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Chair

Mr. Anthony Housefather

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● (1610)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Colleagues, ladies and gentlemen, I'd like to call to order this meeting of the Standing Committee on Justice and Human Rights.

I am very thankful that we're joined by our Minister of Justice and Attorney General, Jody Wilson-Raybould, who will be talking to us about Bill C-75. This is the beginning of our hearings on Bill C-75.

I know that we only have the minister until five o'clock, so I want to give her all the time we can.

I am going to turn it over to you, Madam Minister. Thank you for joining us.

Hon. Jody Wilson-Raybould (Minister of Justice and Attorney General of Canada): Thank you very much, Mr. Chair, and, as usual, thank you to the members of the committee. I think I was here very recently, but it's good to be back.

As you say, today I'm here to speak about Bill C-75, an act to amend the Criminal Code, the Youth Criminal Justice Act and other acts and to make consequential amendments to other acts.

Bill C-75 seeks to modernize the criminal justice system, reduce delays, and improve the safety of our communities. It also proposes significant new measures to address the overrepresentation of indigenous people and marginalized Canadians in the criminal justice system.

Delays in the criminal justice system are a long-standing issue. The Supreme Court of Canada has pronounced on this important issue several times: in 1990 in Askov; in 1992 in Morin; and more recently in 2016-17 in its decisions in Jordan and Cody. Their direction to us was clear.

We must change the culture of complacency that exists in the criminal justice system or risk having charges stayed for violating an accused's right to be tried without delay. This is exactly what Bill C-75 seeks to do.

It proposes criminal law reform in seven key areas.

First, the bill will modernize and streamline the bail system. Second, it will enhance our approach to addressing administration of justice offences, including for youth. Third, it will bolster our response to intimate partner violence. Fourth, the bill will restrict the availability of preliminary inquiries to offences with penalties of life imprisonment. Fifth, it will reclassify offences to allow crowns to elect the most efficient procedure appropriate in the circumstances. Sixth, it will improve the jury selection process. Seventh, it will strengthen the case management powers of judges.

As a former prosecutor, an indigenous person, and now Minister of Justice, I am convinced that these proposed reforms will have a positive impact on criminal courts across the country on a daily basis. I invite the committee to study all areas of reform and to think about their cumulative impact in combatting delays.

Let me begin by stating that I take very seriously the mandate I have been given to address the overrepresentation of indigenous peoples in the criminal justice system, particularly in remand centres, where there are more people awaiting trial than there are individuals who have actually been convicted of an offence. I recognize that other marginalized groups—people struggling with homelessness, black Canadians, those with mental health and addictions issues—face these challenges as well.

The proposed bail amendments will enact a “principle of restraint” for the police and courts to ensure that release at the earliest opportunity is favoured over detention, and provide more guidance to police on how to impose appropriate conditions without impacting public safety. The proposals will also include a requirement that the circumstances of accused persons who are indigenous or come from vulnerable populations are considered at all stages in the bail process in order to address the disproportionate impacts that the bail system has on them.

The second area of reform will enhance the approach to administration of justice offences, such as breaching a curfew condition or a sobriety condition of bail. Processing these administrative offences is consuming court time and resources at an alarming rate and preventing courts from efficiently dealing with more serious matters. This bill will result in fewer charges for these offences by creating a new process called a “judicial referral hearing”. The hearing will be an alternative to laying charges for breaches of bail and failure to attend court in cases where there has been no physical, emotional, or financial harm to a victim.

The third area of Bill C-75 that I will discuss is our strengthened response to intimate partner violence. The bill will toughen our laws in cases of domestic assault. It establishes higher maximum sentences for repeat offenders, provides a reverse onus at bail hearings for repeat offenders, and recognizes strangulation as an elevated form of assault. As well, the bill modernizes our laws by broadening the parameters of intimate partner violence, which will now include a current or former spouse, a common-law partner, and a dating partner. These changes will make victims safer and will respond to the seriousness of intimate partner violence.

● (1615)

The fourth key area of Bill C-75 that I would like to note is the proposal to restrict the availability of preliminary inquiries for adults accused of offences liable to life imprisonment. As I've said before, this proposal will significantly reduce delays and inefficiencies in the criminal justice system. That is why, in its 2017 final report on delays, the Senate committee recommended that preliminary inquiries be restricted or eliminated, and why many of my provincial and territorial counterparts called for this reform.

I acknowledge that, overall, preliminary inquiries are held in only a small percentage of cases, but they are consuming a disproportionate amount of time in a number of provinces. These reforms are expected to have a significant impact in those provinces where preliminary inquiries are more common and will have a cumulative impact overall.

I will now discuss Bill C-75's proposal to hybridize a number of offences in the Criminal Code, which, unfortunately, has been mischaracterized. This reform will mean that prosecutors will have the discretion to prosecute alleged crimes either by way of indictment or by way of summary conviction. Hybridization of straight indictable offences punishable by a maximum of two, five, and 10 years will have the following effect.

Cases involving serious facts and circumstances will still be prosecuted on indictment and will still face the current maximum penalty. However, for cases involving less serious circumstances, the crown will have a choice: proceed on indictment, or, if similar cases have resulted in much shorter sentences, consider proceeding summarily, where the same sentence will result but likely more quickly.

Let me be extremely clear: reclassification reforms are not about lowering sentences. Serious conduct will continue to be treated seriously by the courts. This is one of the bold reforms that we expect will have a fundamental, cumulative impact on delays in the criminal justice system. I would also underscore that this reform is strongly supported by the provinces and territories.

I am proud of the many other reforms being proposed in Bill C-75, including with respect to improving the jury selection process. Abolishing peremptory challenges will follow long-standing reform recommendations in this country and the experience of other countries, and will finally put an end to potential jurors being excluded from serving as a result of baseless speculation, stigma, or discrimination.

Finally, I would like to draw the committee's attention to the legislative backgrounder on Bill C-75 that I tabled on May 31, as well as the accompanying charter statement. I hope these documents will help guide your study by explaining in more detail the intent of the proposed changes.

Mr. Chair, those are my comments, and I very much look forward to the questions of the honourable members.

● (1620)

The Chair: Thank you very much, Madam Minister.

We will turn this over to the Conservatives.

Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much.

Thank you, Minister, and thank you to those who are joining you here.

Let me talk just a bit about the procedure and get your thoughts on this. This is a huge bill with a lot of changes to the criminal justice system. It's over 300 pages long and, as you say, it goes into so many different areas. I was somewhat surprised that when we finally started second reading debate, Mr. Cooper, another of our colleagues, and I all got up to speak, and then I was informed I think the next day that time allocation was coming in to shut down the debate.

I'm not going to start arguing about that, but wouldn't you agree, or could we have your support, that this is not something that should take place when it's at third reading? It's important that Parliament debate these different issues and debate not be quickly shut down, because there was no suggestion on, I'm sure, my or Mr. Cooper's part that we were going to somehow keep talking about this ad infinitum.

Your thoughts...?

Hon. Jody Wilson-Raybould: I hear the question by my colleague. In terms of procedure, I would say with respect to Bill C-75 that we now have the opportunity to continue to engage in discussions around these important issues that seek to address delays in the criminal justice system, a topic that we have been having discussions about for two and a half years.

Certainly, I have benefited and we have benefited from what we've heard from reports and feedback from the round tables we've held across the country. We've benefited from Senate committee reports. But I very much look forward to what has always been the thoughtful consideration and recommendations from this committee, and certainly recognize the opportunity you have had to meet with numerous witnesses with respect to all of the different aspects of the bill.

Hon. Rob Nicholson: Thank you for that, but again, I'm hoping that when the time comes and we do debate it at third reading that the importance of this bill will justify having a considerable debate without cutting it off initially.

With respect to the hybridization of the offences, we're talking about over a hundred proposals to make indictable offences also eligible for summary conviction. I've heard from some people at the provincial level that this may fill up and jam the provincial courts, as opposed to the superior courts, if they opt for the summary conviction, but you say that the provinces were overwhelmingly in support of this. Did they say that formally or was it the result of an informal discussion? Who exactly at the provincial level been pushing for these?

Hon. Jody Wilson-Raybould: As I've had the opportunity to indicate to this committee before, and I'll reiterate, we engaged in many conversations: I with my provincial and territorial counterparts, the attorneys general, at two formal federal, provincial, and territorial meetings. As well, in-between, we continued to have conversations at officials levels, as well as at my level, around various types of reform that we could collectively put forward given the administration of justice responsibilities that we share.

At the first FPT meeting and then at the subsequent FPT meeting, we confirmed six areas of bold reform. That was the word of the provinces, that the reform be "bold". Certainly, I support the bold reform that we are proposing in many areas, including the reclassification of offences. This is one of the areas that my colleagues in the provinces and territories were supportive of.

Hon. Rob Nicholson: I'd be very interested to hear from some of them, because, as I say, I've heard that some of them are quite concerned that the provincial courts will be jammed.

With respect to the clogging up of our courts, if we give this opportunity to somebody participating in a terrorist group, for instance, and if that person has the opportunity to have that reduced to a summary conviction and to have the possibility, I suppose, of even a fine, in one sense I suppose that would speed up the process here. If you're a member of a terrorist group and you get the option of getting a summary conviction, or if somebody says you're going to have to pay $1,000 fine, I could see that, yes, you wouldn't be taking up much time in the court system. You'd say, "Jeepers, give me that one and I'm out of here."

On the other hand, there are people who would seriously question whether the whole list of these offences are of the type that they should never have the possibility of receiving a summary conviction or a very low penalty, because these offences, in and of themselves, are very serious. Have you been getting any feedback on this, or are there people talking to you who are supportive of reducing the possibility of these penalties being imposed?

● (1625)

Hon. Jody Wilson-Raybould: Certainly with respect to the clogging up of the provincial courts, I would again reiterate the need to consider Bill C-75 in its entirety when considering the impact it would have on delays.

In terms of 136 offences that we're seeking to reclassify in the Criminal Code, we have done extensive work around that. With respect to the reclassification, as I said in my remarks, this is not about changing sentencing. This is about providing additional tools to prosecutors to exercise their discretion given the facts and the circumstances of a particular individual who comes before them. This is not about changing the fundamental principles of sentencing in terms of consideration around the proportionality and the gravity of the offence and the responsibility of the accused person. That will be determined based on the offence and the circumstances.

I will say with respect to terrorism offences that there is a difference between how offences are committed, the gravity of the offence, the proportionality, and the responsibility of the accused person in whatever the situation is. As my honourable colleague likely will know, the Supreme Court of Canada has weighed in on terrorism offences and on not having different principles of sentencing around those offences.

There are a number of examples of offences—from terrorism offences to impaired driving causing bodily harm, to other offences—that can be committed in different ways. We have to ensure that we're providing tools to the prosecutors. Then, on sentencing, the judge will ultimately make the decision on the necessary tools to determine which way to proceed, because a number of the sentences, whether they be for whatever offence, could and have been shown to be less than what we're proposing, namely, two years less a day for a summary conviction offence. If a prosecutor proceeds by way of summary conviction, it will help to alleviate some of the burdens of the highly procedural aspects when proceeding by way of indictment.

The Chair: Thank you.

Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thank you, Minister, for being here today and for championing these reforms contained in Bill C-75.

I want to start by following up on a point Mr. Nicholson made. He seemed to suggest that with hybridized offences, the accused might have an option of choosing summary conviction versus an indictable offence.

My understanding was that such an option, as it exists, could be exercised only by the crown based on the circumstances of the case.

Could you clarify that for me, please?

Hon. Jody Wilson-Raybould: I hope I didn't misspeak in that regard.

The option to proceed by way of summary conviction or by way of indictment is an option that is provided to the crown prosecutor. It's not at the option of the accused person.

Mr. Ron McKinnon: I don't think you misspoke. I just needed some clarification.

Hon. Jody Wilson-Raybould: Thank you.

Mr. Ron McKinnon: What I'd actually like to talk about today is bail reform.

We know that according to police and court statistics, over half of the people currently in provincial and territorial detention facilities have not yet had a trial or been found guilty of an offence. As members pointed out during House debate, marginalized and vulnerable groups, including indigenous people, are overrepresented in this group of people being detained before trial. There's also a self-sustaining and self-perpetuating cycle of interaction with our criminal justice system. Court time and resources are disproportionately allocated to address breaches of police conditions or court conditions for bail. Many of these conditions are unrelated to an offence and do not actually serve to maintain public safety. Instead they place unnecessary burdens on vulnerable individuals, including indigenous Canadians, creating a pipeline to the prison system and making it difficult to break out of this cycle.

You mentioned these aspects in your remarks, but I hope you can comment further on what action is being taken to break this cycle and to ensure that the bail process is fair and equitable for marginalized groups, and particularly for indigenous peoples in Canada.

● (1630)

Hon. Jody Wilson-Raybould: It is a vast question in terms of the many different actions necessary to address the challenge and the sad reality of the overrepresentation of indigenous peoples in the criminal justice system, as well as of individuals who are suffering from, as you quite rightly point out, mental illness and addiction issues.

This is something that I and our government has been working very diligently to address. This reality isn't just a function of the numbers in the criminal justice system and the impact on my department, but rather reflects the reality of homelessness, poverty, the colonial legacy of dealing with indigenous peoples, the lack of services, and the need to invest more in those services. Our government is working very diligently on those things and has committed and provided resources to that end.

Because we recognize that we do not, as you say, want to continue to have a revolving door in the criminal justice system, a lot of the measures to address this reality are being taken and need to continue to be taken outside of Bill C-75.

Specifically, in terms of what we're proposing, you referenced the bail reform that we are putting forward in this proposed piece of legislation. This bill would help address the issue and the reality of indigenous peoples and other marginalized Canadians who, as you say, are overrepresented, at the bail stage by enacting the principle of restraint in the bail regime to ensure that where there are no concerns with the accused being a challenge to public safety, judicial release of that individual be considered. We're also requiring that conditions imposed by police be reasonable and necessary in the circumstances, and that law enforcement officers and others take into consideration the reality and particular circumstances indigenous peoples, as well as other marginalized Canadians, face in the justice system.

We think these measures will lead to and assist in reducing the number of individuals who are currently in remand for administration of justice offences.

Mr. Ron McKinnon: Thank you, Minister.

Along the same lines, I wanted to talk about—

The Chair: Mr. McKinnon, you only have a minute left.

Mr. Ron McKinnon: My question is longer. I'll pass.

The Chair: Thank you, Mr. McKinnon.

Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): Thanks, I appreciate it.

Good afternoon, Minister. Thank you very much for joining us as we begin this journey on C-75. I hope we're going to have ample time to thoroughly review it and discuss its merits and shortcomings in detail in the fall.

I have two specific questions I wanted to ask you, hoping that the government would be amenable to amendment. The first involves the routine police evidence question, and the second involves some of the implications of raising the minimum penalty for summary convictions. Perhaps I can start with routine police evidence.

It's pretty rare when you consult people from across the spectrum—academics and practising lawyers in different parts of the country—to get, essentially, unanimity, which is the case in our situation. When I asked these people about the problematic components of this legislation, one that everyone agreed about was that the proposed section involving police evidence being adduced by affidavit, proposed section 657.01, is in desperate need of amendment.

The routine police evidence language in the bill has been called too vague, creating an opportunity for abuse. For example, University of Alberta law professor Peter Sankoff went so far as to write that it is “extremely dangerous”. I think that it makes a lot of sense for lab results and other routine evidence to be at issue and submitted without requiring a police officer to come to court and testify. I'm totally in agreement with that. Indeed, I think that's probably what was intended, but the drafting of this section could allow even eye witness testimony to be submitted in this way.

I understand that defence counsel could come forward and ask for the right to cross-examine, and the courts are going to say yes. However, that's only going to cause more delay, and you've told us that dealing with delay is your agenda for this bill. In addition, many self-represented individuals—poor, marginalized, folks who can't afford legal aid—are not going to know what to do, causing delays and sometimes even injustices.

Can you commit to accepting amendments to this provision so that it's narrowed and clearly defines what routine police evidence consists of?

● (1635)

Hon. Jody Wilson-Raybould: Thank you for the questions and the commentary.

I do recognize that there has been commentary on various aspects of this legislation, including routine police evidence. I guess the short answer to the question is, as always, that I am open to considering amendments.

We're talking about routine police evidence. I look forward to hearing from the witnesses who will come before this committee with respect to potential clarity around the meaning of routine police evidence. Again, this measure was put into this bill to assist with the delays around that routine police evidence, leaving the discretion to the judge in the particular situation to determine... based on the interests of justice.

Again, the short answer is that I look forward to hearing the debate.

Mr. Murray Rankin: Thank you. I appreciate that.

The second issue is the implications of the summary conviction maximum penalty being raised to two years less a day. The concern that has been raised, I expect as an unintended consequence of that, according to professor and lawyer Emilie Taman, among others, is that currently the default maximum sentence for summary conviction offences is six months. However, in the case of more serious offences, the maximum penalty, even where the crown proceeds by way of summary conviction, is between six months and two years. For example, assault causing bodily harm is 18 months.

The concern is that agents like law students and paralegals currently can represent people accused of any offence where the maximum penalty is six months or less. In other words, paralegals and students can represent people for only the less serious summary conviction offences. I mentioned assault causing bodily harm.

The concern that has been expressed is that the proposal to raise the maximum penalty for summary convictions to two years less a day completely gets rid of the possibility of agent representation, which is going to cause delays in the system because many accused persons won't have any legal representation at all. We're talking about the poor, indigenous, marginalized, and the like, who can't afford legal aid in so many of our jurisdictions.

Lisa Cirillo, executive director of Downtown Legal Services at the University of Toronto, stated, “We feel there's such a huge access to justice issue in our country, we feel like they couldn't have meant to wipe out the ability of all of these clients to access legal assistance.”

Can you tell us if restricting agent representation in this way was in fact intended? If not, can you commit to amending the bill to avoid this unfortunate outcome that will cause only further delay and affect those who can least afford lawyers?

Hon. Jody Wilson-Raybould: Again, I am open to considering any amendments, and will consider any amendments put forward by this committee to ultimately improve this bill and help reduce delays in the criminal justice system.

When we're speaking about agents, the intent there was to help address the delay challenge. I do know with respect to the provinces and territories, many are and have been the authorizing jurisdiction for programs with respect to agents. Some jurisdictions have addressed this. We are currently in conversation with the provinces and territories around these types of programs, but again, I'm open to hearing concerns around that.

● (1640)

The Chair: Thank you so much.

Mr. Ehsassi.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Minister, for being here, and thanks to your officials.

I would like to focus my questions on the significant issue of delays. In your opening remarks, you highlighted how important it is to you that we improve efficiencies in the system and that we reduce delays. Could you tell us, given that you have more time now, what specific aspects of this bill will assist in that endeavour?

Hon. Jody Wilson-Raybould: I have more time now: I like that.

I really appreciate the question. I know that this is the objective that all of us are seeking to address, to answer the call by the Supreme Court of Canada that there be a culture shift in addressing delays and to ensure that we do everything we can to provide an accused person with the ability to come to trial in a reasonable time so that cases aren't stayed. The latter is not the objective of anybody. Our review of the criminal justice system sought to ensure public safety, to show compassion for victims, and to hold offenders to account.

In that capacity, and based on the instructions I received from the Prime Minister, working with my colleagues in the provinces and territories and doing extensive consultations across the country, we came to the reforms that are being put forward in Bill C-75 to address bail reforms; streamline the process with respect to bail; to look at the administration of justice offences, which are a significant cause of delay in the justice system; to look at the reclassification of offences to enable prosecutors to make determinations on how to proceed; to look at preliminary inquiries, which, like the other issues, was strongly advocated by provinces and territories for reform; and to look at judicial case management and other efficiencies that have been articulated in Bill C-75.

It's a very detailed bill, as has been said. There are a lot of aspects and technical provisions contained within it, but cumulatively, this piece of legislation will—in my mind, and I'm confident about this—address delays in the criminal justice system, along with other initiatives that our government has put forward and continues to do.

Mr. Ali Ehsassi: Thank you.

Second, in the Jordan decision, as you know, it was emphasized that all of the various actors in our systems are supposed to assist to make sure that we do not have delays in the system. Therefore, I was heartened to see in the news release that there was talk about how some collaboration has taken place between your officials and provincial and territorial officials.

To ensure that this proceeds in a standardized fashion, will there be any assistance from the government to the provinces and territories?

Hon. Jody Wilson-Raybould: In terms of financial assistance?

Mr. Ali Ehsassi: Financial or otherwise.

Hon. Jody Wilson-Raybould: I would say that in terms of our collaboration, my colleagues and I in the federal government will continue that collaborative approach with the provinces and territories. We have regular meetings among all of us to assess and reassess what we can do better and what we can do to address issues that are a challenge for, as you say, all actors in the criminal justice system, from prosecutors to defence counsel to judges.

Again, the menu of bold reforms we've put in place with Bill C-75 have come at the request of many of those provinces and territories. Last September we got to a place where we could issue a joint press release on the need to ensure that these bold reforms move, and that we continue to work together. We'll definitely continue to do that.

In terms of resources, we always have conversations about the necessary resources. Provinces and territories have expressed to me and, I certainly suspect, to my officials that a lot of these changes and reforms proposed in Bill C-75 will assist with the efficiencies and resources necessary in the criminal justice system. That's an ongoing conversation that we will have.

● (1645)

Mr. Ali Ehsassi: Thank you, Minister.

Now, I'd like to give my remaining time to—

The Chair: You don't have any remaining time.

I'm sorry. There are essentially five slots left for the rest of the round. The only way we're going to be able to get these in while the minister is still here is to make them three-minute slots. I'm going to suggest to my colleagues that everybody will get a three-minute slot going forward.

Mr. Boissonnault, go ahead for your slot.

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

Minister, as you know, section 159 has been on the books in the Criminal Code for a long time, and it's an issue that the LGBTQ community has been asking to have removed from statutes for decades.

I'm wondering if you can tell us why it matters to you as Minister of Justice and why our government is taking steps to make sure that this discriminatory provision is removed from the Criminal Code.

Hon. Jody Wilson-Raybould: As the member knows, the removal of section 159 by Bill C-75 is something that has been longstanding since we introduced Bill C-39 to ensure that we do some charter cleanup.

Section 159 in the Criminal Code has been rendered unconstitutional. It is discriminatory. Our government is committed to ensuring the rights of all Canadians and equality for all Canadians.

Another example would be the introduction and passage of Bill C-16, which you're very familiar with, with regard to gender identity and expression. It's an ongoing commitment to ensure the human rights and equality of all individuals.

Mr. Randy Boissonnault: Thank you, Minister, and thank you for your work along with Minister Goodale on Bill C-66, which we hope to see get royal assent later this week.

I want to thank you for your leadership in getting section 159 to this point so that it can come out of the Criminal Code. It means a lot to the LGBTQ community. As special adviser to the Prime Minister on LGBTQ issues, I thank you for your work on behalf of the community and on behalf of our government.

I sit on indigenous caucus on the government side, and we are interested, and I am particularly interested, in how the provisions in Bill C-75 are going to help make lives better for indigenous Canadians, reduce the overrepresentation of indigenous peoples in our criminal justice system, and see a criminal justice system that is fair and that sees people for who they are and the experiences with which they come to the criminal justice system.

If you could comment on that, I'd be grateful.

Hon. Jody Wilson-Raybould: Thank you for the question and the work that you and all members do to reduce the overrepresentation of indigenous peoples in the criminal justice system.

As I noted earlier, this is a prime objective of the reforms we're proposing with respect to bail and administration of justice offences. For one thing, these offences have a greater impact on indigenous Canadians and other marginalized Canadians, and we're also looking at making reforms that will ensure that law enforcement officers and the courts have regard for the individual circumstances of the individual before them.

There are a number of other measures that our government is moving on and proposing around transforming the justice system with respect to restorative justice and other measures that seek to rehabilitate and to address prevention. These will assist in addressing the overrepresentation of indigenous peoples in the justice system.

Do we have more work to do? We absolutely do, and we need to ensure that we're taking a whole-of-government approach that looks at health, housing, education, and the ongoing reality of the colonial legacy.

The Chair: Thank you so much.

Mr. Cooper.

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

Thank you, Madam Minister.

No one disagrees with the fact that Bill C-75 does not change sentencing principles, but it clearly waters down sentences, going from a 10-year maximum to a two-years-less-a-day maximum if prosecuted by way of summary conviction. That is clear. That is the issue, and that is what is so concerning when we're talking about offences such as impaired driving causing bodily harm, kidnapping a minor, arson for fraudulent purposes, and I could go on.

I want to ask you, Madam Minister, about some of the choices that were made in terms of listing, through Bill C-75, offences as hybrid offences.

Can you explain, for example, why you have decided to leave subsection 249(3), dangerous operation of a vehicle causing bodily harm, an indictable offence while making impaired driving causing bodily harm a hybrid offence?

● (1650)

Hon. Jody Wilson-Raybould: Maybe I can address the initial comments you made. You stated that this is going to water down sentences. I would entirely disagree with that statement.

You stated up front that this is not impacting sentencing principles; I would say that it's not impacting or watering down sentences that will come from the passage of this legislation. Prosecutors will have the discretion, based on the circumstances in the cases before them, to decide how to proceed, whether that's by way of summary conviction or by indictment.

This is not going to say that the sentence is not going to match the facts. I have confidence in the prosecutors in terms of making that decision and, ultimately, it will be a judge who decides and determines what the appropriate sentence will be.

Mr. Michael Cooper: Madam Minister, again, I've asked you a specific question, and that is to explain why, for example, dangerous operation of a vehicle causing bodily harm is an indictable offence while Bill C-75 waters down sentencing for impaired driving causing bodily harm, thus making that a hybrid offence among other offences that are being turned into hybrid offences, whereas other offences that are very similar remain indictable offences.

Hon. Jody Wilson-Raybould: I'll ask Carole to go through the process with respect to the specific events that the member raises.

Ms. Carole Morency (Director General and Senior General Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): In response to the question, the approach in Bill C-75 is to come at it from a procedural perspective, and it's looking at offences that are straight indictable now—10, five, and two years, as the minister has responded.

Perhaps implicit in the question is that the name of the offence suggests that it is only capable of being committed in one way and in the most serious way. I think that as the minister said in her opening remarks, offences recognized with the penalty structure recognize that an offence can be committed in a variety of ways, and it can range from less serious—the gravity can be less—to the more serious on the scale.

That's the approach that Bill C-75 has taken: to provide a procedural option to crowns in appropriate cases to seek to move in a more simple, expeditious way for cases that, based on existing case law, based on the circumstances of the case before the court, will dictate that it's more likely that case is going to get a sentence at that lower end of the spectrum for sentencing. It is not to suggest that the existing case law that says that a serious case that in similar circumstances should attract a penalty of eight years on a maximum of 10 should still attract a penalty of eight years if it's appropriate and proportionate to other cases in similar situations.

The Chair: Thank you very much.

Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thanks very much. I'll make a brief comment and then pass the rest of my time to Ms. Khalid.

I think this is a really important point to pick up on regarding hybrid offences. There are a lot of hybrid offences in the code now. The crowns use their discretion every day to make a decision about whether to elect to proceed summarily or by way of indictment.

Unfortunately, I think there is misinformation out there about the fact that this is something new, that summary offences are a way to basically get off with just a fine. I want to put to rest that notion, because it's mis-characterizing the good work that crowns do every day in using their discretion to make these elections. I note that there are plenty of hybrid offences on things that can range in seriousness, such as sexual assault. It's really important that we use precise language when we're talking about the work that the crowns do to not mislead people into thinking that this is an option that the accused has to make.

I would now like to give my time to Ms. Khalid for her question.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you so much, Mr. Fraser.

Thank you so much, Minister, for your time and for coming in today.

I have a question about intimate partner violence. The law and the judiciary have really been pushing the needle forward on this in cases such as Ewanchuk, where the defence of implied consent was rejected, and Lavallee, where the battered woman syndrome was recognized officially, and now we have legislation.

Can you please explain how Bill C-75 will move forward progress on intimate partner violence? Second, we know the judiciary plays a huge role in this as well, in sensitivity and understanding gender diversity. For the record, can you also explain what is the percentage of women on our benches and how we are moving that forward as well?

Thank you.

● (1655)

Hon. Jody Wilson-Raybould: Those are two really important questions, and I'll take the latter first.

In terms of the judiciary, I'm incredibly pleased to have a new judicial appointments process that has resulted in more women than men being appointed to the bench, overall, as superior court justices across the country. The number is in the range of 38% now being women. The number might be a little bit higher. I'll get the exact percentage for the committee, but the number is continuing to increase based on the judicial appointments that we've been able to make over the course of two years, which will have an impact in ensuring that the bench represents the diversity of the country.

In terms of measures—and I'll go quickly, Mr. Chair—of intimate partner violence, there are a number of measures, really important ones, that we're proposing to strengthen our response to intimate partner violence.

Around bail, there's imposing a reverse onus. At bail, we are seeking to require the courts to consider whether an accused is charged with intimate partner violence when determining whether to release that accused person. We're clarifying that strangulation and choking are elevated forms of assault. We are further, as I said in my opening remarks, defining what an intimate partner is to include former spouses, common-law partners, and dating partners. We're clarifying the current sentencing provisions and we're allowing for the possibility of seeking a higher maximum penalty in cases involving repeat intimate partner offenders.

The Chair: You did indeed do that quickly. Thank you so much.

Mr. MacKenzie.

Mr. Dave MacKenzie (Oxford, CPC): Thank you to the minister.

Minister, there are some changes proposed that would allow for remote audio or video conferencing to be added to the code. I'm wondering if you could explain how the rights of the accused to cross-examine the witnesses can be safeguarded and how the whole process would work.

In particular, I think we have many courtrooms that are not equipped with video conferencing capabilities. It's probably fine in large urban areas, but in many parts of the country I'm not sure how you intend that to roll out.

Hon. Jody Wilson-Raybould: I think it's an important question.

We're looking at including measures to enhance the ability of remote appearances, recognizing—as you quite rightly point out—that the technology is not necessarily there in all jurisdictions. That's something that we continue to have conversations about with my counterparts in the provinces and territories.

With respect to remote appearances enabling and allowing the accused to appear remotely, that certainly doesn't take away from the ability to cross-examine an accused person. Permitting participants to proceed by way of remote appearances, as well as potentially judges in particular circumstances, none of these measures are intended to take away from the ability to cross-examine an accused in an appropriate manner. The intent behind these proposed changes is to assist in alleviating delays due to travel and the necessity to continue to delay if someone's not available and outside of the location.

Mr. Dave MacKenzie: Would you suggest that the federal government will provide sufficient funds for some of those jurisdictions to implement video conferencing capabilities?

Hon. Jody Wilson-Raybould: As I said, we continue to have discussions around remote appearances working with our partners in the provinces and territories. I do just want to give Carole an opportunity to speak to one specific point.

Ms. Carole Morency: I just want to point out that Bill C-75 does address some of the key principles that will govern under what circumstances a remote appearance would be appropriate. It directs the court to consider all of the circumstances, including the rights of the accused to a fair, just trial, to make full answer and defence, and the circumstances where it would be appropriate, where the technology exists and for what types of procedures.

That is addressed in the bill and we'd be happy to answer other questions.

● (1700)

The Chair: Thanks.

Last, but never least, we have Mr. Rankin.

Mr. Murray Rankin: I am happy to defer to my colleagues who haven't had a chance to ask questions, or would like to ask more.

The Chair: That's very kind, although every single member of the committee at this point has had the right to intervene.

Mr. Murray Rankin: Mr. Fraser did not technically ask a question.

The Chair: You're correct. However, the minister actually needs to go at five.

Mr. Fraser, did you have a brief question, which Mr. Rankin has so kindly offered you?

Mr. Colin Fraser: Thank you very much, Mr. Chair. I'll be very brief.

Thank you, Mr. Rankin.

Minister, thanks so much for coming.

I have a question regarding the elimination of peremptory challenges. I know that in England they got rid of peremptory challenges in 1988 as a means to have more fairness in the system.

I'd like to hear you comment on how you think eliminating peremptory challenges will make the criminal justice system more fair.

Hon. Jody Wilson-Raybould: I appreciate the question. The elimination of peremptory challenges is one aspect of the jury reforms we're proposing in Bill C-75. Peremptory challenges—which is the ability of a crown or a defence counsel to eliminate an individual without giving a reason—have been considered to not provide, or to discriminate against, a broad diversity of individuals sitting on a jury.

Through the other measures in the proposed changes, we're seeking to ensure that there is the ability to have diversity on a jury.

We're going to continue to work with the provinces and territories around other reforms with respect to jury selection, given the responsibilities that provinces and territories have around lists and bringing individuals in to serve on juries, to ensure that there is a diversity of perspectives of individuals who sit on juries.

Mr. Colin Fraser: Thank you.

The Chair: Minister Wilson-Raybould, Ms. Morency, and Mr. Taylor, thank you so much for appearing before us today.

It's very much appreciated, and we really appreciate you adjusting your schedule based on the votes.

Hon. Jody Wilson-Raybould: Not a problem.

Thank you, everybody.

The Chair: Thank you.

We have an in camera meeting, so we're going to suspend until the room has been cleared.

[*Proceedings continue in camera*]