victims will have an opportunity, at least—not all want to follow that—if there's a particular reason, and a particular concern about where an offender is, or whether they're being transferred, and for what reasons, then the victims would have a right to that information and to that knowledge. I think that's a positive step.

Once again, I'd like the record to show, contrary to the rhetoric that we hear, that there is a concern that victims be treated properly in our justice and corrections system. This is an example of a positive step in that regard, and we're here to support that.

**The Chair:** Thank you.

Ms. Findlay.

**Ms. Kerry-Lynne D. Findlay:** I just wanted to make a brief comment that what this also shows is that—contrary to the rhetoric from the opposition—this government is not only concerned with victims' rights, but with rehabilitation and reintegration; and we are not immune to the benefits of the processes on both sides.

**The Chair:** Thank you.

(Clause 57 agreed to)

(On clause 58)

**The Chair:** Mr. Cotler, I believe it is your amendment L-26.

**Hon. Irwin Cotler:** Yes, Mr. Chairman.

The purpose of this amendment again relates to the rights within the correction system and seeks to maintain the words that are currently there with regard to "the least restrictive environment". This is not just an operational principle as to how people should be conducting themselves within the penitentiary system. It is a constitutional principle so as to frame the principle and operative guidelines around the notion of the least restrictive measures.

That is yet again, Mr. Chairman, the purpose of this amendment. It is also based on the witness testimony that we've received. Mr. Harris referenced in particular the witness testimony of Michael Jackson, who has studied this for some 30 years now.

The whole point here is not to alter a situation where we have a constitutional principle that comports with all that we affirm with respect to the Charter of Rights and the retention of those rights within the penitentiary system.

I made that point before, Mr. Chairman. I need not belabour it. That is the purpose of the amendment: to reaffirm both the constitutional and operative principle of least restrictive measures.

**The Chair:** Thank you, Mr. Cotler.

Mr. Woodworth.

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

I'm happy that the government proposal in Bill C-10 maintains the requirement that only restrictions that are necessary should be permitted. I'm certain that this is something that would be a constitutional requirement.

However, once we determine that a restriction is necessary, I believe it is unnecessary to parse further whether there may be a less restrictive necessary condition. I think it can create a lot of difficulty for corrections people to try to second-guess what might be the least restrictive of necessary conditions. The necessity is a real requirement, in my view, and that is maintained in the government proposal.

Thank you.

● (1015)

**The Chair:** Thank you, Mr. Woodworth.

Mr. Harris.

**Mr. Jack Harris:** Thank you, Chair.

Once again, this is a point of significant disagreement, I believe, between our party and the government. We would support Mr. Cotler's amendment, and we do so for an important reason.

As was pointed out earlier, and on another section, Mr. Cotler reiterated that there are constitutional principles involved here. And Professor Jackson, as a law professor for very many years, who studied this for 30 years, is very familiar with the constitutional history of the phrase. And there's not simply wordsmithing here, choosing one word over another. In the legal context the words have significant meaning, particularly where they've been judicially reflected upon and assessed over the years. The words "least restrictive" and "necessary" have two entirely different approaches.

"Least restrictive" is something that can be measured against something else; "necessary" is very subjective. What one person may consider necessary, another person may not, and "least restrictive" is something that can be actually analyzed and applied, because alternatives can be considered when adjudicating whether or not the least restrictive measure is applied.

To many people, that may seem to be just a lot of words, but the reality is that courts actually do make decisions based on the choice of wordings that are used. For example, if a prisoner or an offender incarcerated in a prison has a right of appeal.... Once you're in prison—we talked a moment ago about rights—you should have the right to ensure that the terms of your imprisonment or the terms of your confinement are in accordance with law. If you're put in the wrong place because it suits somebody to put you there, and all they have to say is that this is necessary, then taking into account our circumstances at facilities, if all they have to say is they think it's necessary, and nobody can judge that, then you really don't have any right to appeal or to seek a change in that decision.

If you have language that is actually subject to adjudication and has a body of precedent already set out, then you actually have some right to seek an alternative decision or to challenge a decision that's been made.

There's nothing easy about this. There's nothing easy about running a correctional service. But despite that, there ought to be rules that can be adjudicated, if necessary, if there are perceived difficulties with a particular situation.

Let's take the sad case of Ashley Smith, who was transferred many times. In fact, some have suggested that she was transferred because she was a problem. She had to transfer somewhere else. It's been suggested by some advocating on her behalf that she was transferred to avoid her having an opportunity to challenge a particular form of confinement because she wasn't there long enough for such a challenge to go through.

It's an extremely sad case, but an historic example of how a person who is incarcerated can lose their rights to adjudicate their circumstances, to have some person outside the institution have a look at what's gone on and in fact tell the correction services where they have gone wrong, if they have in a particular case.

If you say “necessary”, well, if you only have certain facilities, they say, “Well, it's necessary to do this just because we don't have a proper facility in this province.”

● (1020)

If “least restrictive” is there, it may be—it may be—that the correctional services might be required to provide a less restrictive environment in order to be consistent with the rights of an offender. Or it might be necessary to have a least restrictive environment established to ensure that people like Ashley Smith, with mental health problems, are not subject to conditions that would exacerbate and make worse their mental conditions, to the point at which they cannot operate within the system and their lives, as in the case of Ashley Smith, are placed at risk.

These are fundamental questions. It's not simply a choice of words. These are fundamental questions, and when we have such distinguished academic legal scholars as Professor Jackson come before us and say.... I recall the degree of frustration in his voice, pleading to be listened to, saying that this is an important principle. He said if those three words are there, at least those three words are there, the individuals will have some constitutional protection spelled out.

We shouldn't be doing things here where someone will have to decide at the next opportunity, the next government, to have to fix all these things, these problems that have been created, these rights that were diminished and watered down and ignored. These are fundamental aspects of our legal system. The Charter of Rights, by itself, only has meaning when it's being interpreted and followed and the spirit is being contained in other aspects of our law. According to our expert witness, Professor Jackson, and according to Howard Sapers, the corrections ombudsman, this is a phrase that has meaning, that's enforceable, that's a standard by which the behaviour and the activities of a correction service can be measured and can be praised or in some cases criticized for the purposes of making things better.

I wanted to speak strongly on this point. It's an important constitutional principle. It's consistent with the Charter of Rights and Freedoms and a phrase that we believe ought to stay in the law.

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** I agree with Mr. Harris in relation to some of what he said. I think he's right that judges do interpret every word, and I think the words are significant in this particular case.

I listened to Mr. Jackson's testimony as well, twice, and bluntly, I was not persuaded. There's somewhere that we, as legislators, have to draw the line. I think the section that is reflected in the government's own words is good, very good. I believe, bluntly, that the least restrictive method is utilized in either—I can't remember exactly, I was trying to think of where—the Youth Criminal Justice Act, the Young Offenders Act, or bail reviews, or, indeed, conditional sentences. I know that the amount of case law that has been generated by those words, in relation to “least restrictive” is tremendous. It has been ten years since I practised, so I don't remember exactly where I found that, but I do remember that those words utilized in other situations are tremendous.

I bluntly think the line should be drawn somewhere else. So I will respectfully disagree with my colleague Mr. Harris. I think the government's wording is good in the circumstances, and “least restrictive” I do not believe is appropriate in these particular circumstances.

**The Chair:** Thank you, Mr. Jean.

So amendment—

**Mr. Jack Harris:** Briefly, in rebuttal, I agree that there's been a great deal of litigation concerning that phrase. To me, that's a sign that it's a valuable phrase. Litigation always has winners and losers. The amount of litigation shows that it's a phrase people can use to ensure that proper and appropriate measures are being taken.

I take that as a good thing, because that phrase then has meaning, a meaning that's been interpreted by the courts from time to time, and then it's easier of application. If we start changing the wording, well, you're going to start a whole new round of litigation, which may or may not lead somewhere. At least with the phrase that we have, not only do we have a constitutional principle but we have a body of precedent that can be used to judge a particular circumstance without having to go to court and re-litigate.

● (1025)

**The Chair:** Mr. Cotler.

**Hon. Irwin Cotler:** Mr. Chairman, this is one of those unusual things where we're asking that the present law be maintained. We're not asking for something new to be put in. The notion of “least restrictive measures” is already there. It has affirmed itself over time in the jurisprudence and the like.

What we are saying is that this is a principle, and a constitutional principle, that is not only consistent with rights protection within the corrections system, as I mentioned, but one consistent with the jurisprudence that has interpreted this notion over time. In effect, it is Bill C-10 that purports to remove it. That, in effect, is the amendment. We are, in a sense, saying let's keep the principle that has validated itself over time and ensure that rights remain within the correctional system as constitutionally secure.

**The Chair:** Thank you, Mr. Cotler.

(Amendment negatived)

(Clauses 58 and 59 agreed to)

(On clause 60)

**The Chair:** We are on NDP amendment 25.

**Mr. Jack Harris:** These are all considered moved, are they?

**The Chair:** Well, I think I have an issue here, so you'll have to move your amendment.

**Mr. Jack Harris:** Okay.

In NDP-25 we seek to amend lines 14 and 15 on page 35 of the bill. Proposed subsection 31(2) would then read as follows:

> The inmate is to be released from administrative segregation at the end of the segregation period that was determined at the hearing conducted in accordance with subsection (3).

The amendment is designed to ensure that administrative segregation be subject to the same procedure as disciplinary segregation.

**The Chair:** If I could just interrupt you for a moment, Mr. Harris, your amendment 25 is related to your amendment 26.

**Mr. Jack Harris:** We have two amendments, yes.

**The Chair:** Yes: NDP-25 and NDP-26.

**Mr. Jack Harris:** Do they need to be moved together?

**The Chair:** No, I have another problem.

Clause 60 of Bill C-10 provides for the institutional head to order an inmate to "be confined in administrative segregation" under certain grounds. The amendments seek to amend the bill to refer to a hearing held by an independent adjudicator who would determine if an inmate is to be confined in administrative segregation.

*House of Commons Procedure and Practice*, second edition, states at pages 767 and 768:

> Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, the appointment of an independent adjudicator would entail expenses not currently provided for, and would require royal recommendation. Therefore, I rule the amendments inadmissible.

Those are amendments NDP-25, NDP-26, and NDP-27.

● (1030)

**Hon. Irwin Cotler:** Mr. Chairman, I understand the ruling with respect to the exercise of the spending power and the like. I just.... That amendment is important for the government to appreciate the value of the amendment. They could make that change because they have the authority to do so.

**The Chair:** Okay.

Having ruled those three amendments inadmissible, is there any debate on clause 60?

Mr. Harris.

**Mr. Jack Harris:** I guess the amendments have been ruled out of order because if we have an independent process there may have to be an expenditure of money to provide for that. I don't think it stops me, though, from arguing on the amendment itself as to why an independent adjudicative process is required, and I'll do that.

It was proposed because the circumstances we have here are squarely in relation to the Ashley Smith concerns and considerations. You know, I guess there will now be two types of—

**The Chair:** Mr. Harris, you can't debate the amendments. You can only debate the clause now.

**Mr. Jack Harris:** I'll tell you why I'm voting against the clause: because it doesn't have—

**The Chair:** Okay. That's fine.

**Mr. Jack Harris:** There are more ways than one to skin a cat, Mr. Chair.

**The Chair:** Just so the record's clear.

**Mr. Jack Harris:** The circumstances are that there will now be two types of segregation.

We have administrative segregation provided for here, without any opportunity for an independent adjudication. If someone is going to be put in segregation—and when we're talking about segregation, sometimes it's called the hole or solitary confinement, and there are various types of conditions associated with it, depending on the institution, the place, and the facilities—it means being segregated from other inmates, and in some cases segregated from other personal contact for long periods of time each day, in some cases 23 or 23 and a half hours with a half hour of exercise. The effect of that can be extremely severe on certain persons and personalities or mental states. Human beings are social animals, if I may use that generic term, or social beings, and interaction with others is an extremely important part of someone's mental well-being.

If the segregation is taking place because someone has violated the rules or done something that constitutes a danger to other inmates, then for disciplinary reasons that person can be put into segregation for a period of time. That period of time has to be determined based on rules that are related to the offence, if it is indeed an offence—the seriousness of the offence, the seriousness of the behaviour involved, the previous record of an offender who's incarcerated, and whether this has been used before. These are considerations that are taken into account, and there's an adjudication process that's involved.

But if you're looking at administrative segregation, the proposed changes—according to the critique we've received, for example, from the Canadian Bar Association—would actually undermine the protective umbrella of law, which is really designed to prevent an abuse of authority. It also can legitimate—under the colour of what appears to be benign language—a more repressive regime inside an institution where the inmate has no recourse, except to complain to the ombudsman, who has a different kind of role.

There's no independent person involved, no independent hearing before an inmate is confined to an administrative segregation. In accordance with the amendments that were proposed, if you had an independent review, or an independent commissioner, or an independent chairperson, the idea would be to ensure that there's no reasonable alternative. That's a decision point in the bill in clause 60 that says "The institutional head may" do this "if the...head is satisfied that there is no reasonable alternative to administrative segregation and he or she believes"—not finds as a fact, but believes —"on reasonable grounds that...the inmate has acted" in a certain way, and pass judgment on various activities.

There's a tremendous amount of subjectivity in that rule, and it allows for—it's not necessarily going to happen—an abuse to occur unchecked. There is no right of appeal from this, no independent adjudication, and nobody who's on the outside looking in, as it were. Many institutions, including correctional institutions, have this sort of corporate culture or attitude or approach that feeds upon itself.

● (1035)

Inside the tent we have the same problems. We're dealing with difficult inmates, we're dealing with problems that they're causing trouble for us. It may be felt that they're jeopardizing the security of the penitentiary, the safety of any person. That would include the person himself or herself. So there comes a point of judgment that takes place, and the perspective is an internal one.

The idea of an independent adjudicator is someone who is not caught up in the day-to-day stresses of the institution and who can evaluate in an independent way and engage in what amounts to not a debate—"debate" is not the proper word—but in the approach, saying "Look, in this particular case there appear to be reasonable alternatives to this very restrictive and potentially damaging segregation that should be tried before administrative segregation takes place".

I think if someone like Ashley Smith had access to that type of independent adjudication, other alternatives would have been suggested, made available. The attention of the outside world, as it were, could be brought by an independent, objective observer to that process.

So we can't accept a system of administrative segregation that's so dependent upon the opinion of one person, who happens to be the institutional head. That's a deprivation of freedom of a very considerable extent. If one looks at the Charter of Rights and Freedoms, which is one of our great measuring tools, it's the liberty even within the confines of an institution to have the ability to associate with other individuals. To remove that right for administrative reasons, with simply the opinion of one individual who happens to be the head of that particular institution, is not right.

We can't support that. I think we have to oppose that, which is why we propose these amendments. I'm sorry to hear that they're out of order. I'm sorry to hear that the government is not proposing this additional protection for individuals who can be afflicted by this and affected by life-altering circumstances in the very sad case of Ashley Smith. But there are many others who are incarcerated, who have significant mental health problems that are not being properly addressed in our institutions. This has been commented on many times. It's a very sad feature of our criminal justice system that so many people find their way into penitentiaries, instead of into places where they can get the proper level of treatment and necessary protection.

We have suicides occurring inside penitentiaries. This happens when people are isolated as well, because it does lead to depression, it does lead to a loss of self-worth. It does lead to significant emotional and psychological pressures. And it doesn't provide any kind of support that you can get from a fellow human being in times of emotional distress and trouble. All of these things are taken away from you by any form of segregation, whether it's administrative or disciplinary. Having the important protection of an objective person who is not a part of the institution, who has the proper experience to make these kinds of judgments, who can suggest reasonable alternatives, and in some cases can ensure that the head of the correctional institution gets the funds from the government to implement them.... It's one thing to say "I'm putting this person here because I have no alternative"....

● (1040)

If an independent adjudicator said, "There are reasonable measures. You may not have them at your institution, but you should", then the institution can go to the government or to the Solicitor General and say, "Look, I'm being told that I can't use this administrative segregation because there are reasonable alternatives, but we don't have the money to implement them. Give us some more money. Make sure that this person is not being treated improperly because there's a lack of funds." That's the importance of this kind of alternative.

That's why we can't support this, because it precludes the kind of objective assessment that we believe is necessary.

**The Chair:** Thank you, Mr. Harris.

I think you'll admit that we were more than flexible. You are over your ten minutes, even on your clock.

**Mr. Jack Harris:** My clock is over ten minutes by one minute and 20 seconds. But I think we did agree the other day that we'd be flexible. We didn't use the ten minutes for every clause, even the ones that we supported. So I think that's fair.

**The Chair:** Thank you.

(Clause 60 agreed to)

**The Chair:** I see that in clauses 61 to 70 there are no amendments. I'm wondering if the committee would like to consider them as—

**Mr. Jack Harris:** Why don't we break now so we can consider over the break as to whether we need to speak to them or not?

**The Chair:** Okay. We'll suspend for 15 minutes.

● (1040)

(Pause)

● (1055)

**The Chair:** We'll resume.

We're at clause 61. I had asked if we might consider clauses 61 through 70 together, if there would be consent to do this.

Mr. Harris.

**Mr. Jack Harris:** No. There may not be amendments to these, but the fact that we don't have amendments doesn't mean we may not wish to speak to them. If we're against them, vote against them, we also want to say the reasons why. So rather than group them.... If we support them, as we did with the sexual assault ones, I see grouping as being a reasonable approach.

● (1100)

**The Chair:** Fair enough.

(On clause 61)

**The Chair:** On clause 61, Mr. Harris.

**Mr. Jack Harris:** This is the one, of course, that gives meaning to the word "segregation", the limitations that are placed there. It says the inmate "has the same rights and conditions"—but it doesn't mention privileges—"of confinement as other inmates, except for those that...can only be enjoyed in association with other inmates". This is the problem with administrative segregation, because it does have this isolating fact.

Administrative segregation for reasons of security you can understand. Without the presence of an independent adjudicator, you do end up having the possibility of major dissociation by an individual, the inability to maintain their social equilibrium and all of those things. Although it's stated in a positive way, it does make it difficult for individuals who have mental health issues or other problems that.... It's not a question of enjoying someone else's society; in many cases it's a necessity to have social interaction.

One of the other problems that we have with this is if you look at the clause as a whole, particularly on page 36, the clause says: "An inmate in administrative segregation has the same rights and conditions of confinement as other inmates, except for those that... cannot be enjoyed due to limitations specific to the administrative segregation area...".

Now, that gets us back to this whole necessity issue—you can't do this because we don't have facilities for that. We don't have a television in our administrative segregated area, so therefore you can't watch TV. Well, why don't you have a TV there? Isn't that a reasonable thing to have? Well, we simply don't have one. End of story.

Is that the law that we want to have in effect for someone who is placed in administrative segregation? Not only are they deprived of—-

**Mr. Brian Jean:** Mr. Chair, on a point of order, I understand that Mr. Harris wants to talk about this, and obviously I have no difficulty. I'm only wondering if he could say at the outset whether he supports this clause, and if he doesn't, why he doesn't, so I can give due consideration to his points. He hasn't put forward an amendment to this clause or the next nine, so if he has not put amendments forward I assumed he supported it. But if he doesn't support it, I would appreciate it if he could confirm that he doesn't support it and why he doesn't support it. This is so I can understand and be persuaded accordingly.

**Mr. Jack Harris:** That's hardly a point of order.

I think I did say at the outset that we're speaking to ones we're opposed to. If we were supportive of it, and had good reasons for supporting it, we might speak to it, but we'd be more inclined to group them if there were a series of them along the same lines.

No, my concerns here are that this follows on from clause 60. Clause 60 establishes this administrative segregation without any independent adjudicator, one of the consequences of which is clause 61, proposed section 37, which says that when you're in administrative segregation you have the same rights and conditions except for ones you can't enjoy because of limitations specific to the administrative segregation area.

So if there are no exercise possibilities, if there are no opportunities for—and I'm using a mundane example—watching television, listening to the radio, playing music, or whatever it is that might give a person some social replacement for the absence of people, then they don't get that if it's not there. There is no requirement to have reasonable conditions, no requirement to have so-called least restrictive, no requirement for an independent adjudicator who can talk about reasonable alternatives, or suggest that this situation, particular to this institution, or particular to this administrative segregation area, is unreasonable, and that reasonable alternatives exist and should be found. That's the problem I have with this particular provision.

It's one thing to set up an administrative segregation—and as you may have noticed, in principle we don't object to that. But you're going to say it's only based on the determination and the opinion of the administrative head, and then you say there can be limitations as to what can be enjoyed because of the limitations that are specific to the segregation area. Well, that basically says that if we have a certain particular inadequate area, because of the nature of the institution, or because of so much overcrowding because we've got so many prisoners now as a result of these laws that are being passed, the place is full to the nines, and we've created a new administrative segregated area, but we haven't gotten around to outfitting it yet, but you're stuck there anyway, because that's all we've got, well, that's perfectly legitimate. In fact, it's legitimized by this particular provision.

Mr. Chairman, I think this is unacceptable. You go down a road that starts off with just removing this "least restrictive". We're just getting that out of there because that's been.... I don't know why, or you like "necessary" instead. Now, necessary also applies to the limitations of the area that are in that particular institution. Well, how many institutions do we have that have inadequate provisions for administrative segregation? What are the limitations we're talking about here? I've come up with a couple that I'm thinking of offhand, but I'm not an expert in corrections. But I do know, having been in a number of penitentiaries in this country in my work as a lawyer, that there's a great deal of variety and a great deal of disagreement about an appropriate level of an operation for a prison. Many of them are extremely old. Many of them don't have modern facilities.

It's all very well to say, “Well, you're in prison, too bad”, but we're talking here about a prison within a prison, an administrative segregation area that has further limitations that are....You've stated it in a positive way: it's called inmates' rights. They're the same rights and conditions, except those that aren't there. That's what it says—“limitations specific to the administrative segregation area” in a particular institution. Well, it's great to say you have rights if you have rights to everything except what you don't have because those limitations are specific to the administrative segregation area.

● (1105)

It's a use of words to deny the very rights that the section says it's designed to grant. I think that's inappropriate, and it follows from the decision to pass clause 60, which allows an institutional head to order the confinement to administrative segregation, period. I don't really see any limitation of time here. I don't see any limitation of time.

Administrative segregation can be permanent, as I read this. Maybe there's another section, and maybe Mr. Jean or somebody on the other side can point to the fact that there's a limitation here or there's a method for this administrative segregation to end. But I don't see any limitation, other than saying the inmate is to be released from administrative segregation at the earliest appropriate time. Well, that's great. Who decides what that is?

I know I'm jumping back to another clause, Mr. Chairman, but it's clause 60 that establishes the conditions. It says you're going to be deprived of these rights, essentially for as long as the administrative head considers it's appropriate to keep you in administrative segregation, but they'll let you out as early as it's appropriate to let you out.

Again, these words like “appropriate” and “necessary” are subjective in nature. They are not bound by this constitutionally recognized principle of “least restrictive”. That is a very important problem that we have with this. Clause 61 continues that level of restriction, which I'm afraid is very, very discriminatory against individuals in this situation and leaves them open to abuse or arbitrariness. It could lead to injustice inside our penitentiaries

● (1110)

**The Chair:** Thank you, Mr. Harris.

Mr. Jean.

**Mr. Brian Jean:** Nothing, sir.

(Clauses 61 and 62 agreed to)

(On clause 63)

**The Chair:** On clause 63, Mr. Harris.

**Mr. Jack Harris:** Thank you, Mr. Chair.

Clause 63 contains a provision that allows an order for restitution to be made in respect of any property damaged or destroyed as a result of an offence against the Corrections and Conditional Release Act. It also provides that there can be segregation from other inmates, with or without restrictions, on visits with family, friends, and other persons from outside the penitentiary, with a 30-day limit on it.

Someone recently wrote in the paper about how some of the provisions of this act, instead of modernizing our corrections system, actually bring it back to the 18th century, where some of the rules for prisoners included that they weren't allowed to have visits from family and friends, or from anyone outside the penitentiary. That this was—

**Mr. Brian Jean:** On a point of order, I'm wondering if Mr. Harris is saying that the amendments actually make it more soft than it was before. In particular, it defines that restitution can be made in relation to property destroyed—and I'm certain he doesn't have any problem with that—but in the case of a serious disciplinarian offence, segregation from other inmates for a maximum of 30 days was exactly what it was before.

As a government, we now have placed the following words, “with or without restrictions on visits with family, friends, and other persons from outside the penitentiary”, which obviously gives the inmate more options while the segregation is going on. We've actually softened it, and I'm wondering if he sees that and applauds the government for that move.

**Mr. Jack Harris:** I'm not applauding the government for it, because it allows for restrictions to be made on visits with family, friends, and other persons. There could be no restrictions on that, but also there could be restrictions on that. This is a new change to segregation for a period of 30 days. There was nothing there that said that you could restrict visits from anyone else during that period, and now there is. This is not a softening of the existing regulations.

In terms of restitution for damaged property, I'm not sure how someone who is inside a penitentiary can necessarily be exposed to restitution orders if they have no means of making restitution. It seems to me that this is another means, I presume, of saying that if someone is damaging.... I think one of the standard offences for inmates is damaging government property. If you trash a cell or act out in a manner that destroys a mattress or in another manner, you can be charged with an offence. But this also talks about restitution for property damaged or destroyed to a value.... I don't know what the values are. But it seems to me that someone who is in a penitentiary is not in a position to meet very much in the way of a restitution order. This would just cause further restrictions on a person's ability to rehabilitate.

Similarly, restricting visits from family again acts against the importance of maintaining contact, which contributes to the rehabilitation of the offender. To put in place a regime that says that you can use that denial of contact as a form of penalty offers another opportunity to avoid the necessity of contact with your family for the purposes of rehabilitation as well as the incentive associated with knowing that you can have a continued relationship with your family member in the hope of rejoining them, and rejoining society while you're at it.

Those are concerns I have about those particular clauses. Perhaps some of my colleagues would like to add to that.

● (1115)

**The Chair:** We'll go to Ms. Borg.

[*Translation*]

**Ms. Charmaine Borg:** Thank you, Mr. Chair.

I am opposed to this clause, as are all members of my party.

Basically, we also have to consider the effects that clauses like this might have on the mental health of inmates. Studies show that there are effects on the mental health of prisoners living in segregation for 30 days; they display more aggressive and unhealthy behaviour. So they will be more dangerous in the future. That is something we must think about.

Anyway, inmates in segregation can only receive visits in areas specifically set up for the purpose, where the visits go on behind glass and by telephone. The measures in place already restrict family visits. So why do we need to go further and abolish them completely? Once more, let me stress that this can have a psychological impact and adversely affect an inmate's chances of rehabilitation.

That greatly concerns me. In my view, it is unnecessary since measures are already in place to restrict visits to someone in segregation.

Finally, like my colleague, I see no administrative limit on this kind of segregation. How is the length of time determined? The clause restricts visits for a maximum of 30 days. But I am concerned about the mental health of the inmates and the negative behaviour that could result from segregation of that kind.

[*English*]

**The Chair:** Thank you.

Mr. Cotler.

**Hon. Irwin Cotler:** I have just a brief comment, because I think the points have been made. But I do want to make some reference to this overall orientation with respect to segregation, the removal of the possibility of an independent adjudicator, the punitive approach rather than the possibility of a rehabilitative approach, and the disregard of the evidence we have about the importance of visits with loved ones and the like to help facilitate rehabilitation and lessen the incidence of criminal conduct both within the prison and on release afterwards. My concern is really with this whole approach being taken. I make this comment because it will apply to all of these provisions. As I say, it is more punitive than preventive. It is more incarcerative than rehabilitative, and regrettably, it reverses the evidentiary approach we have with regard to matters of this kind.

**The Chair:** Thank you, Mr. Cotler.

(Clause 63 agreed to)

(On clause 64)

**The Chair:** On clause 64, Mr. Harris.

● (1120)

**Mr. Jack Harris:** Thank you, Chair.

Clause 64 is composed of two parts having to do with allowing the corrections service to impose a requirement that any offender who is on a "temporary absence, work release, parole, statutory release, or long-term supervision that restricts their…geographical area or requires them to be in a geographical area" wear a monitoring device. Also, there's a provision there that the offender "is to be given reasonable opportunities to make representations to the prescribed official in relation to the duration of the requirement".

This is something new, and there are no requirements here other than that the demand may be made "in order to monitor their compliance with the condition of their temporary absence, work release, parole, statutory release…". We know that statutory release is something that takes place automatically as a result of the nature of sentencing, so everybody ends up on statutory release. Sometimes people apply for parole and get that. The parole board could impose conditions, but this is allowing the corrections service itself to do that. That's something new.

I wonder if the word "may" here is actually going to lead to circumstances where, given the nature of technology, it's going to be ultimately required in every case, and that this is something, regardless of the nature of the offence, regardless of the propensity of the individual involved, regardless of circumstances....

What is the justification for this, I ask rhetorically? Why is this necessary and being made available for every single person, simply in order to monitor their compliance with a condition? It's a bit of a big-brother type of approach, rather than one that recognizes that these conditions of temporary release or temporary work releases or parole are part of the rehabilitative process, and depend on recognition by the service that these are privileges that are in the nature of a temporary absence, based on the condition that there's a rehabilitation plan—talked about earlier in this legislation—that is called for. There are, as Ms. Findlay pointed out earlier, some provisions here that support and emphasize rehabilitation.

My fear here is that this becomes another punitive approach that may come from a view that every single person who is subject to a sentence, of any kind, is going to have a monitoring device on them until the very last minute. There's an opportunity here to make representation, so I guess somebody can say "I want to make representation; I want to ask that I no longer be required to wear this bracelet", or whatever the monitoring device happens to be.

There's obviously a significant stigma associated with that. It may become an automatic requirement in all circumstances, which would in this case be arbitrary and unnecessary. There doesn't appear to be any finding of necessity here. It ignores totally the notion we talked about earlier of the least restrictive method of dealing with prisoners. There's no notion of that there at all. It's just blanket approval of the service being permitted to make this demand on any person subject to a temporary absence, work release, or any other that requires a person, for example, not to leave a province. If someone is released to go to work, they're probably not permitted to take a bus to the nearest town.

● (1125)

This is designed to closely control individuals without any reference to it being necessary in order to meet the ends of justice. It's simply a further restriction placed on someone for what appears to be an arbitrary reason.

We would be opposed to that. Maybe some of my colleagues would like to add to my remarks. It's something that we oppose.

**The Chair:** Thank you.

(Clause 64 agreed to)

(On clause 65)

**The Chair:** On clause 65, Mr. Harris.

**Mr. Jack Harris:** I'm not going to go into great detail on this. I've looked at this very carefully. It seems to me that it's authorizing a warrantless search of any vehicles. It uses the words “at the penitentiary”. I'm assuming this means that for any vehicle that's parked in a parking lot associated with the penitentiary, the institutional head can issue, in effect, their own form of search warrant without obtaining one through the courts, and that every vehicle on the premises can be searched in order to locate and seize contraband or other evidence that's available. If there's a real circumstance there, search warrants from the appropriate authorities are more and more readily available. As those who practise law will know, they can be obtained by telephone if necessary. They can be authorized by telephone. There's appropriate and significant provision already in the law for this.

The Charter of Rights and Freedoms makes an important provision for the freedom from unreasonable search and seizure. Is it reasonable, I ask rhetorically, for someone who happens to have a vehicle in the parking lot of a penitentiary to have that vehicle subject to search by the head of a correctional facility without a warrant? That's something that goes beyond, in our view, what's required.

**Mr. Brian Jean:** I want to say very briefly that I think all members here, and most people who are involved in the justice system in Canada, recognize that there's a significant drug problem in our penitentiaries. I would suggest this clause goes to that issue.

Indeed, I would say to Mr. Harris, I do understand the situation he's discussing. However, they do not have to enter the penitentiary grounds. Once they enter the penitentiary grounds, it is a privilege to be there, and it is not a right. It is a privilege to drive a vehicle in this country, not a right. As a result of that, this is a very reasonable clause, because we have to look at the long-term ramifications of drug use and the rampant necessity of drug use, and in fact at organized crime itself within these penitentiaries. So I think this goes to the very heart of it.

I'm surprised, if he does have an objection to this, that he didn't propose an amendment, as well as in the other five clauses that he has discussed and opposed but not proposed a relevant amendment. That's why this goes to that point, and I think it's a very necessary thing in our penitentiary system today.

**The Chair:** Madam Borg.

[*Translation*]

**Ms. Charmaine Borg:** I would like to reply quickly to what Mr. Jean said. We are aware that there is a problem, but that does not automatically mean that we have to go beyond what the law already allows. We see no need to search the vehicles of people who may be perfectly innocent without a warrant. As my colleague pointed out, correctional officers can apply to a court for a warrant.

We feel that provisions of the act must be in place to prevent abuse of this kind. Otherwise, any perfectly innocent person could be searched, and, in a way, that would be a violation of their right to privacy.

Thank you.

● (1130)

[*English*]

**The Chair:** Thank you.

(Clause 65 agreed to)

(On clause 66)

**The Chair:** We are on clause 66.

Mr. Harris.

**Mr. Jack Harris:** Just for the record and so that Mr. Jean's ears will be properly attenuated to my remarks, I want to speak in favour of this particular amendment, because it does speak to rehabilitation.

One of the very sad aspects of our prison system is that the aboriginal population is significantly over-represented in our prisons. I think perhaps six or seven times, if not more, of their percentage of the population are in the prisons. It may actually be higher than that in some provinces where aboriginal people are incarcerated. Their rehabilitation is particularly spoken to here in proposed section 84:

> If an inmate expresses an interest in being released into an aboriginal community, the Service shall, with the inmate's consent, give the aboriginal community
>
> (a) adequate notice of the inmate's parole review or their statutory release date, as the case may be; and
>
> (b) an opportunity to propose a plan for the inmate's release and integration into that community.

This is an improvement to the existing law, and it allows for the aboriginal community to play a role in assisting the reintegration of that individual into the community. I hope—and I just hope, because I can't propose any amendments that would spend money, as I've just found out, at least in relation to the proposal for an independent board—I hope that resources will be provided to assist aboriginal communities in playing a positive role in this integration process. It's extremely important that we try to support aboriginal people who have to endure the conditions of incarceration as part of their punishment, I'm not denying that, and in addition also have to endure the cultural community dislocation that occurs when they are in a correction facility, sometimes for lengthy periods of time.

I do support this. We support this as a party. We think significant extra efforts ought to be made to assist aboriginal people to reintegrate into their community. That may require more than just a plan as proposed here. It may require significant resources. I would encourage the government when considering the implementation of clause 66 of this bill to consider programs and resources that might be needed to make this more effective.

If aboriginal people are able to return and be integrated into their community and associate with other members of that community in a plan that's considered by the community itself, with the elders and the groups within the community, their success in reintegration is going to be enhanced.

Those would be my comments, Chair. Perhaps some of my colleagues would like to express themselves on this as well.

**The Chair:** Thank you.

(Clause 66 agreed to)

**The Chair:** I have one little correction. The agenda says this is televised. This meeting is not televised. There was an error in that.

Just using a second of the chair's time, going back to clause 65, I can appreciate that most of the committee members have never obtained a search warrant. I can tell you it's not simple.

We are on clause 67.

(Clause 67 agreed to)

(On clause 68)

**The Chair:** On clause 68, Mr. Harris.

● (1135)

**Mr. Jack Harris:** I'd like to speak in favour of it.

I'm disappointed to hear that news, Mr. Chair. We had a meeting the other day, which was televised, and all we talked about was the failure of the government to have a proper debate so that the public could understand better what was going on. I'm shocked to learn that we have moved to a room that either doesn't offer television or.... So we have gone from a situation in which the public had access to the proceedings of this committee to a situation in which they don't have it.

**The Chair:** Mr. Harris, with all due respect, the rooms for televising have been taken over...or at least one of them has been taken over by the Auditor General for a lock-down today. We had no access to it. It's not by choice of the clerk or the chair or anyone else. It's simply that this is the only available room for us.

**Mr. Brian Jean:** Chair, not to diminish the significance of the people listening right now, I would like to say that they can still listen; they just can't see all our motions with our hands and feet and all the rest. So certainly people are listening, and I'm sure they're catching on to every word that all of us say.

**Mr. Jack Harris:** I'm delighted to hear that, Mr. Jean. At least the public has access to it. But I guess it's like the administrative segregation areas we were talking about earlier: if they're not available, people don't have a chance to have access to them. Unfortunately in this case, a lot of people watch things through television. If they can only hear the audio, they either don't look at a blank screen or they find other ways of doing it. But it's unfortunate. Nevertheless, we are where we are and we shall continue.

I want to speak in favour of clause 68. It's a very interesting clause, which might come as a bit of a surprise to the public and also to some of us legislators, to say that there's a possibility that people actually would want to stay in prison longer than their sentence. It sounds a bit ironic, but once one thinks about it, it's easy to understand why. There could be a variety of reasons.

I'll read the clause out. It says:

> At the request of a person who...is entitled to be released from a penitentiary on parole or statutory release, the institutional head may allow them to stay temporarily in the penitentiary in order to assist their rehabilitation, but the temporary stay may not extend beyond the expiration of their sentence.

Now, if someone is on parole, they're usually out before the end of their sentence. Statutory release is before the end of their actual sentence. That means they'd be on the street. Some people may not have any place to go immediately. If they have a place to go in three weeks but not today, they might be on the street for three weeks.

Some inmate might be in a situation in which they are in immediate preparation for some significant event, such as a graduate education exam that allows you to get your grade 11 without going to grade 11—you can write an exam and you study inside the penitentiary as you're doing this qualification. Next week or the week after, you don't want to be out on the street in a situation in which you might not have the resources or systems to finish that, and it may be eminently desirable to stay in the penitentiary for another week or ten days to conduct a particular examination or qualification that would assist in your rehabilitation.

Despite the irony of this particular provision, it is actually something that can be of substantial assistance to an inmate in his or her course of rehabilitation. So we wish to support it wholeheartedly and would expect fully that the institutional head would take the reasons into consideration, "in order", as it says here, "to assist their rehabilitation". It is at their request that this takes place.

I think it's a positive thing.

Those are my remarks.

● (1140)

**The Chair:** Thank you.

(Clause 68 agreed to)

**The Chair:** I call clause 69.

**Mr. Jack Harris:** I want to speak to that, sir.

**The Chair:** I've already called the vote.

**Mr. Jack Harris:** You have?

**The Chair:** Sorry. I waited.

**Mr. Jack Harris:** Did you wait?

**The Chair:** I waited.

**Mr. Jack Harris:** You waited for people to raise their hands.

**The Chair:** I looked for you. I expected you would have.... But I've called the vote and it's carried.

Were you opposed to the...?

**Mr. Jack Harris:** I am opposed to clause 69. I was just trying to find it here.

The clause started off with the French version, and then there were a number of other sections that I wished to speak to briefly.

**The Chair:** But I've called the vote.

**An hon. member:** A point of order, Mr. Chair.

**The Chair:** Yes, I've got it.

**Mr. Jack Harris:** So we're down to that now? Are we going to be—

**The Chair:** Sorry. We're moving on to clause 70.

(On clause 70)

**Mr. Jack Harris:** Okay, then, I'll speak to clause 70 for ten minutes.

**The Chair:** You go ahead.

**Mr. Jack Harris:** And I'll say whatever I feel.

**The Chair:** It's up to you.

**Mr. Jack Harris:** I know that we do have some rules here, but I was assuming that we'd have some flexibility as well.

**The Chair:** That's why I was waiting for you.

**Mr. Jack Harris:** I didn't realize you were calling for people to have something to say.

The definitions here in clause 70 have to do with authority being granted to the offender by the board, to allow a provincial parole board.... The whole issue of day parole is spelled out there. The definitions are changed considerably.

We do object to those changes, because they effectively devolve the decision-making about these things from the minister setting rules, just as in clause 69. There's a whole series of rule-making being granted to the institutions themselves.

We're opposed to that. We want to see the minister take responsibility for these matters. These ought not to be devolved in the way they are in these clauses.

I just want it on the record that we're opposed to clause 69 and clause 70 for those reasons.

**The Chair:** Thank you.

(Clause 70 agreed to)

(On clause 71)

**The Chair:** We have some amendments on clause 71. Mr. Cotler has some amendments.

My understanding is that if Liberal amendment 28 is defeated, then Liberal-29 should not be moved. As well, if Liberal amendment 30 is adopted, NDP-27 cannot be moved, because they're amending the same line.

Mr. Cotler.

**Hon. Irwin Cotler:** Mr. Chairman, I know these things begin to appear to be technical—and in one sense, they are—but they also then become matters of principle, although not overriding principle. Let me explain what I mean.

I state in my amendment that clause 71 should be amended by deleting lines 8 to 11 on page 40. I'll just read those lines in the bill:

> The protection of society is the paramount consideration for the Board and the provincial parole boards in the determination of all cases.

When I say they should be deleted, I'm not saying they should be eliminated. My next amendment, right after that, would be to add those same words after line 25 on page 40. I simply want them inserted after proposed paragraph 101(a) instead.

So it seems technical in terms of the fact that I'm asking that those lines be deleted, but there is a purpose behind it. I want it inserted as one of the principles that guide the board and the provincial parole boards in achieving the purpose of conditional release, which are all listed there.

I just want it put back to where it was, in that list of principles; that's all. I'd also like you to consider my first two amendments at the same time.

● (1145)

**The Chair:** Thank you, Mr. Cotler.

Mr. Woodworth.

**Mr. Stephen Woodworth:** Thank you very much, Mr. Chair.

I find this issue intriguing, because it was frequently raised in relation to another part of this act, which we will be coming to, and that is to do with young offenders. Witness after witness came before us to accuse the government of making protection of the public paramount in the Youth Criminal Justice Act, when in fact it wasn't. It was just one factor among many.

This case is distinguishable because it does in fact, in the government legislation, make protection of the public paramount when it comes to parole. Quite frankly, I don't find anything offensive in that. I think once every consideration has been given in the questions of sentence and conviction, the decision of whether or not to release someone on parole should in fact be guided, in a paramount way, by protection of the public.

Thank you.

**The Chair:** Mr. Cotler.

**Hon. Irwin Cotler:** Mr. Chairman, I don't think my proposal was offensive. I think my proposal was basically intended to say I agree with this principle. I simply think it should be put among the set of principles so listed, as it was before. I'm only objecting to the removal of it from the inventory of principles and singling it out as the overriding principle, when I think we had an approach whereby we would permit the appreciation of a set of principles. Therefore, again, I'm not eliminating that principle. I'm not saying it should be deleted. I'm saying it should only grammatically and technically be deleted from where it is, to be put in the set of inventory of principles, where it belongs.

**Mr. Stephen Woodworth:** Briefly, I'll withdraw the word “offensive”. I simply meant to say I didn't find anything wrong or inappropriate or untoward or unacceptable about keeping protection of the public the paramount consideration above any others when it comes to parole.

Thank you.

**The Chair:** Mr. Cotler.

**Hon. Irwin Cotler:** There's a question in my colleague's statement. Again, I don't impugn the government's intention or bad faith. I simply think it would be a preferred drafting approach to keep all the principles together, and it would be a preferred principled approach to group all the principles together. That's all.

**The Chair:** Thank you, Mr. Cotler.

Mr. Harris.

**Mr. Jack Harris:** I want to speak briefly in support of the combination of amendments 28 and 29. We do recognize that one of the parole board's paramount considerations has to be the protection of society. Clearly, parole has much to do with sentencing: it's the protection of the public that has to be achieved in the best way possible.

Obviously the rehabilitation of an offender is a goal that establishes, promotes, and enhances the protection of society, so we ask parole boards to exercise their judgment in that regard. We ask the courts and judges to exercise their judgment in that regard. That's the purpose of our justice system, and the principle of sentencing and the principle of parole involves trying to figure out how to best do that.

**The Chair:** Thank you, Mr. Harris.

Shall Liberal amendment 28 carry?

(Amendment negatived)

**Hon. Irwin Cotler:** We almost had one.

● (1150)

**The Chair:** Mr. Cotler, you have amendment number 30.

**Hon. Irwin Cotler:** Yes, Mr. Chairman.

Amendment number 30 really seeks, with respect to parole boards again, to insert or reinsert the principle regarding least restrictive determination.

We have discussed this before in our previous approach to this matter. Again, I want to reiterate that this is not simply an idle drafting amendment, but this goes to the issue both of principle and the issue of policy and in fact operational management.

For reasons of constitutional principle, as well as policy management within the parole board, I would recommend again that the principle of least restrictive determination be included as the normative principle in this regard.

**The Chair:** Thank you, Mr. Cotler.

**Mr. Jack Harris:** Mr. Chair, can I have some help from our advisors here as to how these several amendments on clause 71 interact with one another? We have two as well, one of which appears to be exactly the same as Liberal 30. Is that something where if one is defeated, the other one can't be discussed, or is it...?

**The Chair:** They're not identical. I think you've got a word different.

**Mr. Jack Harris:** We have one word different—

**The Chair:** The French is different.

**Mr. Jack Harris:** —and the French is different. Okay, the French certainly is different.

**Hon. Irwin Cotler:** We can have another crack at it. .

**The Chair:** They're pretty close.

**Mr. Jack Harris:** They're pretty close. I think it's the principle that's similar. I just didn't want to be precluded from speaking to our own amendment—

**The Chair:** You can speak to it.

**Mr. Jack Harris:** —if this one fails. That was my issue. We'll speak to our own amendment, I guess, even though it's along the same lines.

**The Chair:** Liberal 30, shall it pass?

(Amendment negatived)

**Hon. Irwin Cotler:** I thought I saw Robert's hand go up, but I guess....

**The Chair:** Don't get ahead of me.

Now we're at NDP-27, which is close, but different.

**Mr. Jack Harris:** If I may speak to our amendment, we wish to amend the provision, which again, as has been pointed out, is similar to Mr. Cotler's amendment, but the wording is changed so that the parole boards make “the least restrictive decisions that are consistent with the protection of society”. That would be our provision. Again, we recognize the paramountcy of the protection of society, but we believe that it's important that those words be there. We see that clause 71, changing subsection 101.(c) changes those words from “the least restrictive decisions” to—and this is the phraseology that has been used in other places as well—“what is necessary and proportionate to the purpose of conditional release”.

That new wording has not been tested by the courts. Our amendment is consistent with the expert legal representations we received from Professor Michael Jackson in terms of the constitutional protection and reading. We want to see parole boards take as a paramount consideration the protection of society, but in so doing they ought to be restrained by the constitutional protection that their decisions are at least restrictive, and consistent with that, that they don't just add conditions to parole because they can or because they think they're “necessary and proportionate”, when they ought to be, in fact, “least restrictive”.

It's up to the courts to decide on the sentence, but once a person is incarcerated, the rule that's been recognized by the courts, including the Supreme Court of Canada, is that the least restrictive approach is consistent with the role of the courts in sentencing and the role of correctional services in carrying out that sentence. That includes the role of the parole boards.

That's our amendment there, Mr. Chair. That's all I have to add.

● (1155)

**The Chair:** Okay.

(Amendment negatived)

**The Chair:** Now NDP-28.

**Mr. Jack Harris:** Thank you, Chair.

This is to replace lines 34 to 37 on page 40, which are the ones I just spoke about, which deal with the test of what's necessary and proportionate to the purpose of conditional release, to be replaced by the words "limited to the least restrictive determination consistent with the protection of society".

Again, that's the formulation based on the existing constitutional protection for inmates that we believe ought to be retained in our law and not changed by a new provision that is subjective in nature and uncertain in application.

**The Chair:** Thank you, Mr. Harris.

(Amendment negatived)

(Clause 71 agreed to)

**The Chair:** I don't suppose you'd like to combine clauses 72 to 100 and something?

**Mr. Jack Harris:** No. We'll take them one at a time. We may let some of them go without comment, but we may wish to comment on others.

**The Chair:** Okay.

(Clauses 72 to 75 inclusive agreed to)

(On clause 76)

**The Chair:** Clause 76. Mr. Harris, are you in favour?

**Mr. Jack Harris:** I don't know whether I'm in favour or not. I'm having a little difficulty with the wording here. I think this is one of those occasions when we're very happy to have our witnesses sitting there patiently waiting to be called upon for explanations.

I wonder if someone could explain what this does and what changes are being brought about as a result of these sections. My understanding, limited though it is, is that it does take into account the current practices in determining full parole ineligibility for a particular offender, but I wonder if our subject-matter people could help us with an explanation.

**Mr. Daryl Churney (Director, Corrections Policy, Department of Public Safety and Emergency Preparedness):** Mr. Chair, all of these measures are technical in nature, although they all go to sentence calculation provisions and dealing with sentences that run consecutive to the sentence being served at the time of the imposition of a new sentence.

As it pertains to the noted sections, it's attempting to cover off where a multiple sentence is imposed. The act needs to be able to calculate the parole eligibility provisions. Oftentimes when an offender receives a new sentence that runs consecutive to the old sentence, the parole eligibility date becomes a mathematical science for the sentence calculators. These provisions are attempting to marry that up and ensure that sentence calculation provisions are clearly laid out in the act, so that when multiple sentences are imposed those provisions are clear for the sentence calculators.

● (1200)

**The Chair:** Thank you, Mr. Churney.

Mr. Harris.

**Mr. Jack Harris:** For anybody listening, these provisions go on for several pages in the bill, and as you point out, they're highly technical. However, my understanding from reading through there is that if someone, for example, has a parole eligibility date coming up but then receives another sentence, either because that trial had never taken place.... There's a new way of calculating the parole eligibility date. It's now calculated in a different manner.

What would be the different manner? Can you give us a brief explanation of that?

**Mr. Daryl Churney:** It wouldn't be necessarily calculated in a different manner, I would say. It would simply be giving greater precision in the act so that sentence calculators are able to ensure that day parole eligibility dates and full parole eligibility dates are clearly laid out in the legislation. The calculation would remain the same, but experience demonstrates that the current provisions of the act were rather unspecific and unclear in some cases when there were multiple sentences at play.

It is trying to give greater specificity and precision to those clauses; the practice would essentially remain the same.

**Mr. Jack Harris:** Thank you.

**The Chair:** Thank you, Mr. Churney.

Are we okay with that?

**Mr. Jack Harris:** Yes.

(Clauses 76 to 83 inclusive agreed to)

(On clause 84)

**The Chair:** On clause 84, Mr. Harris.

**Mr. Jack Harris:** I want to speak briefly to point out why we are supporting this.

Some of the other ones were technical changes. In this case the Correctional Service of Canada is required, for serious offences, to inform the parole board of its concerns in relation to individuals who may have carried out particular offences while incarcerated. I'm assuming the purpose is to ensure that the parole board is aware of this. I don't know why they wouldn't be. Normally we would expect that the parole board would have a full work-up on an individual seeking parole from a penitentiary.

One would think it would be a requirement of the law to ensure that the Correctional Service of Canada informs the parole board of any concerns it might have. There may be a reason for this that I'm not aware of, but we certainly would want the parole board to be aware of any special circumstances that might have arisen while an individual was in prison so they could be taken into consideration by the parole board.

(Clauses 84 to 88 inclusive agreed to)

(On clause 89)

● (1205)

**The Chair:** On clause 89, Mr. Harris.

**Mr. Jack Harris:** Once again, some of those were technical, but this one really ensures there is an automatic suspension of parole if another sentence is received, without it being necessary for the parole board to actually cancel the parole. It's important that that takes place, so we support it.

**The Chair:** Thank you.

(Clauses 89 to 91 inclusive agreed to)

(On clause 92)

**The Chair:** On clause 92, Mr. Harris.

**Mr. Jack Harris:** Clause 92 allows a peace officer to arrest someone without warrant if they've committed a breach of their parole, statutory release, or unescorted temporary absence, or whom the peace officer finds committing such a breach. Again, it gives the peace officer the kinds of powers that normally reside in a justice of the peace in terms of whether the public interest is satisfied without establishing the identity of the person or arresting the person, or if he believes that the person will fail to report to a parole supervisor.

This is a situation where if somebody is violating a condition of temporary absence or parole, the parole officers are the ones who revoke someone's parole or take action of that nature.

This is giving a peace officer the power to carry out an arrest, effectively arrest someone for violating a parole condition, which may be a minor condition. Conditions of release or parole may have all sorts of conditions attached to them, and it is really in the parole officer's or the parole supervisor's authority to determine why this is necessary. There is no real evidence to support that. We haven't heard of any real examples as to why this is necessary. There is no evidence that the existing framework we have, where if someone is violating parole, if that's a problem and it's a necessity for the parole officer to yank the parole, then it's simply a matter of notifying the parole officer and there are mechanisms there already to address these concerns.

They have ready access to parole officers. They're aware of who they are. They are normally aware of who may be on parole within their community, and there's no real reason why this power needs to be given to peace officers.

There's a little bit of a give and take, if you want to suggest that, in parole. Part of the parole provisions is to seek the rehabilitation of the offender. I don't think it's necessary to be punitive in every respect on every occasion and to essentially engage peace officers in this process without the parole supervisor. It appears to be unnecessary.

We think this is an unnecessary addition and that the work of supervising parole should be left to the parole officers and that the decision should be up to them as to whether parole ought to be revoked and the person picked up.

● (1210)

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** I'm troubled by this, Mr. Chair.

There are two things. The first is that there has been no amendment proposed by the NDP. Secondly, if I understand it correctly, the NDP's position is that if an offender is released and they breach a condition of their parole, a peace officer should not be allowed to arrest them without a warrant. I find that very troubling indeed. If somebody has committed an offence, a police officer knows they have committed an offence that is a breach of parole, and they have to go back to a judge and get a warrant...? I am troubled by the position of the NDP on this. It just does not make sense.

If they know that the person has committed a breach of the parole, they are not allowed to arrest them without a warrant? It's very troubling that they would take this position, firstly, and secondly, they haven't proposed any amendments before this. It makes me start to wonder whether there's something else going on besides the position of Mr. Harris on this particular clause. I wonder if maybe he could go into more detail as to why exactly he is against the position of a peace officer being able to arrest somebody who has obviously breached a condition.

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** Arrest without warrant is an extraordinary power. If the position of the government was so obvious, why has it taken until 2011 for this to come forward as an obvious required amendment to the Criminal Code, or to the powers of arrest of a peace officer?

The concern here is that there could be conditions of parole that could be relatively minor. In some cases it could be as minor as a person who should refrain from alcohol use. For example, if somebody was seen sitting in a club with a beer bottle in front of them and a police officer decides he wants to arrest the person, he can go ahead and do so without a warrant because he may be somehow aware of the conditions of parole.

If someone is misbehaving on parole, the person who is responsible for that is the parole officer. Arresting someone without a warrant, you know, is a pretty.... There are not a lot of offences in which you can do that. There are many offences where you can't arrest someone; you can only issue an appearance notice, or you can issue a summons to appear.

If this were such a necessary power, it would already be there. We haven't seen examples as to why this power is actually necessary.

**The Chair:** I really don't want to enter into your discussion, but I can tell that there are lawyers here and not police officers.

Mr. Woodworth.

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

I'm going to give a possible speculation to our colleague across the way about why this hasn't been possible before. I think it's because in this day and age of electronic communication it's much more possible, even easy, for an officer to know through electronic databases what the specific terms of release are. That probably wouldn't have been the case even ten years ago. So I think it's essential for us to update our laws to match the technologies that are available.

The second point I'd like to make about this is that we recall that the purpose of parole release is, in a paramount way, to protect the public. Consequently, the conditions of parole are for the purpose of protecting the public. It's therefore necessary, in my view, to allow officers to protect the public by allowing them to arrest people who they find breaching terms that had been imposed for the purpose of protecting the public.

Finally, I will say that even if an officer arrests someone without a warrant, there are statutory means to allow the officer to release the individual who has been arrested, and that can be on an undertaking. In most cases it would only be in an exceptional case that an officer would necessarily hold someone for a bail hearing, but I suppose that would be in the officer's judgment.

Thank you.

● (1215)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** I hear you when you suggest that their means to know the details are probably electronic. In addition, the means to know and contact parole officers and advise them of a suspected violation are currently more available. But we often hear of the revolving door. This is a bit of a recipe for a revolving door.

If someone is committing an offence that breaches the peace, then the powers of the police officers are still there. The parole order is expected to be supervised by parole officers and not, in effect, to set up a separate set of criminal offences or criminal code for a particular individual. We have to recognize that parole supervision is in the hands of professionals who have in mind the dual purpose of the protection of the public and the rehabilitation of the offender. Parole is for that purpose. A parole officer is not necessarily going to yank someone's parole in every single circumstance no matter how slight the deviation from the conditions of parole may be.

The suggestion is that the supervision of parole should be left as much as possible in the hands of parole officers and that we shouldn't try to contribute to the revolving door. If someone is breaching the peace to the point of committing an offence, aside from the offence of breaching parole or a condition of release, then one would expect that the police would be the right persons to take action. But as to giving this power in situations where we're supervising an individual on parole—and we have the parole service and parole officers in place—I think no sufficient reason has been given for why the system in existence now, which is not broken, needs to be fixed in this way.

**The Chair:** Thank you.

(Clause 92 agreed to)

**The Chair:** I welcome Mr. Wilks to the committee.

**Mr. David Wilks (Kootenay—Columbia, CPC):** Thank you.

**The Chair:** He's a police officer.

The chair will just say that these discussions are mainly done from a legal perspective, which is appropriate, but not from a practical perspective. Parole officers tend not to be around at three o'clock in the morning. They're good people; they just don't work 24 hours a day.

(Clauses 93 to 96 inclusive agreed to)

**Mr. Jack Harris:** I was just turning my page, Mr. Chair.

**The Chair:** You have to be quick.

Did you want a minute for clause 97?

**Mr. Jack Harris:** Yes, I'll speak to clause 97, then, instead of 96.

● (1220)

**The Chair:** Okay, clause 97.

(On clause 97)

**Mr. Jack Harris:** This has to do with the rights in relation to parole boards and the conduct of parole hearings. Clause 97 deals with waiver and postponement of hearings, which is important. It refers back to an earlier provision of that section. We believe there should be the right to postponement, but the problem has been, I think, that victims have complained that individuals are cancelling hearings without notice. It's a problem that has been brought forward by victims. They want to have rights in relation to parole hearings, including allowing for victim statements for parole hearings, as was part of clause 96, which we supported. So we support these changes.

We also support, of course, the right of offenders to have a proper opportunity to have their parole hearing taking place when they have the information that they need. So there has to be a balance here. I think it's the point of both clauses 96 and 97 that offenders who seek parole have a right to do it. I think we need to remember that some of these concerns about parole hearings and how offenders are affected by that came about as a result of a couple of very high-profile and frankly outrageous abuses of the system by one or two individuals. Clifford Olson comes to mind as really provoking the families of his homicide victims by abusing the system.

Now Mr. Olson is dead. I don't know of any other examples like Mr. Olson's behaviour in terms of jerking around the parole system. Perhaps members opposite do. But I do know that victims' groups are rightfully terribly concerned that families of victims of horrendous crimes, such as those committed by Mr. Olson, have every right to be disturbed by a law that allows this to happen.

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

I wasn't sure if Mr. Harris recognizes that this is actually a technical amendment, in that if the board receives information late—for instance, an hour before the board is to convene or three days before the board is to convene—and the information is such that it's too late in receiving it to be able to go over it and assess it properly, the board, which is seized with the opportunity to adjourn the proceedings, would actually have to convene and adjourn the proceedings.

Instead, now the board is able to delegate that authority to someone, probably the clerk, as we do here, and that clerk can make that decision based upon the lateness of those documents or whatever that evidence might be. So really it's a technical amendment to assign the ability of the board to someone else, to save taxpayers' money and also for the accused to be able to answer completely the new information that is brought forward. So really it's a technical amendment only.

I was very happy to see that Mr. Harris and the NDP supported clause 96 for the rights of victims at parole hearings. I just wanted to clarify with him that this is actually a technical amendment.

**Mr. Jack Harris:** Thank you, Mr. Jean, for your intervention.

As I was saying, the parole provisions of our law need to achieve that balance so potential parolees have an opportunity to have their application for parole considered properly. Whatever technical means and changes that need to happen to allow that to happen smoothly at the least expense to the taxpayer are something we support. We also support victims who want to have their opportunity to make statements at parole hearings.

We have to be clear that the abuse of this parole system is extremely limited. We have to recognize how horrendous certain individuals are who have made it a career while in prison to abuse that system and to abuse the families of victims. As monstrous as it is, it is extremely rare. We ought not to limit other people's opportunities for consideration for rehabilitation because one or two individuals happen to take it upon themselves to abuse this. As victims have said, they revictimize those whose families have already suffered the most horrendous crimes. That ought not to be the yardstick by which all other activity in relation to parole is taken.

We support this technical change, as we supported clause 96, because we believe that victims have an important role if they wish to participate in hearings for parole. We've seen examples of it across the country, including in my province of Newfoundland and Labrador.

● (1225)

**The Chair:** Thank you, Mr. Harris.

(Clauses 97 to 99 inclusive agreed to)

(On clause 100)

**The Chair:** On clause 100, Mr. Harris.

**Mr. Jack Harris:** Again, we support both clause 100 and clause 101. This involves the creation of an appeal division for the parole board. There's an earlier provision about access to parole, and if parole is denied you have to wait a certain period of time to reapply. We agree with that. We also think that if someone has a decision that they feel was made in error they would have the right of appeal. Clauses 100 and 101 allow for an appeal division within the parole board, so if the initial decision is unfavourable to either side there is a right of appeal by the minister or by the individual—I believe the appeal is to both—to allow for reconsideration of a parole decision.

**The Chair:** Thank you, Mr. Harris.

(Clauses 100 and 101 agreed to)

**The Chair:** We'll suspend for a short while, perhaps half an hour, and return to this room at one o'clock.

● (1225)

(Pause)

● (1300)

● (1305)

**The Chair:** I call the meeting back to order.

We'll suspend at 1:45 , because we are a little distance off the Hill, and the buses are not necessarily waiting for us out front. We'll go from now until 1:45 p.m.

We're at clause 102.

Mr. Harris.

(On clause 102)

**Mr. Jack Harris:** I have a question on clause 102. I don't have the two provisions here.

Can we get a technical explanation for this? There appears to be some technical change here that gives statutory release the same meaning in one section as in another. Can someone explain why this is necessary and what the effect of it is?

**Mr. Daryl Churney:** The words “statutory release” had not previously appeared in part 3, which covers the correctional investigator. It's just to make part 3 of the act, which deals with OCI, the correctional investigator, consistent with part 2. It's a technical amendment to add in the words “statutory release”, to make sure that this is in part 3 of the act as well.

**Mr. Jack Harris:** That would allow the correctional investigator to consider elements of statutory release. Is that the purpose?

**Mr. Daryl Churney:** Yes. It is to make sure his authority covers all components of folks who are in the correctional system; not just parole, but also statutory release.

**Mr. Jack Harris:** Okay.

**The Chair:** Thank you.

(Clause 102 agreed to)

**The Chair:** We're on clause 103.

Mr. Jacob.

(On clause 103)

[*Translation*]

**Mr. Pierre Jacob (Brome—Missisquoi, NDP):** I would like an explanation about the translation. I am referring to clause 103(4) of the bill, line 38 on page 59. It proposes adding paragraph *g.1* to section 1 of schedule 1 of the act. I do not understand the translation into French. The English says:

● (1310)

[*English*]

"sexual exploitation of person with disability".

[*Translation*]

But in French, it says: "*personnes en situation d'autorité*". Is that a mistake? I don't understand.

[*English*]

**Ms. Kerry-Lynne D. Findlay:** Yes. Even I can see that.

[*Translation*]

**Mr. Pierre Jacob:** Thank you

Thank you, Mr. Chair. That was all.

[*English*]

**The Chair:** We'll try to get you the answer.

[*Translation*]

**Mr. Pierre Jacob:** Thank you.

[*English*]

**Mr. Jack Harris:** I heard the question, but I didn't hear any explanation.

**The Chair:** We don't have it yet.

**Mr. Jack Harris:** I'm sorry; I thought you may have said something that amounted to an explanation.

**Ms. Kerry-Lynne D. Findlay:** I said even I agreed that it's—

**Mr. Jack Harris:** Oh, even you?

**Ms. Kerry-Lynne D. Findlay:** Even I can read that it's different in French from the English; that is what I said.

**Mr. Jack Harris:** Even I, with my limited French translation ability, would have to concur.

**The Chair:** Ms. Kane, did you...?

**Ms. Catherine Kane:** Mr. Chair, we were just looking at the Criminal Code in both English and French, and it appears that the Criminal Code, now, *en français*, currently uses that term with respect to article 153.1 because it deals with a number of provisions.

It's not an error, but it's certainly not meant to be a translation of the English: "sexual exploitation of person with disability", and then, in French,

[*Translation*]

"*personnes en situation d'autorité*".

[*English*]

It's not the same term translated, but it is the same sort of marginal note in the Criminal Code that is referred to.

**Mr. Jack Harris:** Thank you for the explanation. I can't agree that I'm any more enlightened, however. If it's intended to be an equivalent phrase or addition, then clearly.... Is section 153.1 a new provision of the Criminal Code? I don't think it is. I have my Criminal Code here. We're not changing the marginal notes, are we?

**Ms. Catherine Kane:** No, that section is not a new section.

What's important is that it's the reference to section 153.1. However, we can consult with our drafters and the jurolinguists, who did both versions, and provide to you tomorrow afternoon when we meet a better explanation of why those two terms are used side by side.

Would that be helpful?

[*Translation*]

**Mr. Pierre Jacob:** Thank you, Ms. Kane.

[*English*]

**Mr. Jack Harris:** Perhaps the recommendation should be that we defer consideration of clause 103 until tomorrow.

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** I'm not sure why we would defer it. I understand the explanation of the officials, and we might not even go until tomorrow. We have until midnight tonight, unless all three parties agree. I don't understand why we would defer it.

My understanding of the explanation is that it's in relation to the different French and English utilized in a different clause in relation to the same area. Is that it?

**Ms. Catherine Kane:** No. It's only with respect to the marginal note or the description.

Perhaps I could read section 153.1 of the Criminal Code in English. It's headed "Sexual exploitation of person with disability". It's what we consider a marginal note or a subtitle. The offence is:

> (1) Every person who is in a position of trust or authority towards a person with a mental or physical disability or who is a person with whom a person with a mental or physical disability is in a relationship of dependency and who, for a sexual purpose, counsels or incites that person to touch, without that person's consent, his or her own body, the body of the person who so counsels or incites, or the body of any other person, directly or indirectly, with a part of the body or with an object, is guilty of an indictable offence or a summary conviction offence.

In English the heading is "Sexual exploitation of person with disability", but in the French version of the same offence, the heading is just

[*Translation*]

"*personnes en situation d'autorité*".

[*English*]

But it is with respect to a sexual offence against a person with a disability by a person in authority.

[*Translation*]

**Ms. Françoise Boivin:** I think I may not have understood your explanation. I understand the logic behind it, but it is certainly not very clear.

● (1315)

[*English*]

**Ms. Catherine Kane:** I agree it's not obvious how it's set out in Bill C-10, but I would reiterate that the part in brackets is basically trying to capture the title or marginal note that's already in the Criminal Code provision in the French version of the Criminal Code, as opposed to in the English version of the Criminal Code.

It's not meant to be a specific translation of one term for the other, but it is the same offence.

[*Translation*]

**Ms. Françoise Boivin:** Would it be possible to put the same concept in brackets? We do it everywhere else.

[*English*]

**Ms. Catherine Kane:** We normally don't indicate to the editors of the Criminal Code what their marginal notes should be; however, we could attempt to rectify it. But it's the same provision of the Criminal Code we're referring to.

[*Translation*]

**Ms. Françoise Boivin:** So you are saying that the brackets are not in the Criminal Code.

[*English*]

**Ms. Catherine Kane:** It's just a marginal note. It's not in the—

**Ms. Françoise Boivin:** It's not in the core of the article, but it is in the title.

**Ms. Catherine Kane:** It is in the title. So we would have to get a different version of the title and have that amendment made. That's why I was suggesting that if it were desired we could check with our drafters. They could check with the jurilinguistics to see if there were other implications to changing that subtitle.

[*Translation*]

**Ms. Françoise Boivin:** As a lawyer, I think that would be better, personally. Put yourself in the shoes of a lawyer defending his client under this section. We have already seen cases before the courts which have headed off towards consequences that should never have happened.

Rather than saying that the answer is satisfactory, I personally would find out. I am not sure that it is. I understand your logic, but I agree with Mr. Harris that we should put off the vote on this clause. Mr. Jean said that it is not necessary to put it off until tomorrow; my suggestion is to put it off until the end of our study. We can't know how much time we need or whether we will finish today or tomorrow. Let's say that we give you until the end of the clause-by-clause consideration. You could then come back to us with an answer that will tell us if it can be changed without causing a lot of drama in Parliament.

[*English*]

**Ms. Catherine Kane:** I would need an opportunity to discuss that issue with the legislative drafters. I don't think that opportunity will present itself today, because we will be here for most of the day. We could attend to it first thing tomorrow.

**Ms. Françoise Boivin:** Do you have a BlackBerry?

**Ms. Catherine Kane:** I do have a BlackBerry.

**Mr. Jack Harris:** Let's wait until tomorrow.

**Ms. Catherine Kane:** However, we have to figure out which drafters were involved in this particular case.

**Ms. Françoise Boivin:** Let's give you until tomorrow. We'll make sure that we're there tomorrow.

**Ms. Catherine Kane:** The other point I would make is this. With all due respect, I don't think it would cause any confusion, because it's the offence that is important. It refers to section 153.1, the offence. You would have to look at the content of the offence, and that's what governs, not the little subtitle that indicates—

**Ms. Françoise Boivin:** I've seen lawyers use whatever in their disposition, and rightfully so in a sense. We have an opportunity to make it say the same thing. I mean, come on.

**The Chair:** I have a list.

Mr. Goguen.

[*Translation*]

**Mr. Robert Goguen:** But none of this adds anything to the nature of the offence. It adds nothing, it takes nothing away. It is just a marginal note that makes it easy to consult. Maybe the key in French is one word and the key in English is another word. It is just to make it easier to consult. It has nothing to do with the clause. So I can't see how a lawyer could use it to defend his client or how a judge would be fooled by it.

Really, it is just to make it easy to consult. It adds nothing to the meaning or the substance of the clause.

[*English*]

I would move that we vote on it now, not even defer it, because it really brings nothing to the substance of the section.

**The Chair:** Mr. Woodworth.

**Mr. Stephen Woodworth:** Thank you very much, Mr. Chair.

[*Translation*]

The problem is in the Criminal Code, don't you see?

[*English*]

That's where the correction must be made, and it is not within our power to correct the Criminal Code.

If we decide that in the amendment to this act we are going to use different terminology from what is in the Criminal Code, then we're creating confusion. If a French-language lawyer, a francophone lawyer, looks at what we have before us, he will know exactly the section in the Criminal Code to which it refers. If we change this in any way, then that will no longer be the case. There will be in fact confusion sown about what section of the Criminal Code is being referred to. He will look and see one marginal note here and will find a different marginal note in the code and this will cause doubt and confusion.

I think the correct solution must be to change the Criminal Code, and that's not possible for us today. Barring that, this act simply should make reference to what's in the Criminal Code.

I think we should vote on it.

● (1320)

**The Chair:** Ms. Borg.

[*Translation*]

**Ms. Charmaine Borg:** I just wanted to point out the fact that the rest of the translation is perfect. This is the only clause that could cause confusion, in my opinion. Maybe the Criminal Code should be changed, if that is what has to happen, because that is where the confusion may be coming from.

[*English*]

**Mr. Brian Jean:** I would agree with Ms. Borg, in that my preliminary assessment was confused, but I'm satisfied with what the officials have said.

I guess my question would be does this change the law? Does the vote on this one change the law? That is really the question.

**The Chair:** Thank you.

Mr. Jean.

**Ms. Catherine Kane:** No, not at all. Section 153.1 remains as it is in the Criminal Code.

**Mr. Brian Jean:** Thank you.

**The Chair:** Ms. Findlay.

**Ms. Kerry-Lynne D. Findlay:** I think there is some confusion caused by the reference to a marginal note and maybe not everybody understands what a marginal note is. Basically, as I understand it now, it's referring back to the titles, the area it's affecting. It doesn't change 153.1. There is no judicial interpretation of titles, or in this case being the same as a marginal note. It's not something a lawyer could use to change an outcome or that a judge would be interpreting. In fact it is impossible: the judicial interpretation act says titles and marginal notes are not part of the jurisprudence.

**The Chair:** Thank you.

Ms. Boivin.

**Ms. Françoise Boivin:** Very briefly.

[*Translation*]

I think we all understand that none of this changes the wording dealing with the offences, which is clear and precise. But there is a principle in law that states that Parliament does not speak in vain. Perhaps we do not need to be so careful in this particular case, but, under that principle, just to put our minds at rest, we should ask our experts and our jurists to look into it quickly so that we know why the two headings are so different. But there is still a subtle difference that is interesting. If I say…

[*English*]

"sexual exploitation of person with disability", that's kind of the section.

[*Translation*]

In French, it says: "*personnes en situation d'autorité*". Those are two different concepts. In a way, one is talking about the victim and the other is talking about the criminal.

We may have stumbled on this purely by chance, but it is something that should be corrected. If we cannot correct it in this process, through Bill C-10, I mean, someone should at least come back to us at the end to tell us if it is appropriate to bring forward some amendments.

I am Joint Chair of the Standing Joint Committee on Scrutiny of Regulations. That is where we spend our time studying regulations with a view to finding words here and there that are different in French and English and to making sure that they are correct, in headings or anywhere else. Headings may not have the force of law, but people often use them anyway.

Though we are told that we must not use headings, can we at least make this amendment to put our minds at rest in this case? I would even accept being told that we are going to make an amendment in a future bill to correct something that everyone would agree with, given that it makes no sense now. For heaven's sake, it seems to me that it should not be rocket science for us to be careful and wait until tomorrow.

Sometimes people ask me if I think I can get amendments passed. In cases like this, cases where we should be able to amend headings that contain such obvious errors, but we are not able to—surely you agree that the changes are superficial—then we have a problem. Maybe it is because we have no way of changing anything to anything. But come on.

[*English*]

**The Chair:** Thank you.

Mr. Harris.

● (1325)

**Mr. Jack Harris:** I don't want to go into the whole business here of what the different wordings mean, but I do want to ask further explanation from the officials here.

There's a significant number of changes being made to schedule I of the Corrections and Conditional Release Act, adding offences such as high treason that weren't there before, renaming others, adding new offences that I guess didn't exist before, such as the child luring sections, etc. There's quite a number of them that are not new at all, but are being added to schedule I.

I wonder if the officials could explain what the purpose of adding all of these offences is, and what the consequences of including these offences in schedule I would be. Most of them are.... They're all to schedule I itself, it seems to me. Could we have an explanation for that?

**Mr. Daryl Churney:** Mr. Chair, there was really no other reason than simply updating the schedule in the CCRA to make it consistent with new offences that have been brought in under the Criminal Code and other pieces of legislation.

It's really just a technical updating of the schedule. There was no real substantive change to the schedule as a result of anything else.

**Mr. Jack Harris:** But you're adding high treason, for example, and uttering threats and aggravated assault, kidnapping. What's the purpose of including them in schedule I? What are the consequences of having them there, as opposed to not having them there?

**Mr. Daryl Churney:** We can go back to the drafters, and get back to the committee on that point. As far as my understanding, the update to the schedule is really just to make it consistent with other schedules that appear in the Criminal Code. But we can certainly provide a more fulsome explanation to the committee.

**Mr. Jack Harris:** It's not very helpful to.... The schedule is there, but what is the schedule used for, I guess, is the question. If you can come back with that explanation, I'd certainly appreciate it.

**Mr. Brian Jean:** I know I'm on the speakers list. I'm curious as to whether or not—even if we find that it is inconsistent—it would be within the scope of the ability of the committee to amend it as suggested, to actually make changes that to bring in consistency. Or would it be outside of the scope of the...?

**The Chair:** The section we're dealing with is the only section we can change at this point on an amendment. We can't deal with the Criminal Code.

**Mr. Brian Jean:** If we amended the references in the margins, for instance, in this case.... As somebody who used the Criminal Code for a long time, I would look at the references to sort of find where I was in the Criminal Code, because it's quite lengthy sometimes. I certainly didn't use it for arguments with judges or justices.

I wonder whether the proposal by the NDP, even if they were to make that proposal...would it not be outside of the scope of this particular bill? And would we not be seized with having no ability to change it? That's my understanding.

**The Chair:** I think the legislative clerks have indicated that you would be changing something that we can't change.

**Mr. Brian Jean:** So we're stuck with it, no matter whether we want to wait or not, if I understand that.

**The Chair:** I have Mr. Goguen on that.

**Mr. Robert Goguen:** Based on the discussion we just had, clearly we can't change this and it's just an interpretative note. You have the Interpretation Act, which makes clear that you can't rely upon it as any kind of an argument in law.

So I would ask that the vote be called, Mr. Chair.

**The Chair:** Okay.

Mr. Harris.

**Mr. Jack Harris:** I guess we're talking about two different things, because I didn't speak to this issue of whether the reference in English and in French is appropriate or not. I spoke to the question as to what the effect of the entire clause 103 was in terms of the changes being made to the schedule. What is the effect of those changes, what does that do, and what is the schedule used for?

Our witnesses from the department were unable to answer that question and offered to provide an answer after doing some further investigation.

Someone is trying to play music here. I'd better stop it.

● (1330)

**The Chair:** It's yours.

**Mr. Jack Harris:** I have it on vibrate. I don't know why it—

**Ms. Françoise Boivin:** Now we know what you like, Jack.

**Mr. Jack Harris:** I don't know why it does that even though it's on vibrate. Maybe I need to revise my options.

We've been told by our experts that the explanation will be forthcoming, so I would ask that we defer that until they can provide that explanation. That's what they're here for.

**Mr. Brian Jean:** On a point of order, Mr. Chair, even if we defer it, we can't change it, so what difference does it make?

**The Chair:** If you're looking for the information, I think we can get you the information. But I agree with Mr. Jean. The legislative clerks have made it clear that we can't change it here anyway.

**Mr. Jack Harris:** No, but you were asked.... Hold on, now.

**The Chair:** But we'll get you the information.

**Mr. Jack Harris:** But to that point, Mr. Chair, if the witnesses were brought here to help us understand the bill, and I asked for an explanation as to what the effect of clause 103 was and the witnesses said they'll get back to us and let us know what it does because they have to confer with someone to do that, aren't we in...? What's the point of having the witnesses here? I'm not saying they should have the answer to every question at their fingertips, but if they're going to assist the committee in understanding the bill that we're being asked to vote on, I for one.... When I ask the question about the consequences of all these changes and what does that do and what does schedule 1 itself do in relation to the bill and we're told by the witnesses, by the experts, that they will check it out and get back to us, are we not going to wait until they get back to us? Or are we going to vote on this blindly?

**The Chair:** I think that where you are is somewhere different. I think you've asked the official for an explanation that he may or may not have. I'm not sure if you accepted the explanation that he had, and then he went further on it.

Having said that, we could spend a lot of time asking the officials what each one of these clauses changes.

Mr. Wilks, you're next on the list.

**Mr. David Wilks:** Maybe I can bring some clarity to this. If we refer to clause 115, you see there that schedule 1.... Convictions under section 752 of the Criminal Code will provide that one will not be eligible to apply for parole for 10 years. You're bringing that under schedule 1, and that includes manslaughter, for which the applicant, etc. So it includes all of those under clause 103 that are now going to be brought into schedule I, and that will link back into clause 115 to be part of schedule 1 for pardon.

That's how I read it. It's linking back into pardon, so that's the link. Do you follow me?

**Mr. Jack Harris:** No, I don't follow you at all. What's this got to do with 741? I'm looking at clause 103 right now.

**Mr. David Wilks:** You're looking at clause 103 and you're talking about why we're bringing some of these offences into schedule 1.

Then if you go to clause 115 and you look at schedule 1, it has to do with pardons. Clause 115 increases the time before applying for a pardon to 10 years. It will bring those offences into schedule 1 so that people cannot apply for a pardon for up to 10 years.

**Mr. Robert Goguen:** It's on page 65.

**The Chair:** There's some confusion....

● (1335)

**Mr. Jack Harris:** Well, I can see the reference to schedule 1 there, Chair.

I asked the official what the purposes of schedule 1 are, and I can see what Mr. Wilks is saying in relation to clause 115. But there are a whole bunch of other references there at the top of schedule 1, for example, in the CCRA, and I'm wondering what else we're doing other than giving clause 115 a bunch of other offences to avoid allowing for an application for what the government proposes to change to a record suspension from a pardon.

What else are we doing?

**Mr. Daryl Churney:** Just to clarify, there are two different sets of schedules being talked about. The schedule that's in the Criminal Records Act is essentially the flagging schedule for sexual offences. So that is a different matter entirely from the schedule that is set out in the Corrections and Conditional Release Act.

In the CCRA, schedule 1 is essentially a list of sexual offences and schedule 2 is serious drug offences. So really, it's just an articulation, a listing, or a grouping of types of offences, and the lists relate to different aspects of correctional management so that when decisions are being made, for instance, with accelerated parole review, which was just recently repealed...but, for example, offenders under schedule 1 and schedule 2 were ineligible for those provisions.

So the list exists essentially just to give a grouping of offences so that operators of the correctional system can reference who may be eligible or not eligible for certain provisions of the act. That is separate from the schedule that's set out in the Criminal Records Act. In the CRA, it's essentially a listing of sexual offences. So when someone receives a pardon and then applies for a vulnerable sector position, for example, like a baseball coach or a hockey coach, that record can then be matched to the flagging schedule so that if somebody applies for that vulnerable sector position, the RCMP will get hit on their CPIC system and then that will be transmitted to the Department of Public Safety, which then flags that to the minister. The minister can disclose that record. So that's the function of the Criminal Records Act schedule. It's a flagging schedule for sexual offences.

But with respect to the CCRA, there is a listing of sexual offences in schedule 1 and serious drug offences in schedule 2 that relate to the operation of the correctional system and decisions that are made by correctional officials.

**Mr. Jack Harris:** That explanation doesn't seem to me to be complete. We're talking in clause 103 about adding to—

**Mr. Robert Goguen:** On a point of order, are we beyond our 10 minutes on this?

**Mr. Kyle Seeback (Brampton West, CPC):** We're well beyond 10 minutes.

**The Chair:** The problem is, what you agreed to in respect of Mr. Harris's motion was 10 minutes per party on each item, and we haven't been a half hour.

**Mr. Robert Goguen:** We're done talking.

**Mr. Jack Harris:** What I'm asking, having heard the explanation —

**Mr. Kyle Seeback:** On a point of order, Mr. Chair, the Liberal Party hasn't spoken.

**The Chair:** I appreciate that.

**Mr. Kyle Seeback:** Have they given their ten minutes to the NDP? I didn't hear that; I might have missed it.

**The Chair:** I agree with that, Mr. Seeback, but as I told you when you voted on this last week, you put the chair in a position to try to decide when 10 minutes are up. You came up with 10 minutes for each side, and then the ask was that the chair be able to move the time around.

Mr. Cotler, I think it was, said that he would expect what you did, and that it was to be used with caution by the chair. The problem is that the motion you made was not all that clear to the chair. I may have been less than frank in telling you at the time that it was going to be impossible if we're going to deal with 30 minutes a clause. We're at clause 103, and if we multiply it times 100, for 30 minutes —

● (1340)

**Mr. Robert Goguen:** We won't stop.

**The Chair:** We're a long way away. I agree we're talking in circles here, and I've talked with the legislative clerks. Some of what's going on here you can't change anyway. At some point we will call the vote.

Mr. Harris.

**Mr. Jack Harris:** We're talking about two different schedules, but the schedule that's being sought to be changed is not the one under the Criminal Records Act. It's the one under the Corrections and Conditional Release Act. The schedule we're talking about doesn't just deal with sexual offences in schedule I. That has everything from manslaughter to murder to treason, I think we're now putting in, to pointing firearms and the sexual exploitation of a person with a disability. So I'm a little confused. What's your suggestion?

I thank Mr. Wilks for pointing this out. It has an effect in the act in relation to the criminal and what may happen with pardons. But does that have other effects on the Corrections and Conditional Release Act, as a result of its being in the schedule and the references to 107, 129, 130, 133, 156, etc.? Are we doing something else here in addition to what Mr. Wilks has suggested?

By the way, Chair, I didn't understand that asking questions of the witnesses was part of the debate on a clause.

**The Chair:** I don't think your motion was all that clear.

**Mr. Jack Harris:** Oh, okay.

**The Chair:** Just so that everybody understands, it's impossible for the chair or for the clerk to keep track of your time when both sides are using time. We have only one clock. There is another difficulty in this whole situation.

Mr. Churney, if you have an answer, I'd be pleased to hear from you.

**Mr. Daryl Churney:** Are the additions to the schedule doing anything else? The answer is no. The list is still essentially the list in the schedule. But we can provide a more complete response to the committee. There's no substantive change being made to the function of the schedule. The schedule is being updated to ensure that it's consistent with the offences in the Criminal Code. That's it.

**The Chair:** Thank you.

(Clause 103 agreed to)

(On clause 104)

**The Chair:** On clause 104, Mr. Harris.

**Mr. Jack Harris:** This is an addition to the schedule as well? Why would that not be included in the previous section? Is something different happening here?

**Mr. Daryl Churney:** No, it was through a drafting convention that it was put in a different clause. There's no particular reason why it was set out separately or couldn't have been included. It was just the way the amendment was drafted by the drafters.

**The Chair:** Thank you.

(Clause 104 agreed to)

**The Chair:** We will now suspend until 3:30, for question period. We will reconvene in Room 306 of La Promenade.

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