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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Ladies and gentlemen, let me call to order meeting number 62 of the Standing Committee on Justice and Human Rights, this Monday, March 4.

What I'd like to do before we start with Bill C-55, pursuant to the order of reference before us, is to deal with the fifth report of the subcommittee on agenda and procedure. It actually talks about our having this meeting today, so I think it's only appropriate that we pass this first before we start the meeting, if that's okay.

Ms. Françoise Boivin (Gatineau, NDP): Actually, I was also going to say that it was really well-placed because we might have a better idea at the end of how it's.... Maybe the clerk will tell us how many witnesses—

The Chair: I can tell you that right now. What is happening today, once we call the minister to the meeting, is the following. We've had no witnesses requested by either the Conservatives or the Liberals, and five witnesses requested by the New Democratic Party. Of the five witnesses, two have confirmed and one is highly likely to. They will appear on Wednesday for the first hour.

Ms. Françoise Boivin: Excellent.

The Chair: If we need a little more than an hour, as this is only a seven-clause bill, we will then go to clause by clause. We'll deal with the bill then, and we'll be here on Thursday to present it back to the House.

We're waiting to hear from one more witness. Two of the NDP requests have declined.

Ms. Françoise Boivin: We were aware that it was short notice. It's not so much that they didn't want to come and talk about the bill, but that the time constraint has been the major problem. So I understand that.

You say that two people will probably be there on Wednesday. Is L'Association du Barreau canadien one of them? They just filed their report. That's one extra. It should be okay, then.

The Chair: Thank you very much.

With that, I'll take a motion to accept our fifth report.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): So moved.

The Chair: All those in favour?

(Motion agreed to)

The Chair: Thank you very much.

According to order of reference of Monday, February 25, 2013, we're looking at Bill C-55, An Act to amend the Criminal Code.

We have the pleasure of hearing from the Honourable Rob Nicholson, the Minister of Justice and Attorney General, who is here for the first hour to talk to us about this bill. He's accompanied by a number of senior staff members, who are also willing to stay into the second hour if we have questions for them specifically.

With that, I'll turn the floor over to you, Mr. Minister.

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada): Thank you very much.

I'm pleased to be joined by Karen Audcent and Don Piragoff, both from the Department of Justice. They'll be glad to answer any questions that you may still have, if you have any, after my hour here.

Mr. Chairman, I'm pleased to be here to talk about Bill C-55, the response to the Supreme Court of Canada decision in *R. v. Tse*. The court's decision in the *Tse* case found that existing authority to wiretap without prior judicial authorization in exceptional circumstances was unconstitutional due to its lack of accountability safeguards.

The bill before you responds to this finding of unconstitutionality in section 184.4 of the Criminal Code by first adding the safeguard of after-the-fact notification to persons who have been intercepted; second, adding a requirement for public reporting on the use of this power; third, restricting the use of emergency wiretaps to cases of serious offences; and fourth, limiting the use of this power to police officers and to certain listed offences.

Under section 184.4 of the Criminal Code, the police can conduct a wiretap without prior judicial authorization only when the situation is too urgent to obtain a wiretap authorization; when the "interception is immediately necessary to prevent...harm to any person or to property"; and when the originator or recipient of the communication is the perpetrator of the harm or the victim or intended victim of the harm.

This means that police can only intercept communications between the perpetrator of the anticipated harm and the actual victim or intended victim of that harm. This imposes a strict limitation on whose communications can be intercepted and closes the door on the possibility of police intercepting the communications of an unlimited number of classes of persons.

Furthermore, there must be an immediate need to wiretap to prevent harm to a person or to property from occurring. This should provide you with a sense of how and when this section can be used; for example, in situations such as kidnappings and bomb threats.

Finally, the urgency of the situation must make it impossible for police to obtain an emergency wiretap authorization. To be clear, the Criminal Code has another provision that enables a rapid response designed for an emergency. Section 188 of the Criminal Code enables an abbreviated process for court authorization allowing 36 hours of wiretap. For police to avail themselves of the authority under section 184.4 of the Criminal Code, it must not be possible for them to seek court authority under either the principal and lengthier process for wiretap under section 186 or the expedited process for short-term wiretap authorizations in emergency situations under section 188 of the Criminal Code.

That said, the Supreme Court in the Tse case found that while there exists a justifiable constitutional imperative for the existence of such a wiretap power, section 184.4 of the Criminal Code as drafted is constitutionally deficient, despite the existing built-in safeguards that I've just described.

In its reasons, the Supreme Court found that the addition of after-the-fact notification to persons whose communications have been intercepted would make the provision constitutionally compliant.

That's what they told us: if you do this, it's constitutionally compliant. This bill, Bill C-55, proposes this requirement for the use of 184.4 of the Criminal Code by requiring that notice must be given to the person within 90 days of the wiretap, unless a court authorizes an extension.

• (1535)

[*Translation*]

The Supreme Court of Canada also commented on other issues for which the bill proposes some appropriate responses.

[*English*]

While the court held that the notification was the only amendment required for constitutional compliance, it expressed the view that reporting was a good idea from a policy perspective, and on that the government agrees.

This bill proposes, therefore, to add a reporting requirement to the use of section 184.4, which would mean that the reports prepared annually by the federal Minister of Public Safety and provincial attorneys general on the use of wiretaps would now include information on the use of section 184.4. This will enhance transparency and increase public knowledge and scrutiny of the use of this exceptional power.

The Supreme Court also considered restricting the use of this section to police officers instead of peace officers, as is currently provided in the Criminal Code. This could enhance charter compliance, though the court did not rule on this issue.

Again, the government takes that representation and that suggestion to heart, and the bill therefore proposes to restrict the availability of this section, from peace officers—a term that is defined rather broadly in section 2 of the Criminal Code—to “police

officers”, which is a narrower class of individuals. For example, the narrower approach would exclude such individuals as mayors and Reeves.

This bill also proposes to limit the use of section 184.4 to the offences listed in section 183 of the Criminal Code. Currently the section can be used for any unlawful act. That's what it says now.

Although limiting this power to offences listed in section 183 of the Criminal Code was commented upon, it was not required by the Supreme Court of Canada; nonetheless, Bill C-55's proposal in this regard would harmonize this section 184.4 and its use with other provisions in the Criminal Code related to wiretap that are already limited to section 183 offences. We are making it consistent with the other wiretap sections; the provisions under the Criminal Code would apply to this as well.

Harmonization with other wiretap provisions will also be achieved with the notification and reporting requirements that I have already mentioned, as these requirements already exist for some of the other provisions in the Criminal Code.

Finally I would note that the Supreme Court of Canada gave us until April 13, 2103, to amend section 184.4 to address this defect, and that time is swiftly approaching. This makes it imperative that we move as quickly as possible to enact this legislation, failing which, after April 13 police will no longer have the ability to use this section, which may compromise their ability to respond to high-risk situations and to protect Canadians.

When considering the reasons for the amendments in this bill, it may also be of use to consider the situations in which the bill or the section is likely to be used. Kidnapping is one example, as in the Tse case, in which a married couple and a friend were abducted from their home and held for ransom. Police relied on this section to respond quickly with a wiretap when family members were contacted by one of the abducted persons.

In another case, *R. v. Riley*, the police used section 184.4 of the Criminal Code during an investigation of murder through drive-by shootings in which the goal was to respond quickly to prevent additional murders.

These cases illustrate the importance of this particular section. In short, Bill C-55 is about ensuring that police have an important tool that they need to protect Canadians, while also ensuring that it is used in a way that shows the respect for privacy that Canadians can expect from their government.

I urge all members to support this.

Thank you very much.

• (1540)

The Chair: Thank you, Minister.

The first questioner is from the New Democratic Party.

Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

Thank you, minister.

Obviously, we are all aware of the time limit, since the Supreme Court of Canada gave April 13 as the deadline in *R. v. Tse*. So we have between now and then to do something.

The government took another approach. With its introduction of Bill C-55, it announced the withdrawal of the much-criticized Bill C-30. The government dragged its feet for some months, so now we are forced to study an important bill post-haste. You said yourself that it concerns the “Invasion of Privacy” part of the Criminal Code. So we are very aware of the matter we are legislating.

That being said, I read Bill C-55. Although the Supreme Court did not make a determination regarding peace officers, police officers and so forth, I can somewhat appreciate that the government, in its wisdom, did not wait to establish definitions. However, the provision says the following:

“police officer” means any officer, constable or other person employed for the preservation and maintenance of the public peace.

I am always a bit averse to those kinds of catch-all expressions. I'd like you to tell us who exactly “other person employed for the preservation and maintenance of the public peace” refers to. Does it go as far as to include private security guards? Does it include individuals employed to enforce other federal laws such as the National Defence Act, the Immigration and Refugee Protection Act, and so on?

It might be advisable to define those things, because you may have opened the door to a complicated side issue, in your efforts to address the Supreme Court's ruling.

•(1545)

[English]

Hon. Rob Nicholson: Thank you very much.

I agree with you about better defining exactly who should exercise these powers.

The term “peace officer” is certainly an older term. If you were to go back and look at the history, many times the mayor was called upon to exercise a certain responsibility when there was some type of uprising or riot.

There is a definition in the Criminal Code that defines who a peace officer is. It would include public officials such as mayor, reeve, sheriff, deputy sheriff, sheriff's officer, justice of the peace, members of Correctional Services, any permanent employee of a prison or a penitentiary, officers under the Customs Act and the Excise Act, and officers under the Immigration and Refugee Protection Act. In addition, a fishery guardian is included as a peace officer under the Fisheries Act. The pilot on an aircraft is—

Ms. Françoise Boivin: I'm well aware of this, Minister. So thank God that you are not going with that definition of *agent de la paix*.

Hon. Rob Nicholson: No, that's what I'm saying.

Ms. Françoise Boivin: But when we talk about

[Translation]

“other person”, I'd prefer to look at your new definition. Does it go as far as to include security guards?

[English]

Hon. Rob Nicholson: No.

[Translation]

Ms. Françoise Boivin: Very well. Good.

[English]

Hon. Rob Nicholson: No. It's not security guards, mall cops, or commissionaires. It's Sûreté du Québec, Ontario Provincial Police, RCMP, and municipal law enforcement agents.

Ms. Françoise Boivin: Perfect.

The other part of the legislation I question a bit—I'm not sure of the answer yet—is this.

[Translation]

You talk about granting extensions for up to three years at a time. But this section pertains to emergencies. I'm having a bit of trouble understanding why these extensions would be granted. They seem a bit long to me. I'm trying to wrap my head around the logic behind this new provision.

[English]

Hon. Rob Nicholson: This is very specific. What would happen immediately after this type of wiretap taking place is that you would make application under the other two sections here. Both have complete judicial oversight. All the oversight, the requirements that are involved with the other two sections, are the ones that would kick in. This is for an immediate response to a difficult—

Ms. Françoise Boivin: Okay.

My last question for you is this.

[Translation]

The Canadian Bar Association submitted quite an interesting brief, in which it recommends a few amendments. For example, they recommend that “the exceptional discretion to initiate section 184.4 interceptions be limited to a class of designated superior officers”. That seems to be fairly well-covered in the new legislative enactment. The CBA also recommends that “a requirement be added to publicly report the number of persons whose communications were intercepted under section 184.4 but not subsequently charged with any offence”. The CBA goes on to propose that “a police officer's justification of section 184.4 interception be recorded or memorialized”. Lastly, the CBA recommends that “if subsequent judicial authorizations are obtained on the same grounds as a section 184.4 interception, evidence obtained by the section 184.4 interception may be ruled inadmissible”.

I'd like to discuss the recommendation to “publicly report the number of persons whose communications were intercepted under section 184.4 but not subsequently charged with any offence”. Would you object to amending the provision in that regard, to stipulate that the report provided to Parliament annually pertain to everything? A simple yes or no would do. I'd be perfectly fine with that.

[English]

The Chair: Minister, are you able to answer that question?

Hon. Rob Nicholson: Thank you, Madame Boivin.

We're making the reports consistent with what already takes place with provincial attorneys general. They report now on the other two provisions in the Criminal Code with respect to wiretaps, and what we're doing now is making this consistent with that, with the additional safeguard and requirement of the federal Minister of Public Safety.

Again, this bill is straightforward. As I say, it goes beyond the safeguards that are required by the Supreme Court of Canada to bring it into line with the Constitution. We've taken it, as you pointed out quite correctly, a couple of more steps. We have put that in there.

But, again, this will be consistent with provincial attorneys general and I think these are considerable steps forward.

• (1550)

The Chair: Thank you, Minister.

Thank you, Madame Boivin.

Our next questioner, from the Conservative Party, is Monsieur Goguen.

Mr. Robert Goguen: Thank you, Mr. Chair.

And thank you, Minister, for appearing, and thank you to the witnesses.

It's pretty apparent that Bill C-55 seeks to right the judicial oversight and basically make the interception of private communications constitutionally valid. We know that in each instance there's a test that's done. You strive to make sure, of course, that all legislation is in keeping with the Constitution, and we thank you for that.

It's pretty apparent from our review of the cases that any interception of private communications would probably, *prima facie*, be a breach of the constitutional right against search and seizure. Minister, just generally, can you tell us what is the interception of private communications and why exactly is it needed in this society?

Hon. Rob Nicholson: Again, we're told—and this is consistent with what we know about law enforcement—that this is a necessary part of dealing with some of the emergency situations that law enforcement agents come across. Mr. Wilks and others would be able to tell you instances where information of this type becomes very, very important.

I indicated to you from the Tse case and the other case that we face situations where people's lives are in immediate danger. These are the innocent individuals, the victims. So it's absolutely vital that there be authority within the Criminal Code to allow officers to go and intercept this kind of information for the safety and the well-being of those individuals.

There's been a considerable history over the last 40 years with respect to this whole area of wiretapping. I believe that in the nineties, Mr. Piragoff, you were there and having a look at a number of these provisions, basically updating them from the 1970s to be consistent with what was happening with changes in technology and to what law officers were facing.

It's absolutely vital that there be something like this available. If somebody's life is in immediate danger, for instance—and that's just one example—you've got to have the ability to intercept. However, there have to be safeguards on that. As you quite correctly pointed out, people have a right to privacy and to know that their communications are kept private. This is why we have gone, in this particular section, beyond what the Supreme Court of Canada required. We've built in other safeguards and clarified when and where and how this authority can be used.

But again, there are the three sections: the regular section of the Criminal Code with respect to wiretaps; the emergency section; and this section, that third category where they immediately must have information. Again, what we're doing is consistent with what the courts and law enforcement must have, and victims must have if they ever find themselves in a position like this.

Mr. Robert Goguen: Thank you, Minister.

The courts seem to do a balancing act between protecting the rights of the individuals against intrusion of their private rights, intercepting their private communications and, of course, protecting the public. Of course, there's that intrusion into their civil rights.

What about the situation of imminent harm? Does the right of the individual give way to the right of the state to intervene to protect them? Why is it necessary to amend the Criminal Code to allow wiretapping in situations of imminent harm?

Hon. Rob Nicholson: Again, it's always a balancing act that Parliament and the courts have in balancing the rights of individuals with respect to privacy and their right to live freely and without fear of harm. I outlined a couple of situations, and you may hear from whatever witnesses you have here, where police come across a situation where somebody, for instance, is in imminent harm or a serious crime is about to be committed. If they intercept that and get information on it, they may be able to intervene and protect the individuals or property subject to imminent threat.

One of the interesting things about the Supreme Court of Canada decision in *R. v. Tse*, when you have a look at it carefully, is that the courts agree and understand that on occasion this type of power has to be available to police officers. What they have said is, "Yes, we understand it; that part of it is okay but you have to do something beyond that to ensure that this is not abused. It's important that there be some clarification and some accountability with respect to this". So what we're doing here is basically bringing this into line with the other provisions of the Criminal Code with respect to reporting, and narrowing the group of individuals to whom this applies. Again, that's what you will see when you have a look at this: yes, we're complying, but we go a bit beyond that as well. I think that's important.

• (1555)

Mr. Robert Goguen: Thank you, Mr. Chair.

The Chair: We'll now go to the Liberal Party.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you.

Welcome, Minister, Mr. Piragoff, and Madame Audcent.

I'm curious about this. Private communication now captures much more than people talking on the phone, I would think?

Hon. Rob Nicholson: Yes.

Mr. Francis Scarpaleggia: It would capture e-mail and everything else?

Hon. Rob Nicholson: That's right.

And conversations within a room, for instance.

Mr. Francis Scarpaleggia: Right. Okay.

You answered the question from Madam Boivin about the definition of police officer. Obviously, they are only recognized officers from recognized police forces, municipal, provincial, RCMP, and so on and so forth. Is what you're saying very clear?

Hon. Rob Nicholson: I think so.

I think what we did is to just more carefully define exactly who it is that we're talking about, even with respect to limiting this section to section 183 of the Criminal Code. If you ever look at the Supreme Court of Canada, they're saying this may be a good idea. The present provisions of the Criminal Code under section 184.4 apply to any unlawful act, so we're restricting that to section 183. I think providing some clarification and making it a little more definite is a step in the right direction.

Mr. Francis Scarpaleggia: You'll excuse me if this question is simplistic, but I'm not a lawyer, so you'll have to bear with me.

Hon. Rob Nicholson: We won't hold that against you—

Some hon. members: Oh, oh!

Hon. Rob Nicholson:—and I would object to anybody who did.

Mr. Francis Scarpaleggia: It's really for my own edification because under the definition of police officer, it doesn't say a certified officer employed by a municipal force, a provincial force, or the RCMP. It says, "constable or other person employed for the preservation and maintenance of the public peace."

There's no danger that this could be interpreted to mean the private security guard employed by a municipality to patrol the streets at night because they're not getting sufficient, regular police force coverage, which we see in communities across the country?

Hon. Rob Nicholson: One of the good things about the use of that term is that it has already been interpreted a number of times by the court—

Mr. Francis Scarpaleggia: Yes.

Hon. Rob Nicholson: —so it does not apply to those individuals.

Mr. Francis Scarpaleggia: Perfect.

Hon. Rob Nicholson: You'll see that the definition is also defined in other sections of the Criminal Code so they have a pretty good idea of exactly who is and who is not a police officer.

Mr. Francis Scarpaleggia: Yes, I learned something, Mr. Chair.

The Chair: Good.

Mr. Francis Scarpaleggia: That's part of my legal education.

In terms of applying section 184.4 to section 183, I understand that you want to make it consistent with the way the other sections,

186 and 188, function, but here, if you read the Supreme Court judgment in Tse, it says:

The list of offences in s. 183 is itself very broad; however, Parliament chose to focus upon an unlawful act that would cause serious harm. We see no reason to interfere with that choice.

I don't understand why we have to make it consistent with sections 186 and 188 when the purpose of section 184, it seems to me, as a layperson, is different from that of sections 186 and 188.

● (1600)

Hon. Rob Nicholson: It's a very interesting point you're making. It seems to me that if we are intercepting somebody's communication without prior judicial authorization, there should be a very strong onus on the individuals doing that to ensure that it is appropriate. I actually like the idea of defining exactly which offences this applies to, that it's not just to any unlawful act, which could be very broad.

Again, we went beyond what the Supreme Court said. We said we're restricting it to section 183. As you can see, these are very serious crimes, for the most part, and they're all spelled out. I think it's a better way of doing that. We didn't have to change the definition from "peace officer" to "police officer", but when you are doing something like this, I think it is important to be as specific and as definite as possible.

Mr. Francis Scarpaleggia: Okay. You would think the Supreme Court would want to tighten it as much as possible, but they said, "We see no reason to interfere with that choice."

Anyway, I'm not going to belabour the point.

Those are the only questions I have.

The Chair: Thank you for your questions, Mr. Scarpaleggia.

Our next questioner is from the Conservative Party.

Mr. Armstrong.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you, Mr. Chair.

Minister, thank you for being here.

I have a couple of quick questions about process.

We talked about three different components to the Criminal Code. We have sections 184.4, 186, and 188. Could you discuss the difference between sections 186 and 188? Section 188 is a more speedy way to get a wiretap—and other methods used by the police force. But what's the difference between these two, and why is section 184.4 needed as well?

Hon. Rob Nicholson: We're talking basically about three different situations.

In ordinary circumstances, you would make an application for a wiretap. It would be under section 186. For part of an investigation, for instance, of organized crime, the information would be presented and there would be a judicial determination of whether this is reasonable, under what circumstances, what the parameters are, who, how, and where. This can be a considerable, lengthy, well thought out process. That is the usual process.

You could have a situation where they need a wiretap and they don't have that opportunity, because of the urgency of it, to make that formal application to the court. That provides, among other things, that you could pick up a phone and get a law officer, somebody who is authorized to do this, to provide this, to give you the okay over the phone if you have to have that. That's the second one, and I call it the emergency wiretap provision. That's section 188 of the Criminal Code.

Section 184.4 takes that emergency one step further, that there is a possible imminent harm to people or property, that there isn't time, even, to start phoning somebody and explaining, and making that type of an application. You have to have the information right now.

I mentioned the Riley case and the Tse case. They had to have that information immediately to do their best to protect the individuals, and there really wasn't time to do anything else.

So you have the three categories. For the most part, it's the regular wiretap under section 186. Again, you make the application, but depending on the urgency... What we are doing with section 184 is basically bringing it in line with the other two sections, so that there is accountability and judicial involvement with this. That's what we're doing under this particular section. I think it complements those other two sections here that I just described.

Mr. Scott Armstrong: All the changes that are made in Bill C-55 really are just to strengthen the privacy components of the legislation, to come into compliance with the Supreme Court's—

Hon. Rob Nicholson: Right. We are complying with the requirements of the Supreme Court of Canada. As I pointed out to your colleagues across the aisle, we've gone beyond that. We're limiting it to a certain number of offences, the section 183 offences, changing the definition of "peace officer" to "police officer", and extending the notification. We've gone beyond just provincial attorneys general. Let the federal Minister of Public Safety table that report as well.

Mr. Scott Armstrong: Are you confident that the bill the way it's written can be applied to future technologies? Is it broad enough? We're tightening up the privacy concerns but can we also adapt to future technology?

Hon. Rob Nicholson: I think it is broad enough to include, as Mr. Piragoff pointed out to me, two people in a room or whether, as you know, they've now gone beyond telephones in communicating. I believe it is broad enough. That's one of the things we have to do with the legislation. I've been before this committee many times. We have to make sure that it's up to date and covers what's taking place out there. It can't be drawn so narrowly that it doesn't capture where technology and the criminal element may go. They don't wait. They're not confined by present-day technology. They're always looking for other ways to accomplish their ends.

•(1605)

Mr. Scott Armstrong: Thank you, Minister.

That's my last question.

The Chair: Thank you, Mr. Armstrong.

Thank you, Minister.

We have Mr. Mai from the New Democratic Party.

[*Translation*]

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you, Mr. Chair.

Minister, thank you for being here today.

I'd like to pick up on what Ms. Boivin was talking about, with respect to the recommendations made by the Canadian Bar Association. Specifically, I'd like to discuss the recommendation on the reporting. In its current form, the bill stipulates that individuals who were subject to an interception be notified only in situations where a charge is laid and the case goes to court.

The Canadian Bar Association wondered why it did not go further, for the sake of transparency, and include cases that had not resulted in an arrest or a charge.

[*English*]

Hon. Rob Nicholson: The notice is given to anyone who is the object of this interception. It's not dependent upon whether any charges are laid or not. You're entitled to notification.

[*Translation*]

Mr. Hoang Mai: I'd just like a clarification.

[*English*]

Hon. Rob Nicholson: Okay.

[*Translation*]

Mr. Hoang Mai: Section 195(1) concerns reporting. Paragraph 195(1)(c) reads as follows:

interceptions made under section 184.4 in the immediately preceding year if the interceptions relate to an offence for which proceedings may be commenced by the Attorney General of Canada.

This pertains to reports prepared after the end of each year.

[*English*]

Hon. Rob Nicholson: At this point, we're paralleling the reporting requirements that already exist within the Criminal Code with respect to section 86 and section 188. Indeed, we're actually going beyond that in having the Minister of Public Safety table reports with respect to section 184. This is a considerable step forward in providing the appropriate safeguards.

[*Translation*]

Mr. Hoang Mai: The question is—

[*English*]

Hon. Rob Nicholson: That's a point made in my discussions with Mr. Piragoff. This is in direct response to the Tse decision. It's not intended, as I indicated when I introduced the bill, to be a complete overhaul or an examination of this particular area. It responds specifically to the Supreme Court of Canada decision. It goes beyond the safeguards required in that particular decision. It is what it is. It doesn't hit everything.

[*Translation*]

Mr. Hoang Mai: Still, the Canadian Bar Association has concerns about it, and we have raised them as well.

Let's go back to the offences identified in section 183 of the Criminal Code. You said there were only a few. They apply when a wiretap is being sought. But section 183 contains a four- or five-page-long list that includes deceptive telemarketing and forgery. Are those really emergencies? Emergency cases appear in section 183, but when you look at the whole section, you see that a large chunk of the cases are pretty broad. I mentioned just a few, but I could go into more detail.

Don't you think the list should be more specific, to prevent abuse?
[English]

Hon. Rob Nicholson: Again, as I say, the existing law says that it be applied to any unlawful act so we have restricted it, but the other provisions with respect to the imminent harm that comes to property or individuals kick in. It's not absolutely critical exactly what the offence is other than the harm that is feared by the police officers. That's what it is.

I think it's appropriate, as was discussed in the case, to limit it to the list of offences in section 183, but again the other provisions for this section to kick in have to be there. Those elements have to be there for this to apply.

•(1610)

[Translation]

Mr. Hoang Mai: Very well.

And as for the use—

[English]

Hon. Rob Nicholson: Do you know what I'm saying, Mr. Mai? It's not just a question of somebody stealing a car. It's a question that if you want to have a wiretap or something, what is also part of that making it necessary to have an emergency wiretap? That's what it is.

Mr. Hoang Mai: How much time do I have?

The Chair: I'll give you another minute.

[Translation]

Mr. Hoang Mai: Thank you.

Before this bill, there was Bill C-30. As my colleague mentioned, we are very glad that the government realized that a mistake had been made and took a step back. Now we have Bill C-55. And there were provisions from Bill C-12 that were supposed to apply. Is there any follow-through on that?

[English]

Hon. Rob Nicholson: I'm proceeding with this particular bill, Mr. Mai, at this particular time, and that's the bill we have before us. As you have probably been aware in your time here in Parliament, there's been no shortage of justice legislation, and we'll have other pieces of legislation.

But today this bill is completely focused on the Supreme Court of Canada's decision in Tse.

Mr. Hoang Mai: Thank you very much.

The Chair: Thank you, Mr. Mai.

Thank you, Minister.

Our next questioner from the Conservative Party is Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

Thank you, Minister.

I have only one question. I know it's been touched on today by both Madame Boivin and Mr. Scarpaleggia, but I want to drill down a little bit more.

The definition of peace officer in the section of the legislation mentions other persons employed for the preservation and maintenance of the public peace.

Do we know who would be grabbed within that catch-all phrase, and is it coming from a certain section of the Criminal Code?

Hon. Rob Nicholson: For peace officer, if you look at section 2 of the Criminal Code, it sets out a wide range of individuals whom I have indicated to you, starting with the municipal government, to make sure that we don't just have mayors but Reeves as well. They are contained within that. There is the pilot of a plane, for instance. Individuals under a dozen different federal statutes come within the definition of a peace officer.

I guess the question you would ask yourself is whether it is absolutely necessary that they would have this particular power. What is it they are doing that would require them to intercept the private communications of an individual?

I think you might come to the conclusion that you can't imagine how and where and why it would be necessary for some of these individuals to do that in their respective roles.

I believe—and I hope it is your opinion as well after analyzing this bill—that it was appropriate for us to define a little more clearly exactly who has this ability in an emergency situation to prevent imminent harm and to intercept the otherwise private communications of individuals.

I think that was very important. Again it was one of the things we didn't have to do, but it seemed to me it made sense.

One of the things you will notice about the Tse decision when you go through it is that there is sometimes what we call an *obiter*. There are thoughts and discussions that take place on a number of different areas, but they do sometimes give us direction on where we might go so we're not challenged in some future case on some of these issues.

I think it's entirely appropriate to have a look at those suggestions and incorporate them into the bill. As I indicated to Madame Boivin we've done what they wanted, but we've gone beyond that as well.

Again I think—and I hope with analysis of this bill at committee you will agree—that we're better to define exactly which unlawful acts we're talking about. We're better to define exactly who it is that can and should do this. Yes, it is a good idea for provincial attorneys general, but it's good for the Public Safety Minister as well to do that. You will notice I didn't put Justice Minister in. I put Public Safety Minister in. He can take on that responsibility, and why not?. I think it's a very good idea.

•(1615)

The Chair: Thank you, Mr. Seeback, and thank you, Minister.

Our next questioner, from the New Democratic Party, is Mr. Marston.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): Thank you, Mr. Chair.

Minister, welcome, and to our officials as well.

In my past life, I was part of this equation. I worked for Bell Canada for 22 years. If somebody called in and said “I think my home phone is tapped”, I would go and test their line. If they called in and said “There's noise on my line”, I would type their number into the computer, and when it came up, I would listen to seconds of their conversation to see if there was trouble there.

My point is that there are probably some instances where Canadians are unaware of the fact that somebody, here and there, is listening. Obviously, that was for a very different purpose.

What we're talking about here is what I consider to be, from what you're saying, a very exceptional situation. I think in fairness to the government, you've made a reasonable effort in this. For Canadians, in the society we live in, with the electronics and all the conspiracy movies you see, where the government, which is usually the U.S. in the movies, is intruding on people's lives, you can understand why people would be concerned.

The question I have is the following, even though it's been touched on three times here. We talk about the emergency wiretap, which has a connotation to it of a hardwire onto a phone line and that's it.

Just for the record, I want to put it before the committee that this would include cellular communications—

Hon. Rob Nicholson: Yes.

Mr. Wayne Marston —and text communications—

Hon. Rob Nicholson: Yes.

Mr. Wayne Marston: —which the children of our generation are wearing their thumbs out doing?

Hon. Rob Nicholson: Exactly.

Mr. Wayne Marston: You had used the term “intercept communications”, which I took to mean as taking all of that in.

Hon. Rob Nicholson: It does.

Mr. Wayne Marston: I would say, and I think it's important... I know we just received the bar association's offers of suggestions, but there are three in there. One of the things they talked about that caught my eye was the fact that in this special circumstance of putting the wiretap on, the evidence garnered during that might be thrown out in court. That's something that I think somebody should take a look at.

This is their reading, not ours, so....

Hon. Rob Nicholson: I do have a look at what they have to say, as indeed I do for all individuals who make suggestions, but the bill is very specific and confined to what it is we are trying to address at this particular time.

Again, you can see by the title we gave it—

Mr. Wayne Marston: To amend the Criminal Code.

Hon. Rob Nicholson: —yes—that it's a response: “Response to the Supreme Court of Canada Decision in R. v. Tse Act”.

We put it right in there at the beginning of the bill, and that's exactly what it is we're doing. We're not trying to get into other areas.

But you touched on a number of points, also raised by my colleague, that it's not confined to one type of communication, that it's all communication where there is imminent, or the possibility of, serious harm coming to someone if that information is not given to appropriate authorities.

Again, I appreciate all inputs on these, but this bill is what it is. It stands on its own.

Mr. Wayne Marston: Well, my intent was to put it on record so that people could reflect back on it in due course.

Hon. Rob Nicholson: Yes.

Mr. Wayne Marston: Sometimes, even though it's clear to us on paper, once it's passed, somebody starts raising that it's doing this and it's doing that.

It's better, I think, to have it on record.

Hon. Rob Nicholson: That's an excellent point.

Mr. Wayne Marston: Thank you.

Thank you, Chair.

The Chair: Thank you, Minister.

Our next questioner, from the Conservative Party, is Mr. Albas.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you very much, Mr. Chair.

Thank you, Minister, for your presence here today.

Certainly I hope we can all support this particular bill. After reviewing some of the papers the Library of Parliament has done in terms of analysis, coupled with your testimony here today, I think it's very important that all parties support this.

We all know that law enforcement at times requires the ability to respond very quickly in situations where there are urgent circumstances.

Minister, you mentioned specifically kidnapping, hostage-taking, bomb threats. Those are just a few examples of where urgent actions are expected of the police to protect innocent victims and maintain safety.

A good example, Minister, from my home province of British Columbia is the kidnapping of 23-year-old Vancouver resident Graham McMynn in April of 2006. The prompt response by the Vancouver Police Department in using all the legal resources to safely return Mr. McMynn to his family serves as a reminder as to why useful amendments such as Bill C-55 are in order so that we can continue to protect the public.

This legislation responds directly to the guidance from the Supreme Court of Canada by adding new privacy safeguards of notification and reporting. You've alluded to it in your testimony and in a number of your comments to the committee, specifically section 184.4 of the Criminal Code.

Minister, is there anything in this bill that is not related to adding more safeguards—beyond the response to the Supreme Court?

• (1620)

Hon. Rob Nicholson: When we get an opportunity to have a bill like this, we try to make sure that anything of a technical nature that can or should be placed into it is indeed done. For instance, the department works very hard, as you know, to make sure that the English and French translations are absolutely consistent, and so you will see references in there where there have been slight changes made to make sure they're absolutely consistent—because this is an ongoing process that we have in this country.

Indeed, we sometimes update the language in these bills. There's a reference, I believe, to the minister and the term used was a masculine one. A man or woman can of course be the minister of justice, and so we update the wording in there so that's it gender neutral. That's basically what we do. So what happens is that you might be amending legislation that was done many decades ago and find that it's not gender neutral. What we like to do when we bring forward a new piece of legislation is to clean up something like that. I think that's entirely appropriate.

Again the bill, as I indicated to your colleagues across the way, is very focused on the decision. But again, whenever you have a piece of legislation, you want to make sure of things like gender neutrality or consistency between both official languages, and so you'll see slight modifications with respect to those.

Mr. Dan Albas: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Albas.

Thank you, Minister.

Mr. Jacob from the New Democrat Party.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you, Mr. Chair.

Minister, thank you for being here.

My first question is about Bill C-55 and Bill C-394. It is assumed they will soon receive royal assent. In that case, what amendments would be necessary to ensure they are consistent with the Criminal Code?

[*English*]

Hon. Rob Nicholson: With all respect, Mr. Jacob, I'm not quite sure where you're going with that. Yes, with passage of this particular bill by the House of Commons and the Senate, and with royal assent, we want this to come into effect as quickly as possible. We're facing a deadline of April 13, and again that's in regard to the totality of the bill. That is what this is all about.

You mentioned some other bill. Perhaps you could give me a little bit more of a lead on that.

[*Translation*]

Mr. Pierre Jacob: Proposed paragraph 196.1(5)(a) concerns extensions of the notification period in relation to offences under sections 467.11, 467.12 and 467.13 of the Criminal Code, which are the three existing criminal organization offences.

However, Bill C-394, which is also before this committee, would create a distinct criminal organization offence, recruitment of members by a criminal organization, which would be new section 467.11 of the Criminal Code.

In your view, is there a reason why this proposed offence should be treated differently from other criminal organization offences, for the purposes of extending the notification period? If not, what amendments need to be made?

[*English*]

Hon. Rob Nicholson: I'll turn this over to Mr. Piragoff.

Mr. Donald Piragoff (Senior Assistant Deputy Minister, Policy Sector, Department of Justice): Thank you.

As I understand the question, it's whether there should be some concordance between this bill and another bill that's before Parliament, and if that bill is passed whether certain references in the Criminal Code already to certain provisions of section 467 of the Code should also make reference to whatever is passed by Bill C-394.

The other bill would have to make provision to make any consequential amendments. This bill cannot assume that another bill would be passed. It will have to be that other bill that makes consequential amendments to other pieces of legislation before Parliament.

• (1625)

[*Translation*]

Mr. Pierre Jacob: Here is my next question.

Do you have any constitutional concerns that information intercepted under section 184.4 could be used for purposes other than preventing and prosecuting that particular offence involving that particular person?

[*English*]

Hon. Rob Nicholson: Thank you for that question. It's covered in this bill by the safeguards that we have put in there. We want to make sure that the individual whose communication has been intercepted is notified, that this is part of a report not only by provincial attorneys general but also the Minister of Public Safety at the federal level. Again, these are entirely appropriate to ensure that there is some transparency and, indeed, accountability with respect to this, to make sure that this is used for exactly what is contemplated, and that is to prevent serious physical harm to the person or to property. Again, I'm confident that, with the safeguards that we have placed into this bill, this bill will work well.

I have no reason to believe that it was being abused prior to this, quite frankly, and that's not what the Tse decision is all about. The Tse decision examined the use of section 184.4 and said they could see that it makes sense to have this power, but what we're saying is, have these additional safeguards, or at least one safeguard afterwards, so that you can have that accountability.

Again, I think in totality we can go forward with confidence and say that this important, necessary tool the law enforcement agents, in my opinion, have to have will also have the appropriate amount of accountability and safeguards in it. I think it strikes a very reasonable balance, and I'm looking forward to the support of everyone on this.

The Chair: Is that it, Mr. Jacob?

A very short question.

[*Translation*]

Mr. Pierre Jacob: You want me to keep my question very short? Thank you, Mr. Chair, but I won't ask it in that case, because it's very long.

[*English*]

The Chair: Thank you, Mr. Jacob.

Thank you, Minister.

Our final questioner of the minister is from the Conservative Party, Mr. Wilks.

Your time is five minutes, which includes the answer.

Mr. David Wilks (Kootenay—Columbia, CPC): Perfect. It won't take that long.

Thanks, Minister, for being here today and being the author of two wiretap investigations. I can tell you that our Canadian law is very good.

I'm just curious, though. I wonder if you could go on a little further with regards to the April 13th deadline. What happens if we don't meet the deadline?

Hon. Rob Nicholson: It's not good. If we don't have this in place in a little over a month, that particular section, 184.4 specifically, becomes unconstitutional. If you had a situation, as I outlined in the Riley case or the Tse decision, where somebody's life is in immediate danger, for instance, you're not provided the means by which interception can take place.

It's very important that we move on these. Again, I appreciate the fact that sections like this are not struck down in and of themselves. It gives time for Parliament to have a look at these provisions and make changes, and so that's the opportunity that we've been given. Again this bill has moved quickly through Parliament at second reading. Again, with your analysis, we get this back into the House here, and I'm confident that, with the cooperation of everyone, we'll have this in place, and this will continue to be the law in Canada.

As I say, the Supreme Court of Canada did not strike down the section itself. All they're saying is that it is reasonable to have these powers, but you have to have a safeguard that goes beyond that. That's exactly what this bill does, and goes beyond and takes the recommendations and suggestions to heart and puts in place those in the bill as well.

Mr. David Wilks: Thank you.

The Chair: Thank you, Mr. Wilks.

I want to thank you, Minister, for joining us today and talking to us about Bill C-55. As you know, we will be studying it with witnesses on Wednesday for the first hour and maybe more, and then we will be going clause by clause. Thank you very much.

We will ask the officials if they would stay a few minutes in case people have questions. I'll suspend for 30 seconds while the minister leaves.

• (1630)

The Chair: So we have our witnesses here with us from the department. I appreciate their staying. We have some time if we need them.

We have one questioner for sure, Madam Boivin.

[*Translation*]

Ms. Françoise Boivin: I never miss an opportunity like this. When we have such brilliant minds from the Department of Justice in our company, we must take advantage of their expertise, especially when we have to fast-track our study of a bill.

I still managed to take good notes when the minister was speaking. We are fully aware of the impact of the decision in *R. v. Tse* and what will happen on April 14 if Bill C-55 is not passed. That being said, I'd like to know how long you've been working on the bill.

Ms. Karen Audcent (Senior Counsel, Criminal Law Policy Section, Department of Justice): We've previously included responses to the reactions in Bill C-31. Then there was Bill C-50. But those responses pertained to lower court rulings. Then came Bill C-30. The Supreme Court rendered its decision on April 13, 2012. So we've been working on responses to the Supreme Court decisions since then.

Prior to that, we were basing our study on the rulings of lower courts, because the British Columbia, Ontario and Quebec courts indicated that we had to examine this section of the Criminal Code because it raised constitutional concerns.

Ms. Françoise Boivin: Okay, but I think you may have misunderstood my question.

Bill C-55 is a response to the *R. v. Tse* decision. The title of the bill says so. The government might have used Bill C-30 and Bill C-12. Actually, many bills along the way could have tried to address the gaps identified in the *R. v. Tse* decision.

The government announced that it would withdraw Bill C-30 on the same day that Bill C-55 was introduced. Bill C-55 was tabled by the minister in the House less than a month ago. I think it was on February 11, 2013. It was then sent to committee on February 25, which is also very recent.

As you were working on Bill C-30, Bill C-55 was not in the picture. Could you tell me when you started to work on the drafting of Bill C-55?

Ms. Karen Audcent: The draft of Bill C-55 comes from Bill C-30. Previously, it was Bill C-50 and at the outset, it was Bill C-31. The only change that we made to the content of Bill C-30 in order to incorporate it into Bill C-55 was to include the restriction for police officers. The Supreme Court had indicated that it would be a good idea to do so, and the government wanted to reflect that.

Ms. Françoise Boivin: You wanted to avoid loopholes under Bill C-55.

My understanding is that, as long as things were working with Bill C-30, you felt that the situation has been taken care of rather well. Once Bill C-30 was withdrawn, you had to find something else to respond to the court's concerns and to the fact that the court found some provisions unconstitutional. That seems very clear to me.

As for the *R. v. Tse* decision, we were told that it was completely contrary to the Charter, specifically to section 8. The minister considered that the interceptions had to be constitutionally compliant, that people had to be aware that a report had been prepared, and so on.

What type of legal test are you using to ensure that the drafts are consistent with the *R. v. Tse* decision?

[*English*]

Mr. Donald Piragoff: In this case, it was very easy to know what would be compliant, because the Supreme Court of Canada told us. The Supreme Court said that a notification requirement would meet the—

• (1635)

Ms. Françoise Boivin: But they didn't say how many days, they didn't say....

So what made you decide on 90 days and that an extension of up to three years would be...? How do you come to that justification?

Mr. Donald Piragoff: Because that was the existing law. The 90 days is the existing law for ordinary wiretaps. The provisions regarding wiretaps under section 186 already have notification requirements of 90 days, and possibly for an extension.

Ms. Françoise Boivin: Renewal.

Mr. Donald Piragoff: Basically, what happened in terms of notification was that we just used the same model—

Ms. Françoise Boivin: Wording.

Mr. Donald Piragoff: —the same wording that existed for the judicially authorized authorizations. The Supreme Court of Canada even noted that there were previous attempts by the government to address the same type of problem and had proposed notification requirements.

The Supreme Court of Canada was aware of the previous bills that were proposed and the court noted the fact that there might be other ways to correct this constitutional deficiency. The government has proposed, two or three times already, providing a notification requirement and the court said that the notification requirement would make the law constitutionally compliant.

Ms. Françoise Boivin: That's basically my question. You're reasonably satisfied that it is charter compliant.

Mr. Donald Piragoff: Yes.

Ms. Françoise Boivin: You've done the test. You've seen the jurisprudence on the equivalent clauses before and so on, so all that work has been done. We can be assured that it has been done.

Mr. Donald Piragoff: Yes.

Ms. Françoise Boivin: That's excellent.

Mr. Donald Piragoff: We basically followed the advice of the Supreme Court.

Ms. Françoise Boivin: I know that I'm bugging all of you with my questions about the report, but what is wrong, on a transparency basis, with having the Minister of Public Safety report to Parliament on all the interceptions, even those that have not gone so far as to have court cases? Actually, those are the ones that bug me, because they tell me that somebody was under wiretap or whatever sort of interception, but nothing came of it, and we don't know. It might be interesting for Parliament to know how often it has been used and how many of those cases

[*Translation*]

ended up to criminal prosecutions.

[*English*]

Mr. Donald Piragoff: Thank you.

I think on this issue we would disagree with the Canadian Bar Association, because the provision in the bill actually requires, in the amendment to subsection 195 in proposed paragraph (2.1)(a), that the report set out “the number of interceptions made”. So those are all of the interceptions made, not just the ones that resulted in a charge. Proposed paragraph 195(2.1)(d) of that subsection says “the number of notifications given under section 196.1”.

Ms. Françoise Boivin: So you say it's included.

Mr. Donald Piragoff: It's included—

Ms. Françoise Boivin: Okay. Thank you.

Mr. Donald Piragoff: —because there's already an obligation to report all interceptions and all persons who are notified, whether or not... What the report does is go beyond that to say, can you also state—

Ms. Françoise Boivin: That's excellent. From the report we'll be able to say, well, there are 300 done—

Mr. Donald Piragoff: That's right.

Ms. Françoise Boivin: —and for those who are detailed with criminal offence charges, we can do the subtraction and say there were 100 that did not....

Mr. Donald Piragoff: Yes.

Ms. Françoise Boivin: Okay. Thank you.

The Chair: Are there any further questions for the officials?

Seeing none, thank you very much for your attendance. Thank you for supporting the minister: good work on this bill. As I said, we'll have witnesses on Wednesday to discuss this, and then we'll be doing clause by clause.

Before I close, I'll note that we have two witnesses confirmed, and may have three. I will be a little flexible on the time because there are only seven clauses. We'll make sure that everybody gets a chance

to ask questions of those witnesses. Then we'll do clause by clause and go forward from there.

With that, thank you very much. I'll adjourn the meeting.

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