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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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● (1535)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): I am calling to order this meeting of the Standing Committee on Justice and Human Rights. It is a pleasure to have everyone here.

[*Translation*]

We have some witnesses from the Department of Justice, who have expertise in this matter.

[*English*]

If we have any questions for them, they're here to answer. They've all been with us before, so I'm not going to introduce them.

I want to just go over briefly both the agenda and procedure.

This is a complicated bill. It's a long bill, and there are a lot of amendments. We will do our best to make sure that before we vote on anything, everyone understands fully what we're debating and what we're voting on. That will be my job, and I will do my best.

If you have any questions and I have called a vote, please stop me and say you don't know what number we're on, or you don't know what we're discussing. I will do that, because the important thing is that the committee walk through this process together, with Ms. May who's here to join us—welcome, Ms. May—that everybody fully understands where we are, and that proper attention is given to all of these very important issues.

What will also happen in sequence is that where there is a non-substantive amendment that deals with a later substantive amendment, meaning that there's a clause that says we're removing section 173—because there's a list of clauses and one of them is section 173—and that happens first, for example, at clause 4, I will go to the substantive question on section 173 in the later clause and then return to clause 4. Normally, we go sequentially, but where there's a later substantive decision that bears on the earlier question that cannot be made without knowing what the substantive later decision is, I'm going to go to the substantive clause.

Does everyone understand?

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): No. Say that one more time, please.

The Chair: Sure. If there is a list of clauses to be removed—for example, there's a proposal to remove section 173 from a list—I'm going to then go to the actual question of whether we are repealing section 173 before dealing with that little list, because if we don't make that decision, we don't know how to vote on that list.

Ms. Iqra Khalid: Thank you.

The Chair: I will try to bring everybody clearly to where we are.

(On clause 1)

The Chair: That said, I will move to clause 1, on which we have an amendment, Green Party-1. I will give Ms. May time to speak to it, and then everyone else time to speak. However, I would note that if Green Party-1 is adopted, NDP-1, on page 290.1, then would be inconsistent. Therefore, if you're in favour of only NDP-1, Green Party-1 would stop us from voting on that.

Ms. May, the floor is yours.

● (1540)

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chair. I appreciate the warm welcome. We are friends, but I do need to put on the record that I'm only here because the committee has made the process more difficult by adopting a motion that I'm sure you were asked to adopt by someone in some central authority of the Liberal Party. Every committee passed the identically worded motion, so it puts a bit of a test to the fiction that the committee really does control its own process.

Because of the motion you passed, my rights are infringed. I no longer have the right to present these amendments at report stage because I have been invited here. It's a very large increase to my workload and it happens at every committee. I am here for clause-by-clause, and I know you have a long process. I just want to remind you of why I'm here.

I'll be as brief as I can. This first amendment is to create a definition for the term “vulnerable population”, which is used in the legislation. You heard from a couple of witnesses, one of whom was the Canadian Association of Chiefs of Police, who suggested that there be a definition of “vulnerable population”. They set out some factors, such as a person's ethnicity, economic status, drug dependency, age, mental disability and overall health. Those are from the brief of the Canadian Association of Chiefs of Police. Also, Dr. Marie-Eve Sylvestre, of the University of Ottawa law school, suggested some other aspects of defining “vulnerable population”.

That's why we've crafted this definition, which includes, in more appropriate legislative statutory language, the essence of what was being recommended by witnesses who you've heard already. I won't read it to you, but it also draws on some of the language from Bill C-81 in terms of people with disability and will be a guidance to a police officer for an operational capacity, as suggested by the chiefs of police.

Thank you, Mr. Chair.

The Chair: Thank you very much, Ms. May.

Are there other comments from members of the committee?

Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): I support this. You'll note, as you did already, that amendment NDP-1 is very similar. It draws upon some of the same testimony. This one is actually a little better. It has a bit more detail. Therefore, I would support this and supplant NDP-1.

The Chair: This is the first time I've heard someone admit that his work wasn't as good someone else's. What humility Mr. Rankin always shows. I'm very impressed.

Are there any comments from any other members of the committee?

Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): May I ask for the department's interpretation of this, and how it would relate? My understanding is that defining "vulnerable population" could be reducing the number of people included in this. I'd like the department's interpretation of that.

Ms. Shannon Davis-Ermuth (Legal Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): Yes, that's correct. The department's interpretation is that understandings of who is vulnerable for different purposes changes over time. The risk of defining it by specifically listing some groups of vulnerable populations in the code is that it would need to be amended as often as understanding evolves.

The other thing to note about the way the term "vulnerable population" would be used in proposed section 493.2 of the Criminal Code is that there is some language there that suggests what would be vulnerable in that context.

It's not about who's overrepresented at large, but which vulnerable groups are disadvantaged by the bail process. This definition of "vulnerable population" addresses people who are vulnerable in the criminal justice process, but not necessarily for this purpose. The language in proposed section 493.2 would guide police and courts as to what type of vulnerability is relevant in this context.

The Chair: Thank you very much.

Are there any other comments from committee members?

Ms. May, do you have anything you want to say to close?

Ms. Elizabeth May: Yes. Having looked at this bill and both the bail context and the criminal justice process, I hate to disagree with a departmental analyst but I think it suits the definitions and the purposes of both bail and criminal justice.

I'm hard pressed to imagine a hypothetical in which this fails to anticipate a vulnerable population. If it required amendment at some later time, I don't see that as a large obstacle.

As an operational matter, the chiefs of police have asked for guidance as to what a vulnerable population is. I suppose we might at some future date experience extraterrestrial visitors, who are not anticipated as a vulnerable population in my definition, but outside of extraterrestrial visitors I can't think of anything this definition fails to anticipate in terms of what would be a vulnerable population.

● (1545)

The Chair: Thank you.

Mr. Clement.

Hon. Tony Clement (Parry Sound—Muskoka, CPC): Yes, *District 9* was a great movie, so there you go.

I just want to get the Justice officials' reaction to my question, then. If it is not defined in the way Ms. May would like, who does the defining and under what circumstances?

Ms. Shannon Davis-Ermuth: If it's not defined in the code, who would define it? They would be looking at the circumstances. They'd have familiarity, whether it's a police officer deciding whether or not to release an accused on bail, or a judge deciding whether or not to release the accused. There could be training with respect to what types of factors tend to disadvantage different groups. If, traditionally, the bail system requires people to put up money in order to be released, then they would have to be sensitive to the types of groups that might be less likely to have money and, therefore, less likely to be released. Other groups would be less likely to have a fixed address, or there may be impacts that addictions could have on the individual.

One other possible benefit of not listing a particular group but just saying, "If you're part of this group, it applies", is to get the police officers and the judges who are applying the term to think about how it impacts the individuals in the whole process. They would try to remove any kind of discriminatory thinking about people who don't fit their mould of the "good citizen", keeping the rest in jail.

Hon. Tony Clement: Thank you.

The Chair: Thank you. Are there any further comments?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 1 agreed to on division)

(Clauses 2 and 3 agreed to)

(On clause 4)

The Chair: On clause 4 we have amendment X-1, which is identical to the Green Party-2. This relates to removing the "indecent act" section—section 173 of the Criminal Code—and removing a reference to it that falls in clause 4.

I'm not sure whether any member of the committee would want to move amendment X-1, but amendment PV-2 covers the same as well, so we will be debating it.

What I'd like to do is move to the substantive question, which is linked to amendment X-35 on page 71 of the binder of amendments. Amendment X-35 is identical to Green Party-5. These relate to the section we will need to deal with before we can actually deal with clause 4.

Is everybody on board? If so, does anyone wish to move one of these amendments to repeal section 173? If so, please feel free and speak to it.

Mr. Rankin, would you like to speak to the amendment?

● (1550)

Mr. Murray Rankin: I was very moved by the testimony on the historic injustices to LGBTQ2 people who testified, and I'm persuaded that there was a disproportionate impact upon those people, as a first matter.

Second, I believe there are other sections of the Criminal Code that will address issues that would be covered by this section.

For those reasons I would like to move that it be repealed.

The Chair: Let me just also make clear to everyone that this section of the Criminal Code—section 173—deals solely with indecent acts. It does not deal with vagrancy or bawdy house rules, which are separate sections with which we will be dealing when we get to those sections. The vote on this one does not bear on those other two sections. It is solely related to section 173, indecent acts, and this is a motion that would effectively repeal that section from the Criminal Code.

Is there other discussion? Does anyone else wish to intervene?

Mr. Arif Virani (Parkdale—High Park, Lib.): I'm sorry, Mr. Chair, which one are we talking about right now? Which amendment is this?

The Chair: We're talking about amendment X-35, which Mr. Rankin moved, which is identical to Green Party amendment PV-5 by Ms. May.

Basically, I'm to give you a list.... By the way, thank you to the clerk for always doing such an excellent job.

There is a consequential list of amendments, which I will just read out to you, that relate to removing section 173 from various sections. It lists the sections in the code that would be affected consequentially by this amendment, X-35.

The vote would apply to amendments X-1, X-33, X-35, X-62, X-63, X-64, X-65, X-139, X-140, and PV-45, which all effectively do the same thing, which is to remove section 173 from a list.

Ms. May.

Ms. Elizabeth May: I think you may have forgotten to mention the second.... You mentioned it the first time. It's identical to amendment PV-5 in your list. You started with all the X amendments, so it would be amendments PV-45 and PV-5.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): I would like to ask the officials a question.

My understanding about this particular offence is that if we remove it, there's really no other place in the Criminal Code to capture this kind of behaviour.

Could you comment on that?

Mr. Matthew Taylor (Acting Senior Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): Thank you for the question.

It's ultimately going to depend on the facts of the case at question, but there is, certainly, a risk that removing section 173 would leave a gap in the Criminal Code, in terms of being able to respond to certain types of behaviour.

Just very quickly, section 173 does two different things. Subsection 173(1) criminalizes indecent acts, and I think the committee has heard concerns about the way that provision has been used historically to target particular communities. You may also know that since the Labaye decision by the Supreme Court of Canada, the way this offence applies is quite different from the way it applied historically. Our review of jurisprudence suggests that it isn't being used in a way that would discriminatorily target particular communities.

The second part of the offence targets exposure to children for a sexual purpose. Our review of the case law suggests that it is being used in a way that targets morally blameworthy conduct—normally, individuals exposing themselves and committing sexual acts in the presence of other persons.

That's our understanding of the law. While some of that conduct could be addressed through other offences, there is a risk that there would be a gap, if it were removed.

Mr. Ron McKinnon: Thank you.

The Chair: Do any other members wish to comment?

Is there anything further you wish to say, Mr. Rankin?

Mr. Murray Rankin: No.

The Chair: Okay.

Ms. May?

Ms. Elizabeth May: I think that removing this section is consistent with the Prime Minister's apology to the LGBTQ2 community. I don't think we should be so quick to leave such an offensive statute on the books, so I'm hoping that section 173 can be repealed.

The Chair: Thank you.

Mr. Fraser.

Mr. Colin Fraser: Just on that point, I think it was important, Mr. Chair, that you clarified this, because we heard evidence relating not only to section 173 but also to the bawdy house and vagrancy provisions, which will be dealt with later.

I agree with the department's analysis, that this would create a gap and that this one is different from the other ones. I accept, however, the point that's being raised.

The Chair: Thank you very much. Is there any further discussion?

Basically, what we are voting on now is the substantive amendment, which is the identical amendments PV-5 and X-35, to repeal section 173. I will now ask for a vote.

(Amendment negatived [*See Minutes of Proceedings*])

The Chair: That brings us back to clause 4. I will judge that as a result of the defeat of the substantive amendment, the amendments X-1 and PV-2 and all of the other consequential amendments have been defeated or are no longer valid as a result of the retention of the substantive section 173.

This means that we have, then, no other amendments proposed to clause 4.

(Clause 4 agreed to)

(Clause 5 agreed to)

The Chair: On clause 6 there are two amendments, CPC-1 and X-2. There is a line conflict between them, so if one is adopted the other cannot be. However, the whole issue of amendment X-2 depends on clause 319 of the bill, which deals with changing what is the standard summary sentence from six months to two years less a day.

If clause 319 stays the way it is, then all of these amendments would not be receivable anymore, because they change back to "two years less a day" the hybridized provisions.

The Conservative amendments are still good, but the X amendments, which serve to put in "two years less a day" where the terms were left at six months in the other clause, would no longer be receivable.

Did everybody get that? Good.

We are going to go to clause 319 first.

Clause 319 is not an amendment. We're going to go to clause 319 of the bill. It's on page 137.

Basically, this has the effect of changing the general penalty of imprisonment on summary conviction in the code from six months to two years less a day.

First of all, does anybody have any amendment that they want to propose to clause 319? We didn't receive any.

If not, I'm wondering whether there's anybody who wants to debate, either in favour or against this clause, because I'd like to vote on this clause before going back to the amendment.

Effectively, this would be the question: Do you accept the change, for summary convictions, from six months to two years less a day, or not? If not, you would vote against this clause. If yes, you would vote in favour of this clause. Does everybody understand?

Mr. Clement.

● (1555)

Hon. Tony Clement: Thank you, Chair. I would like to speak to this amendment to the code by supporting it as the next-best option.

I and Mr. Cooper have tabled many amendments, which we think are better amendments to the bill. In lieu of those passing, as a little bit of extra insurance—belt and suspenders, perhaps—we would be supportive of this clause passing as the next-best option.

The Chair: Do other colleagues have comments?

(Clause 319 agreed to)

(On clause 6)

The Chair: Then this brings us back. It means that the X amendments—and I will call them out for you as we go through—that would have changed the hybridized sentences to two years less a day will no longer be receivable, and we will move to the Conservative amendment CPC-1.

Mr. Cooper.

● (1600)

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair.

This is the first of a number of amendments that Mr. Clement and I have brought forward dealing with the hybridization of what are currently serious indictable offences under the Criminal Code. This particular amendment deals with the indictable offence of sabotage, and it would de-hybridize it so that it could no longer be prosecutable by way of summary conviction.

The Chair: Thank you very much.

Colleagues, let me again explain something. Originally, we had a discussion about how to not hybridize. I sent an email advising that you would vote against the clause, but this is a perfectly appropriate way as well to de-hybridize, whereby the language that was proposed and that would make slight changes to the clause in the bill is retained and only the portion that is de-hybridizing is removed, so that the effect of the amendment would be to leave it only an indictable offence. That is the effect of multiple different amendments that we'll be treating.

Is everybody clear on that? Good.

Mr. Rankin.

Mr. Murray Rankin: Since we're going to have a lot of these, I would like to say that I support the Conservative amendment CPC-1 and others as well, because we have come to the conclusion that we will oppose hybridization in general. That would leave it, I know, as straight indictable in this context—sabotage—but generally speaking we are persuaded by Christian Leuprecht, who told us that the effect of these changes would be to download this to the provincial courts and the already overwhelmingly crowded provincial corrections systems.

You've heard me say it before. The better solution is the one that was in the minister's mandate letter, which is completely lacking in this bill, namely, to get rid of mandatory minimums and give courts the discretion they used to enjoy. I think that would solve the problem much more effectively than what they are doing here.

I can speak to other specifics, but just to give you notice, Chair, that's the position I'll be taking on these matters.

The Chair: Thank you very much, Mr. Rankin.

Mr. Clement, you wanted the floor again.

Hon. Tony Clement: First of all, I want to thank Mr. Rankin for his intervention and the position of his party on hybridization. I of course support Mr. Cooper's amendment in this case.

I want to say generally that we heard a lot of testimony at committee from those who felt very strongly that hybridization was the wrong way to go. In particular, I want to read into the record that Mr. Christian Leuprecht, who is a professor at the department of political science at Royal Military College, felt that way, as did Ms. Julia Beazley, who is a director of public policy at the Evangelical Fellowship of Canada, and Ms. Markita Kaulius, president of Families for Justice.

These are just a few examples of those who felt very strongly that hybridization was going 180° in the wrong direction, and they asked this committee to reconsider on that front.

The Chair: Thank you, Mr. Clement.

Mr. Fraser.

Mr. Colin Fraser: Thank you.

I appreciate the points raised by my colleagues. I note that there are distinctions in the rationale for each position from the Conservatives and the NDP. I think that's important to highlight. We did hear from a number of witnesses that hybridization will allow Crown flexibility. We trust Crown attorneys every day to make these decisions on hybrid offences: on how to proceed and how to use all the tools at their disposal in order to ensure that justice is not only done but is seen to be done. I trust the Crown attorneys to make those decisions.

Hybridizing will allow greater flexibility and has been the subject, as we heard, of discussions between the federal government and the provinces and territories. The sentencing principles under section 718 of the Criminal Code will remain the same and the circumstances of the offence and of the offender will remain the principal thing that is determinative of the sentence. I think that hybridizing—in particular, this offence and a series of others—is an important tool that we will allow the Crown attorneys to use and, with great respect, that will not have the consequences on sentencing that have been advanced by my honourable colleagues across. I think that is important.

We have to deal with the Jordan decision. This will allow the courts to proceed in the appropriate cases or the Crown attorneys to make those determinations in the appropriate cases for them to proceed in a more effective manner. I will not be supporting this amendment.

Thank you.

● (1605)

The Chair: Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

In light of the fact that we're going to be putting forward a number of these, I'd like to address the issue broadly speaking, which Mr. Fraser did in his remarks.

I would say first of all that part of the problem with this bill in terms of hybridization is the fact that the government simply took a whole series of offences without consideration to any one of those offences and said, “We're hybridizing them.” Basically, with a few exceptions, if the maximum sentence is 10 years, they're going to be hybridized. That is not a well-thought-out process.

With respect to the issue of flexibility—Crown flexibility—no witness that I heard could explain how this would address the issue of Jordan in addressing the backlog. We heard evidence that 99.6% of criminal cases are already before provincial courts. As Mr. Rankin mentioned, the effect of hybridization, as witness after witness conceded, would be of course to download more cases onto provincial courts. For the most part, that's where summary conviction offences are dealt with.

Of course, from the standpoint of the timeline in Jordan, instead of 30 months you're now dealing with 18 months for matters within provincial courts. We also heard evidence that in fact not only are you downloading cases onto provincial courts, but in terms of the prospect of cases being thrown out due to delay based upon the timeline set in Jordan, whereby delay is deemed presumptively unreasonable, the risk would increase, not decrease.

Finally, Mr. Chair, with respect to Mr. Fraser's point about sentencing principles, obviously this bill is not changing the law around sentencing principles. It is changing the sentence, the maximum sentence that a judge could provide for, in a very dramatic way—from 10 years to a maximum of two years less a day, without any transparency and without any accountability in terms of understanding why one case might be brought down to a summary offence and another an indictable offence. That was another substantive issue that was raised about the issue of transparency and the lack of it as a result of these changes.

The Chair: We'll go to Mr. Fraser and then Mr. Rankin.

Mr. Colin Fraser: With regard to the great percentages, I take the point with respect to downloading onto the provincial courts. That is a concern. However, this bill as a whole deals with many aspects that will help alleviate the overburdening of the provincial courts. For example, the administration of justice offences, which we'll be getting to later in the bill, will have a dramatic impact on reducing the number of offences that we know are one of the main causes of the overburdening of the provincial courts.

This bill as a whole has to be looked at in terms of how it alleviates the issues of the overburdening of provincial courts. Adding Crown flexibility will add another tool in the tool kit of the administration of justice in order to ensure that the procedures followed will result in efficiency, but also justice.

For those reasons, I can't agree with my friend on those points.

The Chair: Mr. Rankin.

Mr. Murray Rankin: I think those were points well made by Mr. Fraser. I certainly agree that the changes to the administration of justice offences will go a long way. My review with attorney general officials in my province is that this is an enormous downloading exercise, notwithstanding the excellent point he made.

The other concern, which I didn't raise, is one that was raised by Emilie Taman, who appeared before us. It's a twofold one.

First of all, Mr. Fraser pointed out that we're giving a lot of discretion to the Crown attorneys to make these decisions, but as Mr. Cooper said, that is done in an entirely secret way. They have no accountability for that decision. If it were the judges that had the discretion in sentencing—as they've had for decades, if not centuries—they would give reasons and provide some kind of accountability. Now it's people in backrooms who will decide whether they proceed one way or the other. She made that point.

She also made the point that where the Crown proceeds summarily the accused has no option of forum and is not entitled to a preliminary inquiry or trial in the superior courts. The Crown can seek more jail time without the accused having the option of being tried by a jury or the option to proceed in the higher court.

I think this whole enterprise is wrong-headed. I think the solution, with great respect, would have been what the mandate letter of the minister required her to do, which was to get rid of the mandatory minimums and give the judges the tools they've always enjoyed. That, I think, is a much more efficient way to do this and provides more accountability and transparency than this would ever do.

● (1610)

The Chair: Thank you. Does anyone else wish to intervene? I'm glad we've had a fulsome debate, because we have lots of these amendments. Perhaps, then, we'll get into the specifics of why one is different from the general theme, but it was well done on everybody's side. Thank you.

Hon. Tony Clement: Thank you, Chair.

The Chair: I always love to heap praise on people.

Hon. Tony Clement: I'm blushing.

The Chair: When you can do it on all sides, it shows the excellent non-partisanship of this committee.

We're going to have a vote on CPC-1 now.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 6 agreed to)

(On clause 7)

The Chair: We move to clause 7. Again, amendment X-3 is no longer valid, so we move to CPC-2.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

This is again an amendment to de-hybridize and return what is presently a serious indictable offence under the Criminal Code, namely forgery of or uttering a forged passport.

The Chair: Thank you very much.

Is there anyone wishing to intervene on that point?

Hon. Tony Clement: Mr. Chair, I would also agree with my colleague Mr. Cooper that this should remain a solely indictable offence. This is a very serious activity, which has been connected, of course, with terrorism, with organized crime, with people who seek to do violence against other people. To have this offence as one that could conceivably be prosecuted under summary conviction, I believe, offends the common sense of the people of Canada.

The Chair: Thank you very much.

I saw Mr. Fraser and, I think, Ms. Khalid.

Ms. Iqra Khalid: You go first.

Mr. Colin Fraser: With respect to Mr. Clement's point about giving examples of ways that this offence could be committed, the Crown will have the discretion to make those determinations, which it makes all the time on hybrid cases right now, in order to proceed by indictment where it seeks the higher penalty that those circumstances, those offences, merit.

This is, really, to give credence to Mr. Clement's point, because this offence can be committed in a number of ways, in a whole range of ways, some far more serious than others. That is actually reflecting the point that this should be hybridized to allow the Crown that discretion and flexibility in proceeding on the circumstances of the offence.

The Chair: We'll have Ms. Khalid and then Mr. Clement.

Ms. Iqra Khalid: Thank you, Chair. I completely agree with Mr. Fraser here. I do understand that in September 2017, provinces, territories and the federal government did come to an agreement to support hybridizing all straight indictable offences that are punishable by a maximum penalty of imprisonment of 10 years or less as an important way of reducing delays. I feel that an offence like this would really impede that collective agreement that everybody's come to in order to address the delay issues.

The Chair: Thank you.

Mr. Clement.

Hon. Tony Clement: Thank you. I do respect my honourable colleague's opinion, which is contrary to mine. I would only say in reply that while I respect Crowns as well, and they work very hard on behalf of the people of Canada, I believe these are the kinds of cases, and certainly this case is one in particular, for which rather than leaving that discretion to the Crowns, the Parliament should speak. Parliament should make it clear that, reflecting the views of Canadians and their interests and their security interests, this offence should remain indictable.

● (1615)

The Chair: Thank you very much.

Are there any further comments?

Ms. Iqra Khalid: I just want to again say that moving this offence to hybridization does not mean that Canadians are less safe. It just gives a prosecutor more flexibility and discretion in terms of how to prosecute in the best way possible.

The Chair: Those are great, great contrary opinions, and now we'll go to a vote on amendment CPC-2.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 7 agreed to)

(On clause 8)

The Chair: Next we move to clause 8. We have amendment CPC-3.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

This is yet another amendment to de-hybridize another Criminal Code section—namely, the fraudulent use of certificate of citizenship. Again, that is a very serious criminal offence. It's something that is punishable by up to 10 years, and for good reason. Under Bill C-75 it would be reduced to the possibility of a mere fine. This would de-hybridize that.

The Chair: Thank you very much.

Are there any other comments on that one?

(Amendment negatived [*See Minutes of Proceedings*])

The Chair: Next is X-4, another X amendment. I won't keep repeating this, but all the ones that change the sentencing are ruled not receivable at this point because of the way we left clause 319. I won't be dealing with them.

We have no other amendment to clause 8.

(Clause 8 agreed to)

(On clause 9)

The Chair: For this clause we have amendment CPC-4.

Mr. Cooper.

Mr. Michael Cooper: Mr. Chair, this is another amendment to de-hybridize another serious offence in the Criminal Code. It pertains to offences in relation to military forces.

The Chair: Are there any other comments on that one?

Mr. Clement.

Hon. Tony Clement: I just want to add to Mr. Cooper's intervention and again appeal to my colleagues on the other side that these are very serious offences. They pertain to the ability of our nation to defend itself.

Certainly, in my opinion, we should not have this discretion in the hands of the Crown attorneys. They do a great job, but I think Parliament should speak on behalf of our citizens and say that these kinds of offences within and pertaining to military forces should be considered indictable.

The Chair: Thank you.

Mr. McKinnon.

Mr. Ron McKinnon: In regard to hybridization in general, hybridization is not reflective of the seriousness of the offence. We're hybridizing extremely serious offences and less serious offences as well. It's really all about prosecutorial discretion.

In general, I'm in support of hybridization. There will be potentially some cases where I don't want them to be able to deal with a particular issue in provincial court, but in general, I think it's important to allow the Crown flexibility so that they can proceed by indictment if they need to but also avoid longer processes where a fit sentence would be in the summary conviction range.

I will oppose this amendment.

● (1620)

The Chair: Mr. Ehsassi, did you...? No.

Go ahead, Mr. Clement.

Hon. Tony Clement: I respect Mr. McKinnon's intervention. One point I haven't made yet, and did want to make at some point, is that Parliament is also a signal centre. That's one of the things we do. When we send signals that certain offences could be deemed to be less serious in their prosecution, we are also sending a signal to society. We're sending a signal that perhaps these offences are no longer as serious as they were considered by previous parliaments.

I don't think that's a signal we should send as parliamentarians. I respect my honourable friend's opinion, but this is also a reason why we oppose de-hybridization.

Mr. Colin Fraser: I respectfully disagree with my colleague, and I think the important point here is that the offences we're going through right now can be committed in a range of ways, all the way up to the most serious example we can think of, and that is reflective of hybrid offences that are in the code now, such as sexual assault, which can be committed in a range of ways. I don't think that means that anybody thinks that type of an offence is considered less serious, but it does reflect the fact that it can be committed in a range of ways and offers prosecutorial discretion in those cases where it's appropriate.

The Chair: I have everybody's comment.

Mr. Cooper, do you want to add anything?

Mr. Michael Cooper: The only thing I would add to this is that each of these offences was decided by Parliament to be an indictable offence for a reason. We have not heard any justification for why these very specific offences—which were all classified as indictable offences by Parliament—should be reclassified, other than following the general theme about providing greater discretion to address delay, which has been debunked by way of evidence before the committee that it would not reduce delay and it would likely increase delay. If that is a rationale that the government is putting forward, it is pretty thin gruel.

The Chair: Ms. Khalid.

Ms. Iqra Khalid: Thank you, Chair.

I take the points of all of my colleagues here. I want to say that the work we do here with each bill, each clause, as we're going through adds to a bigger context, a bigger picture of how to better provide justice to Canadians. Delay is a big problem now. The Jordan decision clearly outlines that. On the grounds that people are facing these very severe issues, we do need to take serious measures to ensure that we're addressing the delay issue. It's not the one thing that fixes everything. It is bit by bit by bit, together painting a bigger picture as to how we're going to fix our justice system and really eliminate those delays.

I believe that hybridization is a way towards moving to reducing delays. We have heard testimony to that effect. I think this is a strong measure with the agreement of the provinces and territories to say let's move in this direction. I think that does not take away from the severity of a crime. It does not take away any safety that Canadians are entitled to and do have within our country, and it doesn't send any bad signals, other than the fact that our government is working towards eliminating delays and better providing access to justice within our country.

The Chair: Thank you. We will move to the vote on CPC-4.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 9 agreed to)

(On clause 10)

The Chair: We now move to clause 10. We have amendment CPC-5.

Mr. Cooper.

● (1625)

Mr. Michael Cooper: Thank you, Mr. Chair. I have another amendment to de-hybridize what is a serious indictable offence that Bill C-75 would hybridize, namely the punishment of a rioter.

The Chair: Thank you very much.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 10 agreed to)

(On clause 11)

The Chair: Now we move to clause 11, and that takes us to amendment CPC-6.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair. This amendment again deals with de-hybridizing another serious indictable offence that Bill C-75 hybridizes, and that relates to neglect by a peace officer.

The Chair: Thank you very much.

Are there any further comments?

Hon. Tony Clement: Mr. Chair, just to underline the point, we want laws that are just and are seen to be just, and that apply to citizenry generally but also to peace officers. If a peace officer neglects his or her duty to suppress a riot, I think most people in our country would agree that it is a very serious offence. That is why I support my colleague's amendment.

The Chair: Is there any further discussion?

Ms. Iqra Khalid: Again, I would say that hybridization does not take away from the seriousness of an offence. It is a way to give prosecutorial discretion. I don't agree that having it as straight indictable would somehow make this offence more serious.

The Chair: Thanks very much. We'll move to a vote on CPC-6.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 11 agreed to)

(On clause 12)

The Chair: Now we move to clause 12 and CPC-7.

Mr. Cooper.

Mr. Michael Cooper: Again, this is another amendment to de-hybridize another clause that Bill C-75 hybridizes.

The Chair: That is on unlawful drilling.

Mr. Michael Cooper: Yes.

Ms. Iqra Khalid: Mr. Chair, I would ask Mr. Cooper, what does this law entail? I haven't read it.

Mr. Michael Cooper: Let me just say that I oppose—as I made clear in my comments—all of the hybridization offences. Each of these was decided by Parliament to be an indictable offence for a reason. This government has not provided any reason beyond the fact that this is purportedly aimed at addressing delay. Moreover, there was no consideration during the time of this committee to examine each of these offences individually as to why the government was moving forward with reclassification.

Without more, I oppose the hybridization.

The Chair: Mr. Clement.

Hon. Tony Clement: Mr. Chair, this particular section may seem arcane, but we've had incidents of secretive paramilitary organizations or groups of terrorists who have been training for violent activities in our country. I think this committee should do its due diligence and see how serious that offence is.

I know that my honourable friend would say they're not opining on whether an offence is serious or not, but I think the net impact of this is in fact quite the opposite. As I've said, as parliamentarians, we create signals: signals both to society and to nefarious people who want to destroy our society and who could be of the left, the right or radicalized in some way. The imagination wanders, but to say that this is a matter that could be dealt with through summary conviction I think defies imagination and logic.

● (1630)

The Chair: Thank you. I think we're at the point where we could vote on CPC-7.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 12 agreed to)

(Clause 13 agreed to)

(On clause 14)

The Chair: Now we move to clause 14 and CPC-8.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

This amendment would de-hybridize a section of the Criminal Code that Bill C-75 hybridizes. That is subsection 82(1), which deals with a very serious Criminal Code offence, namely, having without lawful excuse an explosive substance.

The Chair: Thank you very much.

Not seeing any discussion on that, we'll go to a vote on CPC-8.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 14 agreed to)

(On clause 15)

The Chair: Next we move to clause 15 and CPC-9.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair. This is another amendment to another clause of Bill C-75 that waters down sentences for what are presently treated as serious indictable offences. This particular section relates to providing or collecting property for certain illicit activities.

Mr. Colin Fraser: Can I ask the department for its understanding of the offence that this amendment would be amending?

Mr. Matthew Taylor: I think Mr. Cooper explained it accurately in regard to the scope of the offence in terms of collecting property for certain activities, including in relation to terrorist activity. Again, the bill proposes the same types of amendments that you've already discussed in terms of hybridizing what is a straight indictable offence.

Mr. Colin Fraser: Thank you very much for that, Mr. Taylor.

I note that this is one of the offences relating to terrorism that our committee heard testimony on from a number of individuals. They talked about the way that this would impact their community.

I believe strongly that these types of offences related to terrorism are distinguishable from the other offences that have been brought forward to be hybridized, including one on advocating genocide. I believe that we should not hybridize those offences for the compelling reasons of the testimony we heard at our committee about how this is an offence against a community. I believe that the range of ways that such offences can be completed is distinguishable from the other offences that are being hybridized.

I note that in the testimony we heard, and in further research on this, very few prosecutions have been laid on terrorism-related offences. In my opinion, it would not particularly impact one way or the other the issue of delay that is the golden thread throughout this bill, and therefore, on this offence and other terrorism-related offences, as well as on the advocating genocide offence in an amendment that we'll be dealing with later, I will be voting in favour of these amendments to not de-hybridize those particular offences, for those particular reasons.

● (1635)

The Chair: Thank you. Do you mean to not hybridize?

Mr. Colin Fraser: Yes, to not hybridize. Thank you.

The Chair: It becomes a double negative.

Mr. Colin Fraser: True. I didn't hear the word “de-hybridize” until today.

The Chair: Are there other comments on this amendment?

Hon. Tony Clement: I just want to take note of my friend's comments and thank him for heeding the witnesses that we heard on this matter and for agreeing to support a Conservative Party of Canada amendment in that regard.

The Chair: I appreciate that as well, although I do think the committee discussed this as a group before. Even though I can't vote, I as well would voice my strong support for this amendment.

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

(Clause 15 as amended agreed to)

(On clause 16)

The Chair: That was unanimous. Now we move to clause 16 and Mr. Clement with CPC-10.

Hon. Tony Clement: Mr. Chair, thank you for the opportunity.

This particular provision deals with allowing summary conviction for providing and making available property or services for terrorist purposes. I would put it to you again that we heard expert and passionate testimony that this should not be a hybridized offence. The Conservative Party agrees with those who came to this committee and who stand with society against the terrorists. That is why I'm proposing this amendment.

The Chair: Thank you very much.

Are there any comments from anyone else?

Mr. Colin Fraser: I concur for the same reasons I gave a moment ago.

The Chair: Mr. Ehsassi, you had your hand up. Did you want to say anything?

Mr. Ali Ehsassi (Willowdale, Lib.): No.

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

(Clause 16 as amended agreed to)

(On clause 17)

The Chair: What harmony.

We now have clause 17 and Mr. Clement with CPC-11.

Hon. Tony Clement: Thank you, Chair.

Similarly, this involves a clause in our Criminal Code about using or possessing property for terrorist purposes. The Conservative Party of Canada believes very strongly that this should remain solely an indictable offence liable for imprisonment of 10 years. That is why I'm proposing this amendment.

The Chair: Are there any comments? I don't see any.

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

(Clause 17 as amended agreed to)

(On clause 18)

The Chair: On clause 18, we have amendment X-13, which again would not be receivable because it was tied to the summary changes. It was putting an offence that previously had been a year back to a year from where it was going to go, to two years less a day, but given the way the committee has dealt with clause 319....

Is there anybody who wishes to propose X-13? I'm not seeing anybody, so X-13 is dropped. There are no amendments, then, to clause 18.

(Clause 18 agreed to)

(Clause 19 agreed to)

(On clause 20)

The Chair: At clause 20, we are at CPC-12, with Mr. Clement.

Mr. Clement.

Hon. Tony Clement: Thank you, Chair.

This pertains to the hybridization of the offence found in proposed subsection 83.18(1) involving individuals who knowingly participate in or contribute to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity.

It would be indictable under the present legislation. You could be guilty of an indictable offence and liable for imprisonment of 10 years.

Clearly, we want this to remain a solely indictable offence, not a hybridized one, and that is why the Conservative Party and I move this motion.

● (1640)

The Chair: Thank you very much.

Are there any comments? We'll go to the vote for CPC-12.

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

(Clause 20 as amended agreed to)

(On clause 21)

The Chair: Now we move to clause 21 with CPC-13 and Mr. Clement.

Hon. Tony Clement: Mr. Chair, this amendment is about those leaving Canada to participate in the activity of a terrorist group. As Conservatives, we would like this to remain solely an indictable offence. We think it is very injurious to the safety and the interests of Canada. That is why the Conservative Party, through me, is proposing this amendment.

The Chair: Thank you very much.

Is there any further discussion?

Mr. Michael Cooper: Mr. Chair, it appears government members will do the right thing and support this amendment, but we've been going through Conservative amendment after Conservative amendment on very serious terrorist-related offences, and I think it underscores the haphazard way in which Bill C-75 was drafted. The fact that we are discussing this, the fact that this was in the bill, again I think just speaks to what a flawed piece of legislation Bill C-75 is.

The Chair: I would only mention—I'm not getting into any debate, as the chair—that as I stated at the beginning, we as a group had talked about amending certain sections. This was one of them. The instructions I received were to vote against the clause.

You've done it in a different way, which is fine and totally acceptable, but other people in other parties were also not supportive of those clauses as well, which you see clearly here.

Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thank you, Mr. Chair.

My response, with all the respect that is due Mr. Cooper, is that's hogwash and poppycock. Let's be serious. We had witnesses who came here with very compelling witness testimony. We're talking about terrorism. We're talking about very serious offences. Our side is not playing politics with the justice bill.

Let's keep going, clause by clause, through this issue.

The Chair: The good news is that we will now go to a vote on CPC-13.

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

(Clause 21 as amended agreed to)

(On clause 22)

The Chair: On this clause we have CPC-14.

Mr. Clement.

Hon. Tony Clement: This section is about advocating or promoting the commission of terrorism offences. The Conservative Party feels very strongly that this should remain solely an indictable offence, which is why I am proposing this amendment.

The Chair: Thank you very much.

Does anyone else wish to speak on this? Seeing no one, we will move to a vote on CPC-14.

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

(Clause 22 as amended agreed to)

(On clause 23)

The Chair: We will now move to CPC-15.

Mr. Clement.

Hon. Tony Clement: Thank you, Chair.

This section pertains to concealing a person who carried out a terrorist activity. It's obviously a very serious charge and a serious offence. I won't go through all the evidence we heard as to why this should remain solely an indictable offence, but that is why the Conservative Party and I are moving this amendment.

● (1645)

The Chair: Thank you very much.

Is there any discussion? Hearing none, we will move to a vote on CPC-15.

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

(Clause 23 as amended agreed to)

(Clause 24 agreed to)

(On clause 25)

The Chair: There is an amendment to clause 25 that's called LIB-1 in your package. LIB-1 would essentially have the effect of voting down clause 25, so I rule it not receivable. The proper intent is to vote down clause 25. If you're in favour of LIB-1, you should vote against clause 25 when I call the vote on clause 25.

Does everybody understand that? This is the first time we've dealt with that.

Mr. Colin Fraser: When do we get to LIB-1, then?

The Chair: The purpose of LIB-1 is to delete all the lines in clause 25.

Mr. Colin Fraser: Right.

The Chair: I can't receive LIB-1, because LIB-1 essentially means that you should vote against the clause. The reason the Conservative amendments were receivable, instead of our voting down clauses, was that there were slight wording changes in those clauses that they retained. They retained the clause. That's why they did it that way. In these, there is nothing retained. You should just vote down the clause.

Mr. Colin Fraser: Got it.

The Chair: Just so everybody understands, if you want to vote down clause 25 by removing those words, vote down clause 25. Okay?

Mr. Boissonnault.

Mr. Randy Boissonnault: Is this on LIB-1?

The Chair: It's on clause 25. Again, LIB-1 is asking you to vote down clause 25. Do you want to speak to that?

Mr. Randy Boissonnault: I do.

LIB-1 amends clause 25. It's a housekeeping item, a word issue in terms of “recognizance”.

If you look at clause 25, we're replacing the term “recognizance” in subsection 83.29(3) of the Criminal Code with the term “release order”. The document used to bind the witness to appear in court for an investigative hearing under subsection 83.29(3) is not part of the bail regime and should continue to be referred to as “recognizance”. The amendment would remove clause 25 to ensure continued reference to “recognizance” in subsection 83.29(3).

That's why we're putting forward LIB-1.

The Chair: So, you're voting against clause 25.

Mr. Randy Boissonnault: I am, to do that.

The Chair: Is there any further discussion?

(Clause 25 negatived)

(Clauses 26 to 28 inclusive agreed to)

The Chair: We're on clause 29.

Mr. McKinnon.

Mr. Ron McKinnon: I'm just thinking we could vote on clauses 29 through 34 in one fell swoop.

The Chair: Does the committee agree to vote on clauses 29 to 34 at once?

Hon. Tony Clement: No, Chair, I cannot agree to that. I think, for clarity and for the historical record, we should do it clause by clause.

● (1650)

The Chair: Fair enough. That's fine.

We'll start at clause 29.

(Clauses 29 to 34 inclusive agreed to sequentially)

(On clause 35)

The Chair: Now we move to clause 35 and we have amendment CPC-16.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

This is yet another amendment related to a section of Bill C-75 that reclassifies a serious indictable offence and makes it a hybridized offence, and that offence relates to frauds on the government.

The Chair: Thank you very much.

Is there any discussion on that?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 35 agreed to)

(Clause 36 agreed to)

(On clause 37)

The Chair: Next we move to clause 37 and we have amendment CPC-17.

Mr. Clement.

Hon. Tony Clement: Thank you, Chair.

This pertains to the offence of breach of trust by a public officer, and certainly that should be seen as a very serious offence and certainly one that is offensive to our democracy and trust in government. In that case, I would be happy to move this amendment to keep this as an indictable offence only.

The Chair: Thank you very much.

Is there any discussion? We'll move to a vote on CPC-17.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 37 agreed to)

(On clause 38)

The Chair: Next we move to clause 38 and CPC-18.

Hon. Tony Clement: Thank you, Chair.

This clause relates to the crime of municipal corruption, obviously a very serious offence and one that offends not only taxpayers but also our democracy. I would put it to you that it is in the public interest that this remains solely an indictable offence, which is the purpose of my amendment.

The Chair: Thank you.

Does anyone wish to speak to that? We'll move to the vote on CPC-18.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 38 agreed to)

(On clause 39)

The Chair: Clause 39 brings us to CPC-19.

Mr. Clement.

Hon. Tony Clement: This offence relates to the selling or purchasing of an office, again, a very grave offence that offends both citizens and the nature of our democracy. I would urge my colleagues to vote with me to make sure that this is solely an indictable offence.

The Chair: Is there any discussion? We will now vote on CPC-19.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 39 agreed to)

(On clause 40)

On clause 40, we have CPC-20.

Mr. Clement.

● (1655)

Hon. Tony Clement: Thank you, Chair.

This involves influencing or negotiating appointments or dealings in office. Again, it's a corrupt activity and I would put to you a serious one that offends our democracy. Again I would encourage colleagues to support this motion, which has the impact of keeping this as an indictable offence.

The Chair: Does anyone wish to speak to that? We will vote on CPC-20.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 40 agreed to)

(On clause 41)

The Chair: We now move to clause 41. Clause 41 takes us to CPC-21.

Mr. Cooper.

Mr. Michael Cooper: Chair, this is an upper amendment dealing with the reclassification of an indictable offence that under Bill C-75 will be made a hybrid offence relating to the disobeying of a statute. This amendment would ensure that it remains an indictable offence.

The Chair: Thank you very much.

Mr. Clement, did you have something to add?

Hon. Tony Clement: No, I do not.

The Chair: I'm looking at people who are just touching their hair and I'm thinking their hands are going up. Sorry about that.

Ms. Iqra Khalid: I've a question for the department.

Do the Standing Orders of Parliament fall into the purview of this law at all?

Mr. Matthew Taylor: I don't think I know the answer to that question. The focus is on contravening an act of Parliament. We would have to look to see whether a standing order constitutes an act of Parliament. We would perhaps have to look to the Interpretation Act for some guidance on that.

The Chair: It's a great question and a very interesting one.

Ms. Iqra Khalid: Thank you, though. I appreciate that.

The Chair: Any other comments or questions? Not hearing any, we'll have a vote on CPC-21.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 41 agreed to)

(Clauses 42 and 43 agreed to)

(On clause 44)

The Chair: On clause 44, we move to CPC-22.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

This is an amendment to deal with another reclassification under Bill C-75. This specific offence is reclassified in Bill C-75 as a solely indictable offence, and this offence relates to affidavit.

The Chair: Is there any discussion? We will move to a vote on CPC-22.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 44 agreed to)

(On clause 45)

The Chair: On clause 45, amendment CPC-23, I'm going to guess it's Mr. Cooper.

Mr. Michael Cooper: It is.

The Chair: Mr. Cooper, the floor is yours.

Mr. Michael Cooper: Thank you, Mr. Chair.

This is yet another amendment dealing with the reclassification of what is currently an indictable offence under the Criminal Code that Bill C-75 will make a hybrid offence. This amendment would maintain it as an indictable offence. That offence is the serious offence of obstructing justice.

The only comment I would make as we're having some of these votes is that at the beginning of the debate around reclassification of offences, a number of Liberal MPs—Mr. Fraser, I believe—said that this has nothing to do with sentencing and nothing to do with treating certain offences more seriously than others; rather, this is all about giving prosecutors the discretion they need in the appropriate circumstances, and to more broadly deal with the backlog in our courts.

Yet, when it came to some amendments related to terrorism offences, Liberal MPs took a very different position. They seemed to rightfully treat those as very serious offences, and that on that basis they should not be reclassified as hybrid offences.

I think it speaks to the fact that when we are talking about the reclassification of offences, it does go to the seriousness of the offence, and that's reflected by the votes taken by Liberal MPs on various of the amendments put forward.

● (1700)

The Chair: We'll go to Mr. Fraser, and then Ms. Khalid.

Mr. Colin Fraser: Thank you.

First I'd like to say that rather than reiterating my point on each one of these amendments as they came forward, the discussion in the beginning was meant to apply to each and every one of these amendments. We're all busy, so I didn't want to just say the same thing over and over again. However, I hope it's understood that my comments at the beginning with regard to hybridization apply. I made separate and distinct comments with regard to why the terrorism-related offences and the one relating to advocating genocide were distinguishable from all of the others.

I would pose, perhaps rhetorically, to my colleagues on the other side, that if hybridization is such a terrible thing and we shouldn't allow Crowns to have this sort of discretion, why didn't they get rid of hybrid offences when they were in government?

This is important stuff. I believe my colleague earlier made an extremely good point. We heard from people who came to our committee on the offences relating to terrorism and advocating genocide. This committee listened to those concerns, and I stand by the points I raised earlier, in particular on the rationale for distinguishing those offences from the rest of them.

I guess I'll leave it at that. Thank you.

The Chair: Thank you.

Ms. Khalid.

Ms. Iqra Khalid: Thank you, Chair.

One thing that I always appreciate about this committee is that, for the most part, we're able to get through our work—working for Canadians—in a very non-partisan way and try not to slam each other for unnecessary reasons. I hope that we can continue that way. I understand that an election is coming, but that doesn't impede us from doing the important work that Canadians expect us to do.

I have a question for Mr. Cooper with respect to proposed subsection 139(2) for the offence that we're talking about right now.

If a person obstructs justice, say, for example, they run into a peace officer who gets very upset and charges them with obstruction of justice—please help me understand this—would you want them to go to jail for 10 years? Is that the case?

Mr. Michael Cooper: It would be up to a judge to make that decision, and as I reiterated—

Hon. Tony Clement: Not more than 10 years....

Mr. Michael Cooper: Of course, again, we didn't hear any evidence about the specific offence. It was just thrown into the basket along with terrorism offences and other serious offences. This speaks to what a mess this bill is, which is why we're going to be spending hours dealing with amendments, including all kinds of government amendments, to clean up the mess that is Bill C-75.

Ms. Iqra Khalid: Wow.

The Chair: I will get to everyone, but again, I appreciate what you said. We try to be as non-partisan as possible. Let's try to continue that way.

Mr. Clement.

Hon. Tony Clement: Chair, I just wanted to respectfully request a recorded vote on this, a roll call vote.

The Chair: That's fine. We will do that when we finish debate.

Mr. McKinnon.

Mr. Ron McKinnon: I want to assure Mr. Cooper that we consider all these offences as serious offences, irrespective of whether they're hybridized or not. Hybridization has nothing to do with the seriousness of the offence. It's about whether they, in the particular circumstances.... We want to give the prosecutors the latitude to elect to go to a provincial court, depending on what the circumstances of the case are.

The Chair: Does anybody else want to intervene? If not we'll move to a vote on CPC-23.

(Amendment negatived: nays 5; yeas 4 [*See Minutes of Proceedings*])

(Clause 45 agreed to)

(On clause 46)

● (1705)

The Chair: Next we move to CPC-24 and clause 46.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

This is an amendment dealing with the reclassification of an offence in the Criminal Code that is currently an indictable offence that Bill C-75 would make a hybrid offence. This amendment would maintain it as an indictable offence. It relates to compounding indictable offences.

The Chair: Thank you very much.

Is there any discussion? Will vote on CPC-24.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 46 agreed to)

(On clause 47)

The Chair: Next we move to CPC-25 and clause 47.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Chair.

This is an amendment dealing with the reclassification, or watering down, of an indictable offence that Bill C-75 makes a hybrid offence. This would maintain it as an indictable offence. This specific offence relates to corruptly taking reward for the recovery of goods.

The Chair: Thank you very much.

Is there any discussion? We will vote on CPC-25.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 47 agreed to)

(On clause 48)

The Chair: Next on clause 48, we have CPC-26.

Mr. Clement.

Hon. Tony Clement: Thank you, Chair.

This offence involves a prison breach, which of course is a very serious crime that has impacts on public safety and security. I would opine and hope that members agree that this should remain solely an indictable offence.

The Chair: Thank you very much. Are there any comments? Not seeing any, we'll move to a vote on CPC-26.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 48 agreed to)

(On clause 49)

The Chair: Next we move to clause 49. We have two amendments, and I'm just checking that they do not conflict.

The first one is Green Party-3, Ms. May.

Ms. Elizabeth May: Thank you very much, Mr. Chair.

This, of course, goes to a substantial part of Bill C-75, which aims to reduce the number of accused held in pretrial detention. What I'm proposing through this, of course, emanates from the Supreme Court of Canada decision in Morales back in 1992 that bail not be denied except in circumstances where there is a substantial likelihood of committing an offence.

Now, what we've seen since the early 1990s when the Morales decision came down is that, even though the crime rate has gone down, the number of people held in pretrial detention has gone up. What I'm trying to do with the amendment is to narrow the grounds on which a failure-to-comply charge can be applied to only those situations where the breach in question endangers public safety. I hope this will be met with support, because I think it speaks to the clear intent of government in much of what we find in Bill C-75.

● (1710)

The Chair: Mr. Boissonnault.

Mr. Randy Boissonnault: Thanks, Mr. Chair.

I appreciate the honourable member's amendment and the intent. I understand this would amend clause 49 to specify that only breaches of conditions that endanger "the safety of the public, including any victim or witness" would trigger an offence for failing to comply.

I have concerns with the amendment, and the most significant is that there would be no mechanism for enforcing compliance with the conditions of undertaking and release orders and the requirement for the accused to come to court. Where the safety of the public is not endangered, for example, where an accused does not appear in court as required, there is currently no alternative to criminal sanctions for deterring breaches of conditions and requiring that the accused come to court to answer to charges laid against them.

The amendment would leave a gap in the Criminal Code that would make it difficult for the criminal justice system to function effectively, potentially causing significant delays. As you know, our overarching attempt here and plan is to address the issues with delays according to Jordan. For these reasons, I oppose the motion.

The Chair: Mr. Rankin.

Mr. Murray Rankin: I'm inclined to support it, but I would like the perspective of the officials on the implications.

Ms. Shannon Davis-Ermuth: The implications, as Mr. Boissonnault has stated, are essentially that right now in the Criminal Code, section 145 contains the offences for not following requirements to attend court, requirements to attend pursuant to the identification of the criminal's act to be identified and to follow conditions, but if there was a qualification put, and only some of the failures to comply with conditions and some of the failures to appear in court were covered, if they were breaches, there wouldn't be any mechanism to address those breaches.

Ms. Elizabeth May: I think what we've forgotten about is that, in terms of pretrial release, at this point we've relied heavily on the criminality of breach, and it requires a lot of police training to decide who you're going to be putting under failure-to-comply charges.

We've virtually forgotten in Canada and it's been a long time since we actually enforced the security deposits that are made on pretrial detention and release from pretrial detention. If we are to be serious about those terms of bail and pursue that money, it's quite likely that very few people would want to see their mom lose their house.

In the normal course of things in criminal justice in Canada, the financial penalties for breach and for failure to comply are essentially non-existent. If we resurrected those as a matter of course, it would be much more effective for the cost of law enforcement, and the cost of detention and correctional services. We would be able to have people feel much more obliged to appear without the criminality if they also knew that whoever was their near and dear who had put up a surety on their behalf would face consequences.

The Chair: Is there any other discussion? Not seeing any, we will put Green Party-3 to a vote.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We will move to LIB-2.

Mr. Fraser.

Mr. Colin Fraser: Thank you, Mr. Chair.

This is a technical amendment to clause 49(2), which makes consequential amendments to both the new bill provisions. This would reflect the new terminology being used to replace "recognizance" with "release order" to provide consistency with other aspects that have been modified in the bill. It's a technical amendment changing that terminology.

The Chair: Are there any comments? We will proceed to a vote on LIB-2.

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

(Clause 49 as amended agreed to)

(On clause 50)

The Chair: On clause 50, we move to CPC-27.

Mr. Cooper.

● (1715)

Mr. Michael Cooper: Thank you, Mr. Chair.

This is an amendment dealing with reclassification. The offence of permitting or assisting escape is reclassified in Bill C-75 to be a hybrid offence from an indictable offence. This amendment would keep it as an indictable offence.

The Chair: Thank you very much.

Is there any discussion? We will move to a vote on CPC-27.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 50 agreed to)

(On clause 51)

The Chair: On clause 51, we move to CPC-28.

Mr. Cooper.

Mr. Michael Cooper: Mr. Chair, this is the same as my last amendment in terms of what it would do, which is to keep something that is in the Criminal Code as an indictable offence so it will remain an indictable offence. This particular offence relates to rescue or permitting escape.

The Chair: Thank you very much.

Does anybody wish to comment on CPC-28?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 51 agreed to)

(On clause 52)

The Chair: On clause 52, we have CPC-29.

Mr. Clement.

Hon. Tony Clement: I would request a roll call vote on this one.

The Chair: Okay. Do you want to speak to your amendment so we know what it is?

Hon. Tony Clement: No. It's on assisting a prisoner of war to escape.

The Chair: All right.

Ms. Iqra Khalid: Mr. Chair, could you give me a minute. I would like to read it. I haven't read it yet.

The Chair: Of course. Absolutely.

This is CPC-29, lines 15 and 16 on page 20.

Ms. Iqra Khalid: Good.

The Chair: We will move to a roll call vote.

(Amendment negatived: nays 5; yeas 4 [*See Minutes of Proceedings*])

(Clause 52 agreed to)

(Clauses 53 to 55 inclusive agreed to)

(On clause 56)

The Chair: On clause 56, there are no amendments.

Mr. Boissonnault, would you like to speak?

Mr. Randy Boissonnault: I just want to talk about this clause.

● (1720)

The Chair: Sure.

Mr. Randy Boissonnault: This is former section 159 in the Criminal Code. The LGBTQ community has been asking for decades for it to be removed from the Criminal Code. It criminalizes same-sex consensual activity between consenting young men. This discrimination doesn't exist for young women, but it exists for men aged 16 to 18. It's the right thing to do. We need to have this removed from our Criminal Code. I'm very happy we're doing this.

I'd like a roll call vote.

The Chair: Sure.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

I fully support this clause. I certainly support the repeal of section 159, but I have to say I don't understand why it has taken this government so long to repeal this zombie section of the Criminal Code.

I can remember back in the fall of 2016 the government announced Bill C-32, with great fanfare about how it was going to repeal section 159. It was such a priority of this government, but that bill remains stuck at first reading, two years later. Then it tried again and introduced Bill C-39 on March 8 of 2017, to again repeal section 159. That was such a priority of this government that the bill remains stuck at first reading—by the way, to the chagrin of the McCann family in my riding, who have suffered as a result of the misapplication of the zombie law.

Now finally they've thrown it into this very flawed piece of legislation. Perhaps it's one of the few good things to come out of Bill C-75. Again, I'm happy to support it. It's just disappointing that it's been two years.

The Chair: I guess it's disappointing that it was ruled unconstitutional a decade ago and it was not removed until now.

Mr. Boissonnault.

Mr. Randy Boissonnault: Mr. Chair, assuming the vote goes in a good way and the bill passes through the House, I'll be very happy with our government's record on this, as opposed to the other side that had 10 years to do the same, but did nothing.

The Chair: Okay. We've all had some fun. It's a very important clause. I think this is an important moment in history that we're actually doing this.

(Clause 56 agreed to: yeas 9; nays 0)

The Chair: I'm sure Ms. May would have voted yes also if she could have voted.

Ms. Elizabeth May: You're right. Thank you, Mr. Chair. You are so kind.

The Chair: I note her always strong support for LGBTQ issues.

(On clause 57)

The Chair: On clause 57, we have PV-4.

So Ms. May, you're up.

Ms. Elizabeth May: Yes.

Now these go back, similar to my attempt at—

The Chair: I'm sorry, am I wrong? Is this the 173 one?

Ms. Elizabeth May: It's related to it, but....

I'll wait for you guys to figure it out.

The Chair: It relates to repealing subsection 173(2). Does it do anything more?

I thought it was just removing the subsection, but if I'm wrong....

Unfortunately, with 173 remaining, this is one of the ones that becomes out of order. Sorry about that.

Ms. Elizabeth May: Just to make sure that I'm on the right page, I believe that this will apply to everything.

[*Translation*]

Actually, I feel it applies to amendments PV-4, PV-5, PV-6, PV-7, PV-8, PV-9, PV-10, PV-11, PV-12, PV-13 and PV-14, which all deal with the same subject.

The Chair: I think you are right. They are all the ones that propose abolishing section 173.

Ms. Elizabeth May: I just want to confirm that we are on the same page.

The Chair: Yes, we are.

[*English*]

With that being said, there are no amendments that are receivable on clause 57.

(Clause 57 agreed to)

(Clause 58 agreed to)

(On clause 59)

The Chair: Next we move to clause 59 and CPC-30.

Mr. Clement.

Hon. Tony Clement: I don't have any comments. We can proceed to the vote, if you'd like.

● (1725)

The Chair: Are there comments from anyone else?

Ms. Iqra Khalid: No.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 59 agreed to)

The Chair: With clause 60, we have the same issue as with PV-5. It's not receivable. It's the same with X-35. There are no receivable amendments on clause 60, given the vote on section 173.

(Clause 60 agreed to)

(On clause 61)

The Chair: Now we're at CPC-31, the one about obstructing the clergyman.

Mr. Clement.

Hon. Tony Clement: Mr. Chair, we did hear evidence before this committee about why it was not a good idea to hybridize this offence, and how it would lead to greater disruption of faith services. I would encourage my colleagues to treat this offence as being as serious as it is and ensure that it remains a purely indictable offence.

The Chair: Are there any other comments, colleagues?

Mr. Michael Cooper: I think we should have a recorded vote on this.

I would add, Mr. Chair, that the government tried to remove this particular section from the Criminal Code altogether, and it was only after considerable backlash that they had to re-evaluate. Their attitude is clearly consistent with what was initially in Bill C-51, which is that they don't seem to take this very seriously, despite the outcry from the faith community. They don't take it seriously is evidenced by the fact that they want to water down the sentence for this serious offence. It's really an insult.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I remember well this one coming to committee. It was my amendment that was voted upon in order to preserve this as a criminal offence. With great respect to Mr. Cooper, I think he isn't telling the whole story with regard to how this came forward. It was put forward in a suite of offences that were considered redundant or perhaps obsolete or otherwise no longer applicable. After listening to witnesses who came before this committee, which is the appropriate job for this committee to do, the committee voted in favour of my amendment in order to retain that criminal offence.

With regard to the hybridization issue, I refer to my comments at the beginning of the meeting indicating why this offence, and many others in this bill, should be the subject of hybrid offences, allowing the Crown to have that flexibility when needed.

I just wanted to highlight the fuller context of how that issue came to light earlier for the people listening.

Mr. Michael Cooper: To complete the context, it wasn't until the Conservative opposition highlighted it that the government then... and an outcry from the faith community, with considerable resistance on the part of the government to do something about it. Instead of the government's dealing with it immediately, it took an outcry. It took petitions. It took thousands of Canadians to be mobilized before this government finally listened. They did listen. They get some credit for that, but really very little.

Mr. Colin Fraser: It was amended at committee at the first opportunity to amend it.

It was amended at committee with the support of all parties.

The Chair: Not only the Liberals, but also the NDP and the Green.... Everybody supported it, so for one party to take credit for it, again, is negating the work of the committee, which I don't think is what you intended to do.

Mr. Michael Cooper: But we're now hybridizing.

The Chair: Okay, fair enough. You want a recorded vote on this one. If there are no other comments, we'll do a recorded vote.

(Amendment negatived: nays 5; yeas 4 [*See Minutes of Proceedings*])

● (1730)

The Chair: We will move to—

Mr. Colin Fraser: The bells are ringing.

The Chair: Can I have unanimous consent to continue for five more minutes?

Mr. Dave MacKenzie (Oxford, CPC): Sometimes it's hard to get the buses here.

The Chair: Would you rather suspend?

Mr. Dave MacKenzie: Yes.

The Chair: Could I ask that everybody come back as soon as you can after the votes, please?

Mr. Ron McKinnon: Could we finish clause 61?

The Chair: Yes. Could we have the vote on clause 61 and then come back?

Hon. Tony Clement: That's a reasonable suggestion.

The Chair: Mr. McKinnon always comes up with reasonable suggestions.

(Clause 61 agreed to)

The Chair: We will come back to a very important section, clause 62, as soon as we reconvene.

Mr. Rankin.

Mr. Murray Rankin: Just to be clear, when are we finishing this evening?

The Chair: At about ten to eight, I guess.

Hon. Tony Clement: Why not 7:30?

The Chair: Because of the vote, it's taking.... I wanted to give a bit more time.

Mr. Dave MacKenzie: I'm leaving at 7:30.

Hon. Tony Clement: The notice was—

The Chair: Fair enough. I can't keep you here after 7:30, if you don't want to. I thought we'd try to make up the time for the vote, but if you can't do it, you can't do it. We'll just stop at 7:30.

Hon. Tony Clement: I would prefer that, sir.

Mr. Colin Fraser: We're not going to get through all of it anyway.

The Chair: No. At this stage, no, we're not.

The meeting is suspended until we come back after the vote.

● (1730)

(Pause)

● (1845)

The Chair: We will now continue our meeting of the Standing Committee on Justice and Human Rights as we continue our clause-by-clause study of Bill C-75.

(On clause 62)

The Chair: Clause 62 relates to the potential repeal of section 179 of the code. We have identical amendments X-37, LIB-3 and PV-6.

Ms. May is not here.

Mr. Rankin?

Mr. Murray Rankin: I could move X-37.

The Chair: If it's okay, Mr. Boissonnault would like to jointly move it with you.

Is that okay?

Mr. Randy Boissonnault: So moved.

The Chair: I think both of you have a specific interest in this.

Mr. Randy Boissonnault: Do you want to go first?

Mr. Murray Rankin: I'll go first.

I feel strongly that this ought to be removed. I spoke about the general issue of vagrancy and about the nature of the disproportionate impact of these offences in other contexts. I had a little research done, Chair, and I found out, using good old Quicklaw, that there have been only two cases in the past 30 years on this section.

It struck me that it's not exactly serving an important social purpose anyway. In addition to all the points that I suspect Mr. Boissonnault will raise, it doesn't make any sense to keep it, so I am very anxious to have this removed from the code.

The Chair: Thank you very much.

Mr. Boissonnault.

Mr. Randy Boissonnault: Thanks, Mr. Chair.

I agree with Mr. Rankin's assessment.

As we heard, vagrancy is a broad, ill-defined offence. It has historically been used, not just against sex workers but to police people's gender identity or sexual preferences. This provision would have been used against people wearing the wrong clothes or for the length of their hair.

It's also important to note that in 1994, in the Supreme Court case of R. v. Heywood, this was declared unconstitutional and contrary to the charter. For those reasons and for historical injustice reasons connected with the LGBTQ community, I will be moving this LIB-3.

The Chair: This is identical to X-37 and PV-6.

Yes, Mr. Clement.

Hon. Tony Clement: The Conservatives will be supporting this motion.

The Chair: Fantastic.

Mr. Boissonnault, do you want to have a recorded vote?

Mr. Randy Boissonnault: Yes.

The Chair: Perfect.

I think we all consider this, again, an important step forward in terms of equality for the LGBTQ+ community, and I think a recorded vote is a good idea.

(Amendment agreed to: yeas 9; nays 0 [*See Minutes of Proceedings*])

The Chair: I want to congratulate the committee on a great step forward. That means that we can then vote on clause 62 as amended, which is now the section being repealed.

(Clause 62 as amended agreed to)

(On clause 63)

The Chair: Now we move to clause 63 with CPC-32.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Chair.

This is another amendment related to the reclassification. This would maintain the offence of common nuisance as an indictable offence.

● (1850)

The Chair: Thank you very much. Is there any other discussion?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 63 agreed to)

(Clause 64 agreed to)

(On clause 65)

The Chair: On clause 65, we move to CPC-33.

Mr. Clement.

Hon. Tony Clement: This clause deals with those who have a duty imposed on them by law to bury a human dead body or human remains and who neglect without lawful excuse to do so.

I would put it to you that it is a serious offence that should remain indictable only.

The Chair: Thank you very much. Does anyone else want to intervene on that one?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 65 agreed to)

The Chair: Next we get to amendment LIB-4, which repeals the definition of an offence in section 183 of the code. With LIB-4, for the first time we're repealing a clause that references sections 210 and 211 of the code, the bawdy house laws.

As a result, in order to deal with amendment LIB-4, we would need to go to the primary amendment, which is LIB-6 on page 103. The same vote on LIB-6 would apply to LIB-4, LIB-5, LIB-8, LIB-10, LIB-16 and LIB-40, which are all referencing sections of the code and which then remove sections 210 and 211.

As a result, we will go to amendment LIB-6, because that is the actual repeal of the bawdy house laws, which is identical to amendment X-49. The committee's X-49 and LIB-6 are identical. We also need to mention that there's a Green Party amendment, PV-7, which is partially identical but not completely, because it repeals only section 210 and not section 211.

Given the more complete nature of sections 210 and 211 and the identical nature of amendments X-49 and LIB-6, I would go to those first. They were received first anyway.

Mr. Boissonnault, and then Mr. Rankin, I'm sure you guys want to speak on that. Mr. Boissonnault, I'll put you first this time.

Mr. Randy Boissonnault: Thanks, Mr. Chair.

I'm going to talk about amendments LIB-4 and LIB-6 at the same time. These are the bawdy house provisions. We've heard from representatives of the LGBTQ2 community and we've heard testimony here at this committee. It's a substantive change to this bill and to the legislation before us, removing the offences contained in sections 210 and 211, so it's important for us to put a fine point on this that we had mostly men, but not exclusively men, who were criminalized for same-sex consensual behaviour because of where it took place.

It's our belief that this is an important offence that needs to be removed from the Criminal Code. The Prime Minister also made reference to this in his historic apology to the LGBTQ community. This does affect many sections of the bill. We think it's the right thing to do, and for that reason I will be putting forward all of these Liberal amendments.

The Chair: Amendment LIB-6 would, consequentially, lead to all of those others then being adopted, because it would move that section out of the code.

Mr. Rankin.

Mr. Murray Rankin: Thank you, Chair.

I would just like to support strongly what Mr. Boissonnault said. I was very moved by the testimony of Gary Kinsman and the others, the gay and lesbian historians who testified here, and Mr. Ron Rosenes, who talked about his personal experience with this and how it has affected his life. I found it very moving.

I held a press conference with them on this topic and promised them that I would be supporting this and speaking in favour of it. I think this is truly a historic moment, and I'm delighted the committee is moving, apparently, in this direction.

● (1855)

The Chair: Mr. Clement.

Hon. Tony Clement: I have a question for the mover, Mr. Boissonnault. Is the issue how this section was historically used or is it the nature of the section itself?

Mr. Randy Boissonnault: It's both. It's the historical application of bawdy house provisions and the fact that.... There are other provisions in the code that could account for any time there would be any sort of non-consensual sex that would take place in what used to be known as a bawdy house. It is our belief that the Criminal Code has sufficient coverage in other sections of the code, that repealing this does not leave any gaps in the code, and that it also addresses the historic issue that we heard about from witnesses at this committee.

Hon. Tony Clement: My specific concern is gaps in the code. I will ask those at the table whether or not they affirm what Mr. Boissonnault is saying.

Mr. Matthew Taylor: I think our analysis of this motion would suggest that other offences would continue to apply, addressing conduct still deserving of criminal sanction. What the provisions focus on now is being found in a place where indecent acts occur.

Again, following the Labaye decision, what that means is fairly circumscribed. More recently, the offences were primarily used to target prostitution activities. Following the Bedford decision and legislation introduced and enacted subsequent to that, the provisions no longer relate to those activities.

Hon. Tony Clement: We're mostly concerned about exploitation of other people in a place.

Mr. Matthew Taylor: We certainly still have a number of offences that would address that conduct, whether it's sexual exploitation of a minor, human-trafficking offences or offences related to the selling of sexual services.

Hon. Tony Clement: Okay, thank you. I think we can support this motion.

The Chair: Thank you.

Colleagues, if you wouldn't mind, I'd like to say one small thing, because I was also very moved by the testimony of Mr. Rosenes, Mr. Kinsman and Mr. Hooper from the gay and lesbian historians' association.

I think this is a moment the committee can really take pride in, because once this is removed from the code, we are essentially allowing people to apply for expungement, after further action is taken, to allow them, while they're still alive and can still enjoy it, to know that they were vindicated, that they were unjustly convicted, both for the people whose convictions will be expunged but also other people who were picked up, who were entrapped.

It was a very sad and sorry part of Canadian history. I'm really glad this committee is doing its part, all three parties, to seek to remove that horrible gap in our history.

Mr. Boissonnault.

Mr. Randy Boissonnault: Thank you, Mr. Chair, for your comments.

I would like to do a roll call, but before that I think it's important to note for clarity's sake that what we're doing here repeals the bawdy house provisions from the Criminal Code, and that other steps would need to be taken to allow people to apply for expungement, which is a separate process, but so noted.

The Chair: Yes. It wouldn't require legislation, though, it would require only—

Mr. Randy Boissonnault: It requires a schedule addition to existing legislation.

(Amendment agreed to: yeas 9; nays 0 [*See Minutes of Proceedings*])

The Chair: Thank you, colleagues. I very much appreciate it.

As a result, CPC-42 would not be able to be moved, as we repealed the section it was seeking to amend. There are no other amendments to clause 75, so I suggest we vote on clause 75 as amended, and then go back to section 4.

The Clerk of the Committee (Mr. Olivier Champagne): It's a new clause.

The Chair: Okay then, we don't have to vote on it, and we can go back to clause 66.

Mr. Clement, we're on CPC-34, in clause 66.

● (1900)

Mr. Arif Virani: Mr. Chair, I think we're at clause 65.1.

The Chair: All of the amendments in clause 65.1 are considered adopted by adopting LIB-6. The clerk has advised me they are all interlinked and we can move to clause 66 now.

Mr. Cooper.

(On clause 66)

Mr. Michael Cooper: Thank you, Mr. Chair.

This is an amendment dealing with hybridization. Bill C-75 would take from an indictable to a hybrid the offence under section 184(1) of wilfully intercepting a private communication. This amendment would maintain this offence as solely an indictable offence.

The Chair: Okay, perfect. Any comments or questions on that?

Not hearing any, we will move to a vote on CPC-34.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 66 agreed to)

(On clause 67)

The Chair: We are at clause 67, CPC-35, and that would be Mr. Cooper.

Mr. Michael Cooper: Thank you, Chair.

This is an amendment dealing with hybridization in Bill C-75.

I would maintain this specific offence as a solely indictable offence. That offence relates to the interception of radio-based telephone communication.

The Chair: Thank you very much.

Anybody wishing to speak to that? If not, we're going to move to a vote on CPC-35.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 67 agreed to)

(Clause 68 agreed to)

(On clause 69)

The Chair: We move to CPC-36.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Chair.

It's another amendment dealing with hybridization under Bill C-75.

This would maintain what is currently a solely indictable offence to remain a solely indictable offence.

That relates to proposed subsection 191(1). It makes it an offence for anyone to possess, sell or purchase any electromagnetic, or other device or component, primarily for the surreptitious interception of private communications.

The Chair: Thank you very much. Is there any discussion?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 69 agreed to)

(On clause 70)

The Chair: Now we have CPC-37.

Mr. Cooper.

Mr. Michael Cooper: It's an amendment dealing with hybridization to maintain what is solely an indictable offence to remain a solely indictable offence related to the disclosure of information.

The Chair: Thank you very much. Does anyone wish to speak to that?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 70 agreed to)

(On clause 71)

The Chair: Now we have CPC-38.

Mr. Cooper.

Mr. Michael Cooper: Again, it's hybridization, a reclassification under Bill C-75.

This would maintain as a solely indictable offence, the subject offence relating to the disclosure of information received from interception of radio-based telephone communication.

The Chair: Thank you very much. Does anyone wish to speak to that?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 71 agreed to)

The Chair: The new clause 71.1 is already dealt with by the adoption of LIB-6. This is related to the bawdy house.

(On clause 72)

The Chair: We move to CPC-39, under clause 72.

That will be Mr. Cooper.

● (1905)

Mr. Michael Cooper: This is again a matter dealing with the reclassification of offences from indictable to hybrid.

This amendment maintains what is solely an indictable offence to remain a solely indictable offence. That offence relates to keeping a gaming or betting house.

The Chair: I'm just checking one thing.

The amendments that we made already to the definitions of the gaming and betting house don't touch any of these lines. I wanted to make sure, because we've amended the definition in that clause.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 72 agreed to)

(On clause 73)

The Chair: Now we move to CPC-40.

Mr. Michael Cooper: Again, this is an amendment related to the reclassification, to maintain as a solely indictable offence an offence in relation to lotteries.

The Chair: Is there any comment on that?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 73 agreed to)

(On clause 74)

The Chair: On clause 74, we have CPC-41.

Mr. Cooper.

Mr. Michael Cooper: Again, this is an amendment related to maintaining what is an indictable offence to remain a solely indictable offence. That related to section 209, which Bill C-75 proposes to hybridize. Proposed section 209 relates to “Cheating at play”.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 74 agreed to)

(On clause 75)

The Chair: We passed LIB-6 and X-49, which were identical. Basically we've already dealt with clause 75 through LIB-6 and X-49. This was the repeal of bawdy house, and adding the clause.

I asked before if we voted on the clause. You said we didn't need to.

The Clerk: I thought you meant the new clause.

The Chair: No, it comes into clause 75. We had passed the amendment, and then I asked whether we should have a vote and you said that we didn't need one.

The Clerk: That was because the amendment was to create a new clause.

Sometimes members will think that we need to vote on the amendment, and then on the new clause. That's why I said we didn't need to.

The Chair: Okay, but clause 75 is replaced by the new clause.

Either we voted and accepted it and we now move on to clause 76, or we need to vote and we should vote now.

The Clerk: My understanding was that we voted on LIB-6.

The Chair: We voted on LIB-6 to replace what's there in clause 75 with a new clause. That's what the effect of it is.

The Clerk: My understanding is that we did not vote on clause 75 as amended.

The Chair: LIB-6 amends clause 75. It changes what's in clause 75 to repeal what's there. There is no clause 75 that remains, because of LIB-6.

I just need to understand. As a result of that past amendment, have we already achieved a new clause 75 or do we need to vote on LIB-6 being clause 75?

● (1910)

The Clerk: There is still text in—

The Chair: No, because it's repealed. The effect of LIB-6 is to repeal the clause that would have been in clause 75. Subsection 210 (1) of the Criminal Code is now repealed, or would be repealed.

The Clerk: That's what the new clause 75, as amended, says.

The Chair: Yes. We're all in agreement. We're in violent agreement.

We passed that motion. Do we need to vote on clause 75?

The Clerk: Yes.

The Chair: Got it.

We will now, just for the total sake of clarity, vote on clause 75 as amended by our having adopted the repeal under LIB-6.

(Clause 75 as amended agreed to)

(Clauses 76 and 77 agreed to)

(On clause 78)

The Chair: For clause 78, we have CPC-43.

Mr. Clement.

Hon. Tony Clement: This is a provision pertaining to the offence of causing bodily harm by criminal negligence. I think we heard a number of deponents and witnesses who were concerned about this, if it's the clause that I'm thinking of. Regardless, it's our position that this should remain a solely indictable offence.

The Chair: I think you are thinking of the drunk driving clause, which would be later. That's where your testimony...but either way I would understand—

Hon. Tony Clement: Either way, I'm indignant, Mr. Chair.

The Chair: I see from the way your demeanour is that you're indignant. It's fantastic.

Hon. Tony Clement: I have self-righteous anger about it.

The Chair: That's magnificent. You should have been on the stage years ago.

Hon. Tony Clement: Show business for ugly people, that's my definition of politics.

The Chair: The good news is we can give a pitch for your wife's new book at this point, because that ties into the arts.

Hon. Tony Clement: That's right.

The Chair: We will move to a vote on CPC-43.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 78 agreed to)

(Clauses 79 and 80 agreed to)

The Chair: Do you want a break in the meeting at this point, Ms. Khalid, to have a discussion, or do you want to continue?

Ms. Iqra Khalid: No, we can continue.

(On clause 81)

The Chair: On clause 81, we have CPC-44.

Hon. Tony Clement: Mr. Chair, I think this motion speaks for itself. It deals with punishment for infanticide. I can't imagine any case on God's green earth where we would want to have a punishment that could go by way of summary rather than indictable offence, and I would encourage my colleagues from all sides to support my amendment, which would make it continue as solely an indictable offence.

The Chair: May I ask a question to the Justice officials? It's says, “Every female person who commits infanticide”. Can you explain to me what exactly the crime of infanticide is and why only a female person could potentially be guilty of this crime?

Mr. Matthew Taylor: We can certainly try.

The crime of infanticide is focused on a situation where a woman who has given birth, or shortly after she has given birth, kills her child. It's a provision that recognizes a particular mental state involving the accused that doesn't rise to the level of mental disorder. It's a diminished mental state, and that is why the punishment is different for infanticide from what it would otherwise be for murder.

● (1915)

Hon. Tony Clement: Are you referring to postpartum depression? Is that what you're saying?

Mr. Matthew Taylor: I'm not a scientist, and I don't know where the distinctions are in terms of postpartum depression and the baby blues. We know on one end we have mental disorder, and we know on the other end we have depression. Somewhere in the middle we have a diminished capacity, a diminished mental state, so it's something more than depression and something less than mental disorder.

The Chair: Ms. Khalid.

Ms. Iqra Khalid: Thank you.

To the officials, is “mental disorder” a defence to this crime?

Mr. Matthew Taylor: Yes. If the mental state of the individual arises to a state where mental disorder has been established, then yes, that would operate as a defence. We were just discussing that if the committee would like more information on the law in this area, we'd be happy to provide some.

The Chair: I would be interested. It says:

> A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.

Essentially, in this offence, in 237, we are talking about a woman who has had some type of post-traumatic birth or who is not of totally sound mind when she commits the offence. Do the officials know in general, when people have indeed been sentenced for infanticide, if there have been a number of occasions where the crime has received sentences of less than two years in prison?

Mr. Matthew Taylor: We do have that data. We don't have it in front of us. We would have to provide that to you subsequent to the meeting.

The Chair: I would assume the answer would be yes.

We'll go to Mr. Rankin and then Mr. Clement.

Mr. Murray Rankin: On the issue of the gendered nature of this —that it's only applicable to females—has there ever been a charter challenge?

Mr. Matthew Taylor: Not to my knowledge. It's slightly different from the focus of this amendment, but there are other jurisdictions that have taken different approaches to these issues and looked at those questions, in terms of reform to their laws of infanticide and whether defences should be available in other situations where there are similar facts at play in terms of diminished capacity and what have you.

Mr. Murray Rankin: I just wanted to say for the record, again, because we've been away for a while, that my reason for a supporting position to oppose hybridization—if that's not a double negative.... I guess I should say "my reason for opposing hybridization", I guess—

The Chair: That's good. That works.

Mr. Murray Rankin: Thank you.

We're not talking about the penalty here. We're talking about the process and the ability of the Crown to decide to proceed by way of summary or indictable. I say, again, that the way we could solve this in a much more transparent way would be to give the courts the discretion that they no longer appear to have, which this government does not seem to want to address.

The Chair: Thank you.

Mr. Clement.

Hon. Tony Clement: I had another point, which I guess is trite, in the circumstances.

Obviously, the Crown has to establish *mens rea*, as well as the *actus reus*.

If there's no *mens rea* because of the state of mind of the individual, that would also play into this issue.

Mr. Matthew Taylor: Yes. As the chair has noted, it involves an intentional act, so the *mens rea* elements are established there.

But what the punishment tends to recognize is that the circumstances surrounding the commission of the crime are such that the mental state of the individual is diminished.

Hon. Tony Clement: Yes. Okay. I hear you.

The Chair: I think Ms. Khalid had put up her hand.

● (1920)

Ms. Iqra Khalid: Thank you, Chair.

A lot of the work we've done with respect to access to justice, with respect to trafficking—and I've always tried to provide a gender lens on the work we do here—in light of the epidemic, I would think, of mental illnesses and our failure to understand them.... From what I've heard from the department, it seems to me that this must be evaluated on a case-by-case basis, whether somebody should be pursuing through indictment or summary. A prosecutor should be pursuing it through indictment or summary based on the individual in question or the individual charged here.

I don't think I can support this amendment.

The Chair: Mr. Rankin.

Mr. Murray Rankin: I think I'm right in saying that there's a whole part of the Criminal Code that deals with being not criminally responsible on the basis of mental disorder, so when you put the infanticide section with the diminished capacity on one side and then you note that there's already a possible finding of not criminally responsible because of mental illness, it's very difficult to see just how those would actually work in a real case. I just put it out there.

With respect, I don't think it has anything to do with this discussion, whether we proceed by way of summary or by way of indictment.

Mr. Matthew Taylor: One other piece that might be relevant is that infanticide also operates as a partial defence in the context of murder and can result in a manslaughter conviction.

The Chair: A lesser charge that they can....

Mr. Matthew Taylor: Yes.

The Chair: Are we ready to vote, colleagues?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 81 agreed to)

(Clauses 82 and 83 agreed to)

(On clause 84)

The Chair: We turn to CPC-45.

I just want to understand. Has LIB-7 been judged to be an administrative error, Mr. Clerk?

The Clerk: Yes, it's just a letter.

The Chair: It's a letter. That will be fixed administratively, so it's deemed to be done.

The Clerk: Yes.

The Chair: On LIB-7, I just want to make sure that there's nothing conflicting and we don't do anything wrong.

Mr. Colin Fraser: It's the missing letter “a”.

The Chair: It's missing “a” in the the word “*coupable*” in French.

They're saying that we don't actually have to pass an amendment to do it. They can do it administratively.

Is that understood everyone?

Some hon. members: Yes.

The Chair: Okay, perfect. Thank you.

LIB-7 is deemed to correct the spelling of “*coupable*”.

We will move to CPC-45

Mr. Clement.

Hon. Tony Clement: I understand now.

This crime is titled “Neglect to obtain assistance in childbirth”. Of course, we all want to protect our newborns.

I would encourage members to keep this as an indictable offence only.

The Chair: Thanks very much.

If no one wishes to speak to that one, we'll move to a vote on CPC-45.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 84 agreed to)

(On clause 85)

The Chair: On clause 85, we get to CPC-46.

Hon. Tony Clement: This amendment involves the administering of a noxious thing—

The Chair: Noxious—that's awful.

Hon. Tony Clement: It is, just ask Socrates

It's causing a person to take poison.

The Chair: Did he self-administer that, though?

Hon. Tony Clement: No, he did not. I mean, he drank it. He was in the jail alone, but after a very long and boring speech, he did in fact administer it himself.

The Chair: I wonder who made that speech.

Mr. Ron McKinnon: The speech actually was the noxious thing.

The Chair: It must have been a political speech then.

Sorry, Mr. Clement, back to you.

● (1925)

Hon. Tony Clement: I know we're joking, but we all know that this is serious.

Certainly to cause to be administered poison or something similar to that, in our view, should remain a solely indictable offence.

The Chair: Can I ask a question to the department again? I'm looking at this as an indictable offence and liable to imprisonment for a term of not more than 14 years.

Are there many 14-year offences that are hybridized?

Mr. Matthew Taylor: No. The decision, as I think has been articulated, relates to the indictable offences punishable by 10 years or more.

If you look at proposed paragraph (b)—

The Chair: It's 10 years or less.

Mr. Matthew Taylor: Sorry, it's “or less”. I apologize.

If you look at proposed paragraph 245(1)(b), we have the maximum of two years.

Did that answer your question?

The Chair: It may answer it. I just need to—

Mr. Matthew Taylor: If you look at proposed paragraph 245(1)(a), it remains at 14 years in the bill, and then 245(1)(b) is where the hybridization would be proposed.

The Chair: Maybe my question is really to Mr. Clement, since the sentence is two years in this offence already. It's the same sentence. We're changing one sentence to another. Whether it's indictable or summary, it's still a two-year sentence in this proposed paragraph.

It's not one where the maximum is actually being reduced.

Hon. Tony Clement: But it's not two years less a day.

The Chair: It's moving from two years to two years less a day.

Hon. Tony Clement: One day makes a difference.

We'd like a roll call on this one.

The Chair: Sure. Hopefully it won't take a whole day.

(Amendment negatived: nays 5; yeas 4 [*See Minutes of Proceedings*])

(Clause 85 agreed to)

(On clause 86)

The Chair: It's 7:30, and I've been asked by colleagues to end the meeting. Let's finish with clause 86. That will be the last one we will do, and then let's see when we can schedule for Monday.

We go to CPC-47. This will be the last amendment that we will deal with, and clause 86 will be the last clause we will deal with today.

On CPC-47, we have Mr Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

Again, this is dealing with a reclassification. This particular section of the Criminal Code deals with a very serious indictable offence involving setting a trap or device that is likely to cause the death of or bodily harm to an individual. On its face, it's tough to understand why the government would propose reducing the sentence for this offence to potentially a mere fine.

The Chair: Thank you very much.

Does anybody wish to speak? I'm not hearing anyone. We'll vote on CPC-47.

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 86 agreed to)

The Chair: If it's okay, colleagues, given that we've only made it through clause 86, I would like to make the meeting on Monday longer, but I would like to offer an alternative. If your schedules so permit, perhaps we could start the meeting before question period, going from, let's say, 12:30 to two and reconvening at 3:30.

● (1930)

Hon. Tony Clement: Chair, I'm trying to understand your philosophy. We have set meetings at this committee.

The Chair: We do...?

Hon. Tony Clement: We or our substitutes will be here. I'm not sure why we're elongating the process. We have set times. Can't we just stay with the set times of the committee?

The Chair: Having seen that we had over three hours today and we only got through 86 of over 300 clauses....

Hon. Tony Clement: We're doing our job, sir. This is our job.

The Chair: I can only say that in past practice we have met for longer and we've done clause-by-clause for longer than two hours.

Hon. Tony Clement: As we did tonight....

The Chair: I would like to propose that we do that again on Monday and see where we get.

Hon. Tony Clement: You'll have to put it to a motion, then, because I'm not very happy with that.

Mr. Colin Fraser: Can I speak on that?

The Chair: Yes.

Mr. Colin Fraser: I think there are a couple of reasons why it might be a good idea, if it can work, to do it in as few meetings as possible.

Number one, it allows all of us to have all the materials here, have the same thoughts in our minds as to which ones we want to deal with and keep some consistency there. Also, we have quite a few people who are joining us here—officials and whatnot—to answer our questions. If we can find a way to make it work, I think we should try to do it in as few meetings as possible.

Hon. Tony Clement: Are you suggesting Monday morning as well?

The Chair: I'm suggesting—again, only if committee members can make it—that we would meet from 12:30 to two, let's say, on Monday, in addition to 3:30 to 5:30. If we're not able to, we can just go later on Monday, after 5:30, but I thought that maybe if people were here earlier, it would be less intrusive.

Mr. Michael Cooper: I would be more amenable to being flexible except for the fact that when it came time for second reading, the government moved time allocation almost immediately. Rob Nicholson and I were the only Conservative members who had a chance to speak on this bill.

We're now faced with a bill that by virtue of all these amendments is nothing short of a disaster. As a result of trying to clean up the mess of this minister, we now have to adjust our schedules to—again—ram this bill through. In the face of so many amendments and so many defects to resolve with this bill, I think we should take our time. Part of taking our time means meeting when we're scheduled to meet and allowing time for further discussion and consideration of the multiple amendments before the committee.

Ms. Iqra Khalid: I am very amenable to sitting extra times to get this through because I believe there's a lot more that we have to get done. My human trafficking report, I really think that we want to focus on that. It's a priority for me. I'm hoping that it's also a priority for you.

We have a lot of other bills coming forward that I'm very excited to work on. Bill C-78 is another great bill that I'm very excited to work on. I feel that if members are not able to sit the extended hours, perhaps they can find substitutes.

Hon. Tony Clement: Chair, I appreciate the member's comments. However, the fact of the matter is that the government is in charge of the schedule, and if we're feeling constrained. I don't want to be constrained on the report. I don't want to be constrained on a future bill. Folks who are in government created the schedule. We're abiding by the schedule, and now you want to change the schedule.

The Chair: We're a committee. We're not government.

Hon. Tony Clement: I know, but government members run the committee.

The Chair: We can blame government for many things. This is the committee, and the committee has set a schedule. We ourselves agreed to move to C-78 the week after next. I never block people from speaking. We can discuss clauses ad nauseam, but I would hope that everyone can agree, as we always have in the past, that we sit longer to get through clause-by-clause.

Now, again, it's 7:30, and we're good to stop at 7:30. I would hope that perhaps we could agree that on Monday we go again from 3:30 to 7:30 and do four hours, because we only made it through 85 clauses in the time we had.

No matter how long we keep going, we will eventually have to finish.

Hon. Tony Clement: We've had some good debate on some sections. I will confess that debate from the other side has changed my mind about a couple of sections, where I voted in favour of the proposers on the other side, so this is meaningful.

It's important. We're dealing with the Criminal Code of Canada here. I don't want us to feel rushed and I don't want us to be tired and I don't want us to be distracted. All of those things increase exponentially when you elongate each individual meeting time.

● (1935)

The Chair: It's true—

Hon. Tony Clement: If you're asking for my opinion, I can only give my opinion.

I'm not the Chair. You're the Chair. I'm only the vice-chair, but my opinion is that we stick to the schedule.

The Chair: I appreciate that, but I think Canadians would expect us to work longer than two hours.

Hon. Tony Clement: We all work. We all have other requirements, parliamentary requirements, sir. Do not play that card.—

The Chair: I will use my prerogative, then. I will ask everybody for 3:30 to 7:30 on Monday. We'll repeat the hours of today and see how far we get. I will not exhaust people, and if people look like they're falling asleep, we'll stop earlier.

I think the debate has been good. The debate will continue to be good, and I would ask people for Monday's meeting to be from 3:30 p.m. to 7:30 p.m. I hope we'll get through it, and if we don't, we'll have to find another time.

Much appreciated and thank you, everyone, for your excellent contributions today.

Mr. Colin Fraser: Can I also thank the staff? They have all been here. They've been helpful. The clerk and the staff have done a great job.

An hon. member: Hear, hear!

The Chair: Absolutely.

We'll thank Ms. May, as well.

It's always good to have you join us, as well as Ms. Ludwig. Thank you, everyone.

The meeting is adjourned.