



House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 051 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Thursday, February 22, 2007

—
Chair

Mr. Art Hanger

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Justice and Human Rights

Thursday, February 22, 2007

• (0905)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call the Standing Committee on Justice and Human Rights to order.

We are here pursuant to the order of reference for Wednesday, November 1, 2006, Bill C-299, An Act to amend the Criminal Code, the Canada Evidence Act and the Competition Act (personal information obtained by fraud).

First on the agenda will be witnesses from the Department of Justice. We will hear testimony from Mr. William Bartlett, senior counsel, criminal law policy section, and Ms. Joanne Klineberg, counsel, criminal law policy section. Following these presentations we will hear from a member of Parliament, Mr. James Rajotte.

Go ahead, Mr. Moore.

Mr. James Moore (Parliamentary Secretary to the Minister of Public Works and Government Services and Minister for the Pacific Gateway and the Vancouver-Whistler Olympics): I have a presentation on behalf of the government to speak to the bill. Is that okay?

The Chair: Feel free, Mr. Moore.

Mr. Rob Moore: As committee members know, prior to this meeting, numerous government amendments were distributed to the committee. I wanted to address them up front, and then we can go through them amendment by amendment. Mr. Rajotte mentioned in his remarks last week that the government amendments are considered friendly and within the scope of the legislation.

Mr. Rajotte's bill, Bill C-299, seeks to address the problem of identity theft in our country. The intention of the bill is certainly admirable. The government, however, could not support the bill as it was originally drafted, for a number of reasons. Reasons were also identified by some opposition members during debate on its second reading.

The amendments the government is moving today will focus the bill on clauses dealing only with the Criminal Code. That's further to the last committee meeting also, when we heard from most members on a desire to narrow the scope of the bill and also to further modify the language. There were some questions raised about the language in the bill.

Specifically, the amendments we're moving seek to define identification information to mean information about any person, living or dead, that is capable of being used, whether alone or in conjunction with other information, to identify that person. The

amended definition will move away from personal information as defined, which is captured under PIPEDA and was identified as problematic by members of this committee.

The amendments we're moving also seek to clarify the scope of the proposed offences. As drafted originally, the offences were very broad and only captured personal information obtained through deception from a third person. The original drafting also did not specify that the information was obtained or distributed with criminal intent.

The government amendments further specify identification information obtained, sold, or otherwise disclosed from any person by a false pretense, or by fraud or with intent to commit fraud, or personation offences under sections 380 or 403 of the Criminal Code. It's narrowing the scope of the bill.

The other amendments seek to delete the clauses dealing with the Competition Act and the Canada Evidence Act. Members will see, when we come up to them, that it's simply deleting those provisions of the bill that deal with the Competition Act and the Canada Evidence Act, leaving only those provisions dealing with the Criminal Code.

Mr. Rajotte has suggested that the elements of the bill dealing with the Competition Act and PIPEDA could be referred to the Standing Committee on Access to Information, Privacy and Ethics, which is presently conducting a legislative review of the PIPEDA legislation and has a mandate and expertise to better consider these matters. That's a matter for the committee. The government is currently considering the submissions it received on the broader issue of identity theft and will respond accordingly.

Those are my opening remarks. I think as you see the amendments, their intent will be clarified, but basically it's a series of amendments to narrow the bill and better define what's left in the provisions related to the Criminal Code.

The Chair: Mr. Moore, I have a point of clarification for the committee. Do the amendments and changes you're proposing deal only with the Criminal Code and not the Canada Evidence Act or the Competition Act?

Mr. Rob Moore: Right.

The Chair: Okay. So there's nothing under the Canada Evidence Act here. All amendments relating to the Canada Evidence Act are—

Mr. Rob Moore: Right.

The Chair: Just to the Criminal Code.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Mr. Chairman, I have a housekeeping matter.

The amendment that circulated—G-2, I guess—had in the pith of it the definition of “identification information”. My copy—and I guess my colleagues' copies as well—does not have what must be page 2 of that first amendment, the continuation of 1.1. So is there a page 2 that we could get? It continues with the “identification information” definition, which—

● (0910)

The Chair: Are you referring to G-1, G-2, G-3, etc.?

Mr. Brian Murphy: Yes, but G-2 must have two pages, because it says page 1, and then we're not quite getting all of the “identification information” definition.

The Chair: There's nothing on the back of that page?

Mr. Brian Murphy: No.

The Chair: All right. Are they getting copies?

Everyone now has a copy of the full page on amendment G-2. I assume so.

Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): They're in the process of distributing.

The Chair: I will then call upon Mr. William Bartlett to make his statement, please.

Mr. William Bartlett (Senior Counsel, Criminal Law Policy Section, Department of Justice): Thank you, Mr. Chairman, members of the committee.

I think Mr. Moore has pretty much summarized the general purpose and intent of these amendments. I'll keep my comments very brief, and then I think perhaps we can be of service to the committee by simply answering any questions you may have about the amendments. I won't address the issue of the Canada Evidence Act or the Competition Act, but I understand the government will be proposing that those sections simply be defeated. I can briefly address the issue of the Canada Evidence Act, if you wish, but I really have no expertise in the Competition Act.

With regard to the Criminal Code provisions, as Mr. Moore noted, there are concerns with their over-breadth and arbitrariness in terms of the reach they would have and the difficulty that causes in terms of charter challenges. The definition of “personal information”, which is taken from the definition of “personal information” in PIPEDA and is designed to deal with information held by businesses and to require businesses to protect that information, is very broad. Basically I'll read it to you. It means any:

information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

So basically, the core of that definition is “information about an identifiable individual”. It does not necessarily mean information that identifies the individual. It could be their shopping preferences. It could be anything that is information about them. And businesses hold a very wide range of information.

The proposal is to delete the definition of “personal information” as taken from PIPEDA, but to replace it with a crafted definition of

“identification information”, which basically is information that is capable of identifying information, either alone or taken with other information. That is crafted to speak to the criminal purpose that is then added to the two provisions in clause 2 that would remain, and that is to use that information for what is broadly called identity theft, but in particular it would be to use the information to commit fraud or personation.

The proposed offence that now appears at clause 2 as proposed paragraph 362(1)(f), which is the false pretences section of the Criminal Code, is about counselling another person. The amendment would delete that proposed offence, simply because it would duplicate what effect the Criminal Code provisions already have in regard to counselling. It is already an offence, pursuant to other provisions of the Criminal Code, to counsel someone to commit an offence. And there are two different provisions for what the applicable penalty is if the person then goes on to actually commit the offence, or doesn't. The penalty varies, but there is an applicable offence for counselling a person to commit an offence, whether or not they actually go on to commit the offence. So this would simply duplicate the effect of those provisions.

The two remaining offences, then, or paragraphs that create essentially distinct offences, would be obtaining personal information through a false pretense or by fraud. It is proposed to delete the requirement that it be obtained from a third party, simply because in pretexting sometimes the person about whom you wish to get the information is the target for the obtaining of the information. Sometimes the pretexter actually gets the information from the person himself. In the business context, yes, you are dealing with third parties, but in terms of identity theft, sometimes the person himself is the source of the information.

● (0915)

The amendment would then go on to add the criminal purpose of intent to use the information to commit an offence under clause 3, which is fraud, or section 403, which is personation. Similarly, the offence of selling or otherwise disclosing the information—the identification information obtained from any person—would have the further criminal purpose of doing so knowing that the information is intended to be used to commit the offence of fraud or personation. Of course, that offence would be committed regardless of whether the person actually goes on to commit that offence of fraud or personation. The offence would be complete if the person knew that the information was intended to be used to commit that offence.

The further offence that would be established... In clause 3 of the bill, from section 403, which is the personation offence, the proposal would be that the clause simply be deleted from the bill. As phrased, it has no further criminal purpose, and if a further criminal purpose were added, it really wouldn't add very much to the personation section, which is already quite broad in terms of...

The purpose of personation is to gain any advantage. I could read to you from section 403, but it's already quite a broad section. Adding a further criminal purpose to the intent to obtain personal information through personation would be circular, because it would be an intent to then go on to commit fraud or personation. But it really wouldn't add much to the current, quite broad scope of the personation offence as it stands.

The Canada Evidence Act provision would prevent information obtained in this fashion from being used as evidence. And indeed, a crown counsel might well want to be able to use this information in an identity theft prosecution. The information does have a distinct evidentiary purpose in proceedings concerning the very activities involved in the pretexting done to obtain this information and the identity theft that then proceeds from it.

Mr. Chairman and members of the committee, that's an explanation of the amendments before you. We'd be happy to answer any further questions you have.

• (0920)

The Chair: Thank you.

Is it the committee's desire to ask questions now or to wait for Mr. Rajotte to come and make a presentation? Do you want to ask questions now?

Okay. We'll go to Mr. Murphy.

Mr. Brian Murphy: Thank you, Mr. Chairman, and thank you, Mr. Bartlett.

Just as a matter of helping us understand, the Criminal Code is a pretty large book, and it has at the beginning of it, in section 2, some definitions that might be used later on. The original intent of Bill C-299 was to throw in personal information under section 2, as a defined item, by referring it to PIPEDA and that sort of thing.

My understanding was that PIPEDA wasn't going to work, for a number of reasons, but particularly because it wasn't personal information that was in there, and therefore it wouldn't help the spirit of this act. The amendment seems to make sense.

Just as a matter of form, in the same manner in which you did PIPEDA in section 2, why didn't you throw the new definition of identification information into section 2? When you look at proposed paragraph 362(1)(e), for instance, on false pretence, the principal definitions, like "organization" and "false pretense", are in section 2. It's just a matter of form. I'm just wondering why that was done that way. I don't know if I should ask Mr. Moore or you or whomever.

Mr. William Bartlett: Mr. Murphy, we tend to put definitions in section 2 only if the term being defined appears in several places in the code. I must say that the structure isn't perfect and the form isn't always followed. Generally, section 2 should be reserved for those terms that are going to appear in several different places in the code. Sometimes a definition appears in only one part and the term is only used in that part.

Because we're crafting this definition only for the purpose of this particular offence, it simply makes the most sense and it's probably the most user friendly if the definition actually appears in the section itself.

Mr. Brian Murphy: I understand what you're saying, because "organization" and "person" have wide applications. On the other hand, when it's only a footnote for the future, as we keep patchworking this book, information clearly has a wide application in the code and it is not in section 2. What is information? That's for another day.

The second point I had is with respect to the concerns of pretexting from non-police force individuals. I think you've seen their brief.

Mr. William Bartlett: Yes.

Mr. Brian Murphy: In particular, for the Council of Private Investigators—Ontario, their concerns are that the pretexting that they feel they have the right to perform in their jobs is not as well protected as the police force's right to pretext is.

I'm not saying that I'm in total agreement with the private investigators group, but in the way I read these amendments, I think there's nothing in these amendments that assuages any of their concerns. Am I correct about that?

Mr. William Bartlett: I think you should assuage most of their concerns. If they are simply pretexting, pretending to be persons they're not or using fraud or false pretences to obtain information for the purposes of the investigation, they're simply amassing the information to report to their client or whomever. They then won't be covered by the offences because they won't have the further criminal purpose of using that information to commit fraud or impersonation.

Are there occasions when they might use the information they obtain to then go on to commit fraud or impersonation? I can't comment on whether or not it would ever be something they would engage in during the course of the investigation, but I would hope not.

It is somewhat different for the police. There may still be occasions in which the police will gain information through false pretenses, and as part of undercover investigations, the information might be used in that fashion. The amendments would certainly narrow the difficulties it would create for police. The subsection 25 (1) law enforcement justification is there to provide protection when they go on to commit further offences or to engage in further criminal conduct.

I would think the private investigators should be pretty much exempt from an offence where the requirement is not simply that they use fraud to obtain the information but that they do so for the purpose of going on to commit fraud or impersonation.

• (0925)

Mr. Brian Murphy: All right.

Finally, on the term "identification information", it seems very clear to me what it is. It's not that I'm accusing you of plagiarism or anything, but in coming up with that, did you compare and pick from any other statute in Canada or elsewhere to get that definition?

Let me put it this way. Is there something similar out there?

Ms. Joanne Klineberg (Counsel, Criminal Law Policy Section, Department of Justice): In the course of the department's work, it has been ongoing for a period of time on the issue of identity theft. During the course of that work, we have amassed a large number of identity theft criminal statutes, most of which are from the United States, at the federal level and in probably about 45 or 48 states at this point. There are also two models to work with from Australia, and one is actually very recent.

We've gathered all of those. No two are identical, but they all offer fairly similar content in terms of the scope, the types of things that are included, and the way in which they're described. We certainly borrow from those.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: You said that over a period of time you've been amassing different definitions. How long has it been?

Ms. Joanne Klineberg: I believe the department started working on the issue of identity theft a number of years ago, when it was raised by the police community as an issue we should be looking at. A number of public consultation documents have been released. In the development of those documents and subsequently, as a routine matter, we track legislative developments in other jurisdictions.

Hon. Marlene Jennings: So if I understand you correctly, you say it's been a couple of years, so the work and consultations on how to deal with this issue and bring forth legislation to deal with it began under the previous government.

Ms. Joanne Klineberg: Yes.

Hon. Marlene Jennings: Thank you.

Given that you've done this research over the past couple of years, including under the previous Liberal government, on the definitions that have been created and used in foreign jurisdictions, is there any case law on those provisions creating the definition in the foreign jurisdictions? If so, what has been the result of the case law? Has it withstood challenge?

Ms. Joanne Klineberg: Even in the United States, legislation dealing with identity theft is fairly new and young. On the cases we have been able to locate so far, I can't recollect any that deal with the definition.

Hon. Marlene Jennings: Thank you.

The Chair: Mr. Ménard.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): To be clear, I don't object to the amendment to section 362. The expression "identification information" is very broad but since it is related to a specific offence of false pretense, it may withstand a challenge.

I would like you to remind us of the scope of sections 380 and 403. What are the elements of the offence?

• (0930)

[English]

Mr. William Bartlett: The fraud offence is quite broad-based and covers a great deal of ground. It's the most commonly used offence whenever any kind of fraudulent activity is involved. There are a number of more specific offences in the Criminal Code that deal with activity of a fraudulent nature, but for the most part the police and

crown attorneys dealing with this find that the fraud offence is broad enough that it covers the vast majority of cases they encounter. They tend to use it more often than the more specialized offences.

It simply covers:

Every one who by deceit, falsehood or other fraudulent means, whether or not it's a false pretense...defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service.

So it's a very broad-based offence that covers fraud in a very wide sense.

Personation is a somewhat more specialized offence and involves fraudulently personating any person, living or dead. Now there is pretending to be that person, but it is a fairly broad purpose, if you will, in that it is "with intent to gain advantage for himself or another person" or "with intent to obtain any property or an interest in any property, or with intent to cause disadvantage to the person whom he personates or another person". It covers a very broad range of intents in pretending to be someone else.

[Translation]

Mr. Réal Ménard: You said that it would have been useful to know how many individuals had been convicted under section 362. Is section 362 a false pretense provision that has been used to reach the desired objectives? I don't think you have any data for us as to the use of the false pretense offence.

[English]

Mr. William Bartlett: The false pretense offence now is a little bit more focused on false pretense to obtain some particular good or service—obtaining credit by a false pretense. There are a number of subsections, but obtains credit, loans, personal property.... It's fairly focused on a false pretense to obtain a particular—

[Translation]

Mr. Réal Ménard: When Mr. Rajotte introduced his bill, the type of offence that he wanted to cover and the way in which it had been used were unclear. Now, I understand the purpose of the amendments before us this morning. We are rather inclined to agree with these amendments. I understand the scope of "identification information", but how often has section 362 been used in the past?

[English]

Mr. William Bartlett: The existing false pretenses offence is, again, a fairly common offence where what the false pretense is used to obtain is the particular kind of target that the current false pretenses offence sets out—credit, loans, that sort of thing. In those situations it's quite frequently charged.

The fraud offence could, in many of those cases, be used as well, but the false pretense offence is a little bit more focused in on what in particular you're using the false pretense to obtain. And where it's one of the things that is targeted in the false pretenses offence, they would very often charge that offence.

• (0935)

The Chair: Thank you, Mr. Ménard.

Mr. Bartlett, I have a question.

I've now had the opportunity to attend three identity theft conferences put on by law enforcement. One of their main complaints when dealing with organized criminal activity, which really garners a lot of money through identity theft and the activity they engage in, which would be, if it's on the plastic side, for instance, false identifications or even those of known persons.... In some cases, they've been known to possess up to 150 different credit cards that are being used on a regular basis until they're of no value. Depending on the limits that are set on these things, it could generate a lot of money. In fact, I think there are multi-millions of dollars that are obtained through identity theft.

Law enforcement will catch these people with all of these credit cards in their possession. Law enforcement authorities complain that to actually convict them of an offence with all this plastic, the only opportunity they really have to convict is on the most recent use of that particular card they possess or that they were in possession of, and all the rest of the plastic, whether used or not, becomes redundant.

Of course, it's difficult to put a conspiracy charge together, if you will, that the intent of this person was to go into a broad conspiracy to steal money from institutions or whatever.

Does anything in this bill address that issue?

Mr. William Bartlett: Mr. Chairman, no.

This bill deals with pretexting, and that's one particular kind of activity involved in the overall panoply of activities that are what we call identity theft.

Perhaps I'll ask Ms. Klineberg to address the particular issue of credit cards. There are a number of particular provisions in the Criminal Code that address possession and misuse of credit cards.

But in general, one of the things we are looking at in the identity theft initiative that Ms. Klineberg spoke about is these sorts of preparatory activities, if you will.

Whether it's in the form of a credit card or whether it's in the form of passwords and other information that can be used to access bank accounts, or whatever form it may take, before the stolen identity actually gets used...and in many cases it may be used well down the line. That is, when criminal organizations are involved, sometimes the activity is broken down into a chain, and the people who do the actual identity theft pass that on to other people, who then use it for the purpose of actually pulling out the money from bank accounts or credit card accounts. It's that preparatory activity we're very much focusing on.

But perhaps I can ask—

Ms. Joanne Klineberg: It's a very interesting question, which ties in nicely with the question Mr. Murphy asked in relation to the use of the term "information" in the Criminal Code. The Criminal Code's dealings with information are a fairly new development in the criminal law, and one of the reasons why identity theft and pretending are issues is that existing criminal offences for theft and false pretense and even fraud are all aimed at deception or taking something "of value". The courts have said that information is not "of value" in that way, because someone can obtain information, but

the person whose information it is, is not thereby deprived of that information.

So the only thing that is lost is control of the information, perhaps privacy of the information, and as well, the risk is created as to how that information might be used, but the person to whom the information relates has not suffered theft or fraud or false pretense the way these things are defined in the Criminal Code. That had always been the case, and in the early 1980s, I think it was, when credit cards were becoming a major form of payment, credit card information was acknowledged as a specific type of information that was not caught by the general provisions of theft and fraud and false pretense of the Criminal Code, because it's merely information.

So specific credit card offences were enacted. They were the first form of identity theft offences, you might say, because they targeted the information itself, which has no value in itself but has value for what it provides access to. That's the way in which information is different from the regular types of property the criminal law is concerned with.

So on the issue of credit cards, we do have long-standing offences in the Criminal Code, which is not to say they're easy to prove in any given case, but they do cover the full range of activities fairly comprehensively. So it isn't merely using a credit card, but it's also an offence to possess a credit card, whether it's an authentic credit card or a forged or falsified credit card, if you know that it was obtained or altered by the commission of a crime. So if someone is caught in possession of dozens and dozens of credit cards, there may be, under the circumstances, a fairly strong inference that the person knew those credit cards had been obtained by the commission of an offence.

There are also offences for possession, use, and trafficking in credit card data, so even if you don't have someone found in possession of the cards themselves, whether they're authentic cards or forged cards, if they've got lists and lists of just the numbers, that can also be an offence. This is not to diminish the law enforcement challenges that may be out there in terms of proving these cases, but on the credit card issue, the law got out a long time ago.

● (0940)

The Chair: Yes. I'm raising that point given the fact that I know when law enforcement deals with an individual, it's not so often because of possession of the data, but because of the possession of the instrument itself. To prove it in a court of law is another matter completely, and they decided not to proceed in that fashion due to the time it takes to put all that conspiracy evidence together. It's not logical.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): My question is for Mr. Barlett. I will give you an example from Quebec. I would like to be sure that this bill provides for this type of case.

In Quebec, we have health insurance cards which allow us to obtain free medical services from government. We also have a birth registration system which is different from that of other provinces. In the past, the system was managed by the churches, but it is now managed by the state. Barely a year and a half ago, some people used the birth certificate of deceased individuals for themselves. Through this subterfuge, they obtained health insurance cards and social insurance numbers because they just so happened to have reached the age when they could obtain them.

However, they did not ask for credit. These people were caught out almost 15 or 20 years later, when they asked to receive the old age security pension under someone else's identity. It should be said that these people had entered the country illegally and that they had created an identity for themselves. So, they were not caught until they decided to ask for OAS. Perhaps they had been living under a false identity for 10 years or so. They had managed to obtain health insurance cards and driver's licences. That's why people are now forced to get their photos taken every two years.

Because there was impersonation before this new legislation applied, they were able to use their own photos on a real licence with a real identity, but one that belonged to a deceased person. They obtained all sorts of things over the course of their lives, for almost 15 years. They did not create new identities for themselves, they stole them. All the services they managed to obtain were for themselves. They did not defraud anyone, they paid taxes under an identity which did not belong to them. These people may be good citizens, but at the end of the day, that identity is not theirs. These people benefited from government services like health insurance, employment insurance, etc.

I would like to know if this bill covers that.

• (0945)

[English]

Mr. William Bartlett: Mr. Petit, it is not covered under this bill, as it's focused, or probably not, because it deals with using some sort of fraud or false pretenses to obtain the information that they then create the identity from. I would assume that in the cases you're talking about, they probably got this information in other ways. They may have used fraud or false pretenses to obtain the information, although if it involves simply, as is often the case, taking information off tombstones, for example, perhaps not. So it may not catch them because it doesn't get the means by which they go about collecting the identity information, although it might.

Perhaps I'll ask Ms. Klineberg to comment. This is an issue we're certainly alive to in terms of the broader initiative the government is engaged in.

Ms. Joanne Klineberg: What I was going to add was that I think the existing personation offence would cover the full range of that person's behaviour: they took the identity of a person who was deceased, so that falls within the ambit of personation, and they pretended to be that person by using their name over the course of a period of years, for the advantage of being able to access government services they otherwise might not have been able to access—if they were in the country illegally, and whatnot.

There is some jurisprudence under the personation offence that says even if a person pays taxes in the false name, or takes out

telephone services in the false name and pays the bills, the portion of personation that says "to gain an advantage" is broader than "to gain property". They're not actually gaining any property through the deception, but they're gaining the advantage of being able to operate under a false name.

I think the initial taking of the information, if a false pretense were used to obtain that initial birth certificate, would fall under Bill C-299 with the proposed amendments, and every subsequent act would be personation.

The Chair: Thank you, Mr. Petit.

Mr. Lee, you're next in the speaking order, but I'm going to call Mr. Rajotte right after.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): My colleagues have already made a similar point to me.

But thank you.

I was having fun conjuring up how I might personate a dead person. Some people have suggested that you have to have a criminal mind to do a really good job of crafting criminal legislation. I tread on this with a bit of trepidation.

On a serious note, I'm very hopeful that these sections, if adopted by the House and the Senate, will become components of the laws that are used to prosecute criminal organizations. Currently it's probably a missing piece.

My question is technical. In the amendment proposed to clause 2, under proposed paragraph (e), it says: "obtains identification from any person by a false pretense or by fraud". It occurred to me that there could also be a theft scenario. In other words, why wouldn't we include a theft as a trigger point in the definition? Someone may obtain my personal or financial information by a false pretense or fraud, or they may simply steal my wallet or credit card.

Is there any reason why we've left that out? The most obvious way to lose your personal information is when somebody steals it from you. Or what if they do it just by observing? I guess observing isn't covered here.

Could you comment on whether the theft of the document should be included here, so that it's more comprehensive and covers more real-life scenarios?

Having said that, Mr. Chair, I recognize that we will probably come back to this in the future to do a rewrite and modification, as things evolve. But I'm delighted to have one kick at the can now.

Thank you.

• (0950)

Ms. Joanne Klineberg: That's a very interesting question.

Two weeks ago, we were here as you discussed Bill C-299, and I think this committee identified pretexting as one of a number of ways in which information could be obtained for later use in identity theft and identity fraud. That's the scope of Bill C-299, as it was brought to this committee.

Are there other ways in which identity thieves gather and collect information for the same purposes? There are. As was addressed in a letter by the Canadian Bar Association, this committee also identified that you then get into some complex and comprehensive issues, in terms of exactly what you would want to capture. Yes, that is an issue.

As to what this committee might want to do with that, I guess you would have to consider the scope of this legislation, as it was brought to you, and those larger types of issues.

Mr. William Bartlett: To further comment, the concept of theft of information, as Ms. Klineberg noted earlier, is a somewhat difficult one, because the law has not generally regarded information as having value by itself.

What we've been focusing on in terms of the government's identity theft initiative is simply the preparatory steps of obtaining information for certain purposes.

Frankly, I don't think it would be helpful to try to get into the area of the theft of information as such. I don't think it would be within the scope of this bill. But the concept of stealing as theft of information is very difficult in terms of the law, whereas if you deal with it simply in the context of obtaining the information, which is how we're approaching it, for certain purposes as part of a preparatory step, you avoid some of the minefields of getting into the difficulties of what theft means when it comes to information.

Mr. Derek Lee: Okay, I'll accept that explanation. But if someone steals my ID card, it's not covered by this section, is it?

Ms. Joanne Klineberg: Well, it wouldn't be covered by this section, but that would actually not be a disadvantage. Stealing someone's identity card is the offence of theft. That can be proved without having to prove the intent to use it to commit fraud or personation, which these motions would add to these offences. So the stealing of the card itself is already a criminal offence, which would be easier to prove than this.

Mr. Derek Lee: But the card is only worth 1.5¢. Isn't that true? If the stolen card is only worth 1.5¢, you'd be prosecuting for a "theft under", I'm afraid. The theft wouldn't pertain to the value of the card. It could be a debit card, one of these octopus cards, electronic wallet cards. I mean, all this stuff is out there.

Anyway, I'll stop there. I've made the point, and I'll see where we go later.

Thank you, Mr. Chair.

• (0955)

The Chair: Thank you, Mr. Lee.

I'll ask Mr. Rajotte to join us at the table.

Mr. Thompson has a quick question.

Mr. Myron Thompson (Wild Rose, CPC): I'm curious with regard to this whole issue. As things happen, you keep information and get prepared for doing something different that needs to be done.

I've listened to the debate, and Joe Sixpack, the normal guy who's listening to all these things...a lot of people start panicking. They ask me where to get information as to what to do.

You hear the debates out there. Don't give your credit card to a waitress. Don't sign the back of the card. Yet the company says you must sign the back of the card.

People would like to do all they can to protect themselves from these things. Is there an information package or anything of that nature that the justice department throws together to feed common old Joe Sixpack, so he knows he shouldn't crumple up his receipt and throw it in the garbage can and things like that?

Ms. Joanne Klineberg: At present I don't think the Department of Justice has information packages. The Department of Justice really only has authority to look at this issue from the perspective of how we can amend the criminal laws in this area. If that were to take place at some point in the future, I think there would certainly be consumer protection-type self-help information packages prepared

I'm certain the Department of Industry has consumer protection. They have their website. They have information packages. They address this issue from a consumer protection perspective.

Law enforcement has a lot of information on this. The banking sector and other sectors of industry have lots and lots of material on how consumers can protect themselves, as well as the Department of Industry, at least, and possibly some other federal departments.

Mr. Myron Thompson: Thank you.

Mr. William Bartlett: There is a broader identity theft initiative involving Industry and some other departments, which includes things like consumer information. You're quite right, Mr. Thompson. There are a lot of things that people can do to protect themselves, and probably need to know to protect themselves, and a lot that can be done in terms of industry practices.

I was somewhat surprised, recently, to find out that when you go to a hotel and they give you one of those plastic cards that opens the door, you shouldn't turn that card in. You should destroy it. If you gave a credit card when you registered, that credit card information is on the key.

Mr. Myron Thompson: Is that right? I didn't realize that.

Mr. William Bartlett: If you turn that card in at the hotel, you're giving them something from which that credit card information can be pulled off.

I just found that out myself. Now I destroy that plastic card. I take it with me, and when I get it home I cut it up.

I have a shredder at home, and I shred everything with my credit card information on it. A lot of personal information is pulled out of the garbage. If you put it out in the garbage, then it's pretty much open season.

You're quite right. There's a tremendous amount in terms of simply preventing it from happening that individuals can do to protect themselves and that business can do to help them protect themselves.

Mr. Myron Thompson: I'll certainly not turn my cards or keys back in. Thank you for that.

The Chair: Thank you, Mr. Thompson.

I'm going to ask Mr. Rajotte to present. At the same time I'll ask the justice department officials to remain, because I know there are some other questions. Mr. St. Amand has some questions, but I'm going to ask Mr. St. Amand to please just stand by until Mr. Rajotte presents.

Colleagues, I have to say that the bills that come to this particular committee usually look different when they leave. I see that yours has been reduced to about one page, unfortunately.

Mr. Derek Lee: It's a good page.

The Chair: It's a good page, yes.

Go ahead, Mr. Rajotte.

● (1000)

Mr. James Rajotte (Edmonton—Leduc, CPC): Thank you, Mr. Chairman. I appreciate that.

I did make quite an extensive presentation the last time we had this, so I don't want to make too long a presentation. Obviously I accept the amendments.

I do want to say something about the process.

I don't come from a criminal law background. I come from more of an industry, science, and technology background. It's interesting that Mr. Bartlett was before our committee recently on Bill C-26; he has expertise in a lot of areas.

I actually think this process has been quite healthy. It started when I read an article in *Macleans* magazine about our current Privacy Commissioner's phone records being accessed. I approached the legislative office and said I wanted to do a private member's bill on this issue. I was drawn for the first time and submitted the bill.

I had some very helpful suggestions at second reading from members of this committee from all parties. They said they liked the intent of the bill and that it addressed part of the identity theft problem, but that they would like these sections to be clarified. I think Mr. Murphy raised the issue of definition of information at that time, and why I had chosen PIPEDA. I think Mr. Moore as well raised a lot of questions about the Criminal Code sections.

Obviously, what the government has suggested is taking the Competition Act amendments not as amendments but as policy statements and putting them to the committee reviewing PIPEDA legislation; I've accepted that. The amendments they've suggested today, in my own view, have improved the bill and have accomplished the intent of what I set out to do in the beginning.

I think it's been a healthy process overall, and I appreciate this committee's work on it. I think it's been excellent from all parties' points of view. I should also recognize Monsieur Ménard and Mr. Comartin for their speeches in the House of Commons; I think they were very good as well. I appreciate that, and I also appreciate the officials' being here and being so responsive.

With that, Mr. Chairman, I am open for any questions members may have.

The Chair: Thank you, Mr. Rajotte.

Go ahead, Mr. St. Amand.

Mr. Lloyd St. Amand (Brant, Lib.): Thank you, Mr. Chair.

This may have been covered during Mr. Rajotte's earlier presentation, so if I'm being repetitious, I know you'll cut me off.

Mr. Rajotte, in the course of their everyday operations, health care providers, health care institutions, financial institutions, investment counsellors, etc., obviously gather this type of information. With respect to the consultation process, how widely were those sectors consulted? Have they singly or collectively raised concerns about the bill?

Mr. James Rajotte: The only consultation I did was in Alberta, which has quite extensively moved down the road of personal electronic health record information. This bill, according to them and certainly according to my intent, in no way affects them, because when they're collecting that information, it's consensual and voluntary, so it's not affected in any way by the amendments and legislation I'm putting forward. Perhaps the officials would like to comment on that as well.

It was Capital Health, which is the health region of my area. They said they obviously collect information both at the macro and the personal level, but it is collected voluntarily, so it's not affected by this legislation.

Mr. William Bartlett: I can only agree with Mr. Rajotte. The voluntary collection of information by businesses is simply not... This activity is not involved in any way, but they are governed in their collection of information by PIPEDA. Mr. Rajotte is asking that some of the concerns he has raised about protection of personal information be referred to the ethics committee reviewing PIPEDA. It is that legislation that governs the private sector, governs business, in terms of how it deals with personal information it has collected quite legitimately in the course of its business. It's quite a comprehensive piece of legislation that is being comprehensively reviewed to see if changes are needed.

● (1005)

The Chair: Thank you, Mr. Bartlett.

Committee members, I know there are one or two more questions, but we do have some work to do to go through clause-by-clause, if you would keep that in mind. We have two other motions we have to deal with at the end of this particular meeting.

Mr. Murphy.

Mr. Brian Murphy: To sum up, to be sure we're nailing everything down, Mr. Bartlett, is there anything we're not thinking about where these provisions could innocently catch someone who under colour of right is obtaining identification information? I'm not sure I have any examples, because otherwise we would have crossed it off. But it seems to me that lists of names are often sold or conveyed from one organization to another, even on a charitable basis. Maybe that's already covered by PIPEDA. I don't know. But the United Way gives their mailing list—I just picked something out of the air—to the Easter Seals people. Is there anything here? There's no evil game mentioned there, but the transfer of identification information.... Is there any way innocent parties could be caught by these provisions? I can't think of any.

Mr. William Bartlett: I really can't see how, Mr. Murphy. First of all, there's no fraud or false pretenses involved in the transfer of the information, and secondly, the transfer doesn't involve the purpose of using it for fraud or personation. So I can't really conceive of an innocent, legitimate exchange of information where the person engaging in that would have the further purpose of using it for fraud or personation. If they obtain it through fraud or false pretenses in the course of some business activity like that, with the intention of using it for fraud or personation, then they really have stepped outside the legitimate scope of what they purport to be doing.

Mr. Brian Murphy: Okay. That's good.

The Chair: Thank you, Mr. Murphy.

I'm going to suspend for two minutes, and we're going directly into clause-by-clause.

• _____ (Pause) _____

•

•(1010)

The Chair: I call the committee to order.

It's my understanding there is general or unanimous agreement on these amendments. The government amendments G-1 to G-9—with the exception of G-2—are all inadmissible. However, it's just a point of making it very clear that the government intends to delete those particular clauses.

If we have unanimous consent here among the committee members, we will deal with clause 1 and apply that result to clauses 3 to 9. We'll deal with the clauses in that fashion. So the amendments are all inadmissible, with the exception of G-2. We will begin with clause 1 and apply that result to each of the rest of the clauses from 3 to 9.

(Clause 1 negatived)

The Chair: That's unanimous.

That vote shall now be applied to clauses 3 to 9.

(Clauses 3 to 9 inclusive negatived)

(On clause 2)

The Chair: Mr. Moore.

Mr. Rob Moore: I move G-2. I think it has been explained.

The Chair: Indeed.

Mr. Lee.

Mr. Derek Lee: I want to propose a subamendment.

I would like to add to the proposed paragraphs 362(1)(e) and 362(1)(f). Let's deal with 362(1)(e) first. I would like to add the words "or by theft" after the words "false pretence" in proposed paragraph 362(1)(e). That is my proposal that I'm moving.

For proposed paragraph 362(1)(f), it's the same type of amendment.

Do you want to deal with them separately? The same issues will be coming up.

•(1015)

The Chair: Deal with both.

Mr. Derek Lee: I'll describe proposed paragraph 362(1)(f). Similarly, after the words "false pretence", I would add the words "or by theft".

The Chair: So you're suggesting it read "false pretence or by theft or by fraud"?

Mr. Derek Lee: If the second "or" is redundant, I would not move that.

The Chair: Mr. Moore.

Mr. Rob Moore: I would not support that, for some of the reasons we had in the discussion and from the expert witness testimony.

We can't forget that theft is already illegal. What we're talking about is obtaining information by false pretense or by fraud. I think by throwing theft into the mix, just the idea of theft.... There are other examples; we only began to go down that road. But by throwing theft into the mix, it could possibly open up a whole can of worms that we haven't really had an opportunity to think out at this point.

So I wouldn't accept that subamendment to our government amendment. I can foresee where that could be problematic. We have to remember—and you raised the scenario where someone steals my wallet—that for the last hundred years, if someone steals your wallet, that would be a criminal offence.

Mr. Murphy thinks stealing someone's wallet is not an offence? I'd like to hear that explanation.

The Chair: In the chair's opinion, this could be just outside the scope. We're dealing with false pretense. We're dealing with fraud. I would like to seek further counsel from the departmental officials.

Mr. Derek Lee: Mr. Chairman, before that, I didn't accompany my motion with any remarks. If you'd just allow me 15 seconds....

The Chair: We'll give you that opportunity, Mr. Lee, right now, and then we'll look to the departmental officials.

Mr. Derek Lee: Mr. Moore has said that theft is already a criminal offence. If you look closely at the amendment, the concept and the term "fraud" is included there, and fraud is already a criminal offence. So the fact that theft is already a criminal offence should not by and of itself be a reason why theft should not be a component of this section.

But I had discussed with officials earlier, rather than using the concept of theft, which involves criminal intent, as does fraud, the common law concept in tort of conversion, which doesn't necessarily involve criminal intent. False pretense does not necessarily involve criminal intent. That concept is included here.

If my subamendment doesn't pass, at least the record will have a discussion of the issues. I'm hopeful it will.

Back to you, Mr. Chair.

The Chair: Thank you, Mr. Lee.

Mr. Bartlett.

Mr. William Bartlett: I would suggest, Mr. Chair, that the scope of the bill is addressing a particular kind of activity. False pretense, as in fraud, is one of kind of activity, and theft is something else. And I wouldn't have thought that theft was the kind of activity that was within the scope of the bill.

In addition, I don't know what theft of personal information, by itself, really means. So I would caution against introducing into the Criminal Code a concept the law hasn't recognized up to this point; that is, theft of your wallet, yes, theft of a car, yes, but theft of information as such, information not by itself having any value, that is simply inherent in the concept of theft of what you're stealing, that what you're taking has value.

Conversion is a civil concept, which is, quite frankly, rather difficult to deal with in civil law and in my own opinion would not be a helpful concept to introduce into the criminal law.

So the concept of theft of information is simply, as Mr. Moore has noted, rather problematic. You're introducing into the law a concept that it has not recognized up to this point and is going to have some difficulty with. I'm not really sure what it would add. If you add problematic concepts to something, then it tends to undercut the effectiveness of the overall provision.

So those would be my comments, Mr. Chairman.

•(1020)

The Chair: Thank you.

Mr. Murphy.

Mr. Brian Murphy: That raises a bunch of questions.

In that this section 362 is the only place that identification information is used, the first question I might have for you is—I think you've answered it—the theft of identification information is certainly not an offence, unless it's put in here.

The second point is, if I find Mr. Moore's wallet on the ground—I do not obtain it through false pretense or by fraud, I just find it on the ground—and I use it with the intent to commit an offence of fraud and the other, section 403, have I committed an offence?

Let's do two years down the road, where identification information has been judicially considered and we know what it is—we don't know what it is because we're just creating it. I find identification information on the ground and I get a good lawyer, and I don't get it by these means.... Mr. Lee's amendment is about the means of the obtaining of the identification information. If it's not an offence already, how is it then redundant? It may well be out of the scope of

the act, and I understand that, but it's certainly not redundant. Wouldn't it help?

Mr. William Bartlett: I think, Mr. Murphy, your example points out the problematic aspect of this. If you find somebody's wallet on the ground, you haven't committed theft. If you lift the wallet up and open it up and look at the information, have you committed theft of the information? I don't know, frankly.

And I'm not sure I'd want to ask a court to decide whether or not opening up the wallet and looking at the information was theft of the information. The means by which you acquired the information—

Mr. Brian Murphy: It could be conversion.

Mr. William Bartlett: —didn't involve—

Mr. Brian Murphy: It is definitely conversion. If I see Rob's wallet on the floor, and I see a credit card, and I know I can use that for committing an offence, then it becomes a conversion. Hopefully there's some limit left on it.

Mr. William Bartlett: I'm not sure that's conversion in the law.

Mr. Brian Murphy: It's conversion of identification information, isn't it? We don't know.

Mr. William Bartlett: Well, conversion involves a rather complicated form of taking. Finding something is not taking it.

You pick it up off the ground, you return it to the person, you've committed no criminal offence, you've committed no civil tort. You look at the information. Is that a criminal offence or a civil tort? I think not.

If you look at the information and form the intent of using that, I just don't know quite how the law would deal with the very scenario you've given here. Is that theft? At what point did it become theft or conversion? When the thought entered the person's head that they could use this information to commit fraud or impersonation? When they picked the wallet up, it wasn't theft or conversion. So an hour later, when they're sitting there at the kitchen table and saying, "Gee, I could actually use this information", does that then convert the point at which they picked it up into a theft or a conversion?

Conversion is a little bit more than simply coming into possession of something. It's a pretty complicated concept in the civil sphere. I would be rather hesitant to suggest that it should be added to the criminal sphere.

•(1025)

Mr. Brian Murphy: Hold on to your wallet.

The Chair: Thank you, Mr. Murphy.

Mr. St. Amand.

Mr. Lloyd St. Amand: Just as a point of curiosity, a customer at a bank inadvertently leaves a bank card behind. A second or third person in line sees the PIN number or the code that allows them to access the card. The wrongdoer, then, who comes into possession of the card, has obtained the number by looking at the screen. So that person is obtaining personal information with respect to the owner of the bank card. What offence or section of the code currently covers that type of stealth?

The theft of the card, yes, they take the card. If the defence says, "Gee, I only stole the card", what offence then allows the court to draw the further inference you stole the card clearly with the intent to bilk that individual because you acquired information personal to them?

Ms. Joanne Klineberg: There's actually a simple answer to that question, but your question nonetheless raises some larger issues. The answer to that question, which is relatively simple, but not necessarily in 100% of the cases, is that the credit card offences that are already in the Criminal Code equally apply to debit card offences. So the offence in relation to credit card data would also cover debit card data. Merely looking at, and then possessing or making a mental note of the debit card data, without there being any colour of right to have it, any justification to have it, and so on, may already, actually, be captured by those very specific offences.

That's the simple answer to that question, but if you vary the nature of the information at all, you lose the applicability of those offences, which are only credit card and debit card data. The suggestion to add "by theft" and the discussion that has ensued here I think give rise to what this committee identified two weeks ago, which was that pretexting, which is the subject matter of Bill C-299, is just one way in which identity information, for use in identity theft, can be obtained. There are a range of different ways in which information can be obtained: conversion of the information by looking over someone's shoulder, or by rummaging through their garbage cans, computer hacking, getting an insider to feed you the information.... Our understanding is that Bill C-299, with very good reason, aimed at one particular method—that is, by deception.

I do think if you go towards theft, conversion, and those other situations, yes, those are situations that we should all be looking at and considering. They may well be outside the scope of this particular bill, but I think it does reaffirm what members of this committee seemed to appreciate a few weeks ago, which was that Bill C-299 could be one step in the direction of more comprehensive law. From the perspective of making sure the Criminal Code makes the most sense, we would urge caution in adding things now until the time has been taken to look at what the consequences might be.

The Chair: Mr. Moore.

Mr. Rob Moore: That's fine, Chair.

The Chair: Mr. Rajotte.

Mr. James Rajotte: Thank you, Mr. Chair.

Ms. Klineberg made a lot of the points I wanted to make. I have a lot of sympathy for Mr. Lee's notion or idea. I think that needs to be addressed in more comprehensive government legislation. For his benefit, I did try to focus on one part of the identity theft problem, which was pretexting, but I would in fact like to see that discussed within more comprehensive government legislation. I hope, if this

bill does pass, it does, in a very friendly way, encourage the government to move forward as quickly as possible on that legislation.

The Chair: Thank you, Mr. Rajotte.

As far as the chair is concerned, I will rule the subamendment, the amendment to the amendment, inadmissible.

Mr. Moore.

Mr. Rob Moore: Why didn't you do that 20 minutes ago?

The Chair: I think we had a good discussion and a good debate. To me, the information that justice officials supplied was valuable for all. So thank you for that.

Amendment G-2 is moved by Mr. Moore.

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

(Clause 2 as amended agreed to)

(Clause 10 agreed to)

● (1030)

The Chair: Given the fact that there were a number of changes to the bill, is there a motion to amend the title?

Some hon. members: Yes.

Mr. Brian Murphy: It would be to delete "the Canada Evidence Act and the Competition Act".

Mr. Derek Lee: I move that we delete all the words in the title following the words, "Criminal Code".

I'm sorry, we would retain the brackets following "Competition Act".

The Chair: The title would then read, "An Act to amend the Criminal Code (personal information obtained by fraud)".

Mr. Derek Lee: Agreed.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: I would propose that the amendment that's being suggested be further amended so that, in brackets, rather than reading "personal information obtained by fraud", it would read "identification information obtained by fraud". The "personal information" that's in the original title refers back to PIPEDA. The amendments that we just unanimously adopted remove all of that and actually use the term "identification information" rather than "personal information".

The Chair: Mr. Moore.

Mr. Rob Moore: I agree with that, "(identification information obtained by fraud)", and I would add, "(for false pretence)", since that is also the effect of government amendment G-2.

The Chair: Is that amendment acceptable?

Some hon. members: Agreed.

Shall the title as amended carry?

Some hon. members: Agreed.

The Chair: It has been carried unanimously.

Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended?

Some hon. members: Agreed.

The Chair: Thank you, committee.

Some hon. members: Hear, hear!

The Chair: Thank you, Mr. Rajotte.

Mr. James Rajotte: Mr. Chairman, very briefly, I want to thank all the committee members for their work. I sincerely appreciate it. I think they certainly improved a bill that I put forward. I very much appreciate all of their efforts.

The Chair: Thank you, Mr. Rajotte. I appreciate your time.

Committee, we have two motions that we must deal with. Given that there is going to be some discussion on one, maybe two, I'm going to take them in a different order from how they were presented, if that's okay with the committee. I will take Ms. Jennings' motions first.

I'm going to suspend for two minutes until we have these motions in everyone's hands.

- _____ (Pause) _____
-
- (1035)

The Chair: We will reconvene. We have two motions before us, a motion presented by Ms. Jennings and one by Monsieur Ménard. Mr. Ménard's motion came before the committee first.

If it's agreed, I would like to handle Ms. Jennings' motion first, given the fact that there may be a little more discussion on Mr. Ménard's motion.

Some hon. members: Agreed.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: I'd like to move my motion.

[*Translation*]

All members of the committee are aware of my notice of motion from two days ago. I would ask the committee to adopt this motion:

That this committee recommends:

That this House take note of the importance of the contribution that the ethnocultural communities make to the prevention of crime, social reintegration of offenders and rapid growth of safer communities and that it recognize the need to ensure every means and resource to allow police departments, the Correctional Service of Canada, the National Parole Board and the ethnocultural communities to respond better to the needs of the increasingly diversified offender and prison population.

That the chair report the adoption of this motion to the House.

I would simply and quite briefly like to explain why I am moving this motion. Further to Mr. Ménard's motion, our committee

examined the issues of crime and street gangs. We've heard from several experts, police officers and representatives of at least one cultural community which is a victim of street gangs itself. Mr. Harry Delva, from the Maison d'Haiti in Montreal, explained how they became experts in the matter and indicated that law enforcement, Correctional Service of Canada and the National Parole Board often call on them for their expertise.

However, the fact that ethnocultural communities are themselves part of the solution is not something that is necessarily recognized by our Parliament or our governments. Moreover, ethnocultural communities can and should participate in creating resources and solutions, and they should receive the means and resources necessary to do so.

Police experts were entirely in agreement with the recommendations made by the Maison d'Haiti representative. Before entering politics, I gained a great deal of experience working with cultural communities in the law enforcement field. If we really want to address the problems of crime in general, we need to have the communities involved.

So I would ask the members of the committee to adopt this motion. It does not specify an amount which the government should allocate, etc. It simply seeks to make sure that police departments, Correctional Service Canada, the National Parole Board and the ethnocultural communities are all part of the solution, and that they be given the resources and the means they need.

I would like to point out that there is a typo in the word *ethnoculturelle* in French: the "t" should be before the "h".

[*English*]

The Chair: Thank you, Ms. Jennings.

Mr. Moore.

Mr. Rob Moore: Thanks, Mr. Chair.

I've read it over. I think I know the intention of the motion, and I'm pleased to support the motion. The government supports providing resources for the prevention of crime, the reintegration of offenders, and safer communities. I am pleased to support the motion.

I notice it says "to ensure every means and resource". I don't know if it's the entire budget, but I think I know the intent of the member who's moving it. On sufficient means and resources, I am not proposing an amendment. It's probably okay the way it is. I'm happy to support it.

- (1040)

The Chair: Thank you, Mr. Moore.

Mr. Lee.

Mr. Derek Lee: I don't have any problems with the motion and the intent. I only want to flag that the practice of committees generating business for the House is not something I would normally subscribe to.

We have not done any substantive work on this issue. It is a sentiment expressed by the members here. We could adopt it and send it out to everybody who cared about the issue, including the government departments. We wouldn't have to report it to the House. The end consequence of reporting it to the House as a committee report is it becomes grist for the mill in the House. I'm only being honest about that.

We're going to have a five-minute discussion here. In reporting to the House as a report of the committee, the House would not have the benefit of any transcript or any substantive discussion of the issues. It really wouldn't be much different if a member simply proposed a motion to the House under private members' business and brought it up there. But of course on a concurrence motion, a committee report manages to preempt some routine proceedings and other parts of the day's work. I only wanted to be honest about that.

The motion is well crafted and well worded. As a one-off, having heard some of the evidence we heard during Bill C-9 and Bill C-10, I'd be happy to support it and send it off to the House.

Although some other committees may engage in it, I wouldn't want it to become a common practice for us to do wishful motions at committee and then send it off to the House as if we did some work on it.

Thank you.

The Chair: Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, unfortunately I disagree with Mr. Lee. I find the motion to be a good one, for two reasons. First off, it is our responsibility to express wishes, and it is absolutely appropriate for us to adopt motions. This motion invites us to take note of a phenomenon: members of ethnocultural communities need public services to adjust to this new reality, from all of the testimony we've heard.

It is true that when the chairman reports a motion to the House, parties may ask to debate the motion before the House, but that would certainly not be a waste of time, because it is an important reality to acknowledge. We shall see what parties make of it. Either way, our committee has not been excessive in this regard up until this point. We would support it with pleasure and thank Ms. Jennings for having made the effort of drafting this motion.

[*English*]

The Chair: Mr. Moore.

Mr. Rob Moore: To respond to what Mr. Lee said, as much as I would have liked this motion had we not heard from these witnesses on Bill C-9 and Bill C-10, I certainly understand what you're saying. It shouldn't be a precedent for everyone who has a pet motion to put forward that we would adopt this motion not having heard evidence.

The reason I support Ms. Jennings' motion is because throughout the last year, through the course of the study of different bills, we have heard these types of witnesses. We've heard from ethnocultural communities, we've heard from Correctional Service Canada, and we've heard from police departments. On the mounting evidence that we have, I'm able to support this.

I certainly wouldn't support a motion that we hadn't heard any evidence on. That may help to alleviate any fears, or it will maybe quell someone's idea to bring a motion next week on something we haven't discussed. But we have discussed a lot of this quite extensively, and I'm happy to support it.

• (1045)

The Chair: Okay. All those in favour of the motion?

(Motion agreed to)

The Chair: I've saved the best for last, Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, can the vote apply to my motion?

[*English*]

Can we apply the same vote to my motion, Mr. Chair?

The Chair: I don't know, Mr. Ménard. I mean, it's kind of wishful thinking on your part, isn't it?

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I'd like to briefly discuss my motion. I shouldn't need much time, because it is quite clear.

First off, we committed to completing our consideration of Bill C-18. I understand that that should take place rather quickly, that we only have one meeting left and that we will be moving to clause-by-clause at the same time as we hear from witnesses. All parties are in favour of Bill C-18.

You know full well, Mr. Chairman, that the government has chosen to change the rules of the game regarding judicial appointments and that this debate has triggered much emotion in civil society and caused a great deal of concern within the legal community. I think it is part of our duty as parliamentarians, and not only on the opposition side. I expect members on the government side to contribute. I think we need to make sure we receive information from a number of witnesses.

That is the purpose of my motion. I would be very disappointed if this motion was interpreted as a stalling tactic. It is the result of a genuine desire to do some serious work. The appointment of judges is an integral part of our democracy. If the government chooses to change the rules of the game, I think it is only natural for the legislative committee to be involved.

In closing, Mr. Chairman, I have heard that some colleagues—Ms. Jennings may have a word to say in this regard—intend to amend this motion, and to consider that amendment. I am very open to that type of amendment.

[*English*]

The Chair: Thank you, Mr. Ménard.

Are you suggesting you have an amendment?

[*Translation*]

Mr. Réal Ménard: I think Ms. Jennings has one.

[*English*]

The Chair: To this motion?

Hon. Marlene Jennings: Yes.

The Chair: I do have a few other speakers first, Ms. Jennings, if you don't mind waiting for a minute.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: With respect to the motion, I would like to get back to one point. Mr. Lee made a comment which leads me to wonder what the rules are regarding the tabling of motions, and whether they have a main or accessory purpose.

I've conducted research. I prepared information for everyone, in English and in French. I asked the House to give me the information I needed and I consulted two up-to-date sources, the Beauchesne and the Marleau Montpetit. What Mr. Lee said led me to this study. He said that the House gives orders to the Standing Committee on Justice. They are referred to as orders of reference. Section 108(2) of the Standing Orders clearly indicates that the House refers orders of reference to committees, as in the case of Bill C-22, C-18 and all other bills which we consider in committee. There are no motions attached to orders of reference. We may introduce motions on a bill itself.

For instance, we may introduce motions to hear from witnesses or motions to amend a bill. All of that is provided in the regulations. Nowhere is it mentioned that a motion whose main purpose has not yet been approved by the House can be adopted in committees. Otherwise, we would have more authority here than would the House of Commons itself. The House sends us an order of reference and we, working together in agreement, could somehow decide to set aside the House's standing orders! The House sends us orders of reference. The House is our boss and committees are creatures of the House. We focus on a given department.

I'm going to have these documents circulated so that you may consult the research I did yesterday evening, thanks to Mr. Lee who had me working all night. First, I'll give you a copy of the Standing Orders.

• (1050)

Mr. Réal Ménard: Point of order, Mr. Chairman.

The Chair: Mr. Ménard.

Mr. Réal Ménard: It is important for us not to engage in a debate on false premises. This is a point of order and I'm asking you to rule once and for all.

I thank Mr. Petit for the efforts he's made, but the reality is the following. If the chair and the clerk consult Marleau Montpetit, they will notice that bills must be the subject of an order of reference from the House to a committee and that there are absolutely no timelines set out for this.

It is very important to understand that, Mr. Chairman, and I reiterate that this is a point of order.

In Marleau Montpetit, the only deadline the House must respect is that dealing with private members' business. That is the reason why, from time to time, there are requests for extensions made. Just yesterday, the finance committee voted in favour of such a request on private members' business.

That means that in all cases, the committee must always formally acknowledge the bills received by the House, but the order in which it chooses to do its work, be it related to private members' motions or government motions, has nothing to do with this order of reference. Besides, it is the prerogative of all committee members, recognized by their respective whips, to introduce motions. It is the committee's prerogative to defeat them, but the power to introduce motions is an integral part of the privilege of sitting on a committee.

Once again, I thank Mr. Petit for his research, but his argument is flawed in two ways. First, it is not pursuant to any provision in the standing orders. Second, if he were right, it would mean that a majority government—and thank God that isn't the case at the moment—could simply, due to the number of members it has in its caucus, decide on 100% of House business. It would constantly be tabling motions to direct business.

Mr. Chairman, I'll end by reminding you of two things. This committee is autonomous, and if it wants to carry out studies which take precedence over government bills, so be it. That being said, it is not the purpose of this motion. The motion fits within the framework of the consideration of several government bills which have been studied, and there will be others. Nonetheless, I call on you to indicate to the committee, based on an informed reading of our standing orders, that the information provided by Mr. Petit is unfortunately not well founded.

Mr. Daniel Petit: Mr. Chairman, may I reply?

[*English*]

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: I understand very clearly what my colleague is saying. However, it is the mandate which dictates our business. Standing Order 108(1)(a) deals with the mandate. It states:

Standing committees shall be severally empowered to examine and inquiry into all such matters as may be referred to them by the House...

Matters are referred by the House, not by committees.

I understand Mr. Ménard's opinion about the fact that a majority government may choose to abuse of the situation. The opposite is true ?? is possible as well. The opposition could also abuse a minority government. It goes both ways.

Whether or not I am defeated is irrelevant. What is relevant is to know the rules. If there are rules, we need to respect them, be they good or bad.

The House sends me here. I got this information out for you. Marleau Montpetit and Beauchesne are up-to-date. There is no jurisprudence. You won't find any. I've done extensive research on this, and there is none. So, today it is unchartered area. In other words, the House gives me the authority, and I must consider what it refers to me.

Either way, if we adopt this motion, there is no purpose in my being here. I just have to follow along with the opposition's agenda and go where I'm told, there won't be any purpose in me... Although you may control your time, you do not control your purpose. The main purpose is determined by the House. Not by the committee. So, if we decide to start using section 108 ?? Standing Order 108 to do other things, there's no purpose in my being here. I'll just wait for their agenda and work on that, because we'll all get along. That's all I can say.

I'm trying to say his motion is no good. It's not about the substance. It's just that he is introducing content which was not referred to me by the House. That's all.

•(1055)

[English]

The Chair: Thank you.

Thank you, Mr. Ménard.

[Translation]

Mr. Réal Ménard: No, I'm not finished. There is no time limit on points of order.

[English]

The Chair: We can go around on circles on this, Mr. Ménard. I don't want to go around in circles on it.

[Translation]

Mr. Réal Ménard: Allow me to make my point of order. It is not up to you to discuss whether or not there is a point of order. Under the standing orders I am allowed to make a point of order, and I will do so.

[English]

The Chair: Then we won't be able to get to the conclusion of this particular motion that's before the committee. Make your point quickly.

[Translation]

Mr. Réal Ménard: Mr. Chairman, I've asked you to rule on the privilege members have to take initiative. That is what we should consider.

[English]

The Chair: I'm going to do that right now.

[Translation]

Mr. Réal Ménard: All right.

[English]

The Chair: With reference to Standing Order 108(1)(a), certainly Mr. Petit has a point. With anything that comes before the committee, the committee is required to examine "all such matters as may be referred to them by the House".

But Standing Order 108(2) makes a further point. It includes additional powers granted to standing committees. In "addition to" the powers in this particular order, the committee is also

empowered to study and report on all matters relating to the mandate, management and operation of the department or departments of government which are assigned to them from time to time by the House.

In other words, a committee has those additional powers, which they can use to set their course.

I sympathize very much with Mr. Petit, because the government does have an agenda, and we're not getting to the legislation we should be getting to. That's my opinion, of course; however, the broad committee sees otherwise and wants to interrupt that agenda.

My next speaker...

In reference again to Mr. Petit's point, Standing Order 108(2) is an additional power granted to the committee to set our own course. I want to thank you, Mr. Petit, for bringing that up. I'm going to move on here, if you don't mind. We have a couple of additional speakers.

Go ahead, Mr. Petit.

[Translation]

Mr. Daniel Petit: I have an explanation to give. I also have a right to speak.

Line six or seven of Standing Order 108(2) states that we can deal with all matters so long as they are assigned to us from time to time by the House. It is always the House which assigns the work. The only place you will find any powers is under Standing Order 108(2) (e). But this power is subservient to that which is given by the House.

I don't care whether I am defeated or not. I'm just saying that that's wrong. I'm allowed to say so.

Some hon. members: Oh, oh!

[English]

The Chair: Order, please.

[Translation]

Mr. Daniel Petit: I'm allowed to say that the decision is wrong.

[English]

The Chair: I speak from the Standing Orders themselves, Mr. Petit. I appreciate your bringing this forward, and yes, you have a right to do that. However, it does say that the committee is empowered to study and report on "all matters relating to the mandate".

Now let's get on with the order of the day here.

Mr. Thompson.

Mr. Myron Thompson: I'm so bedazzled by the conversation that goes on from the legal system; the lawyers have me confused most of the time. I'm going to change the flow just a bit.

What I don't understand is this. Why would Mr. Ménard object to a police officer being part of an advisory committee in determining a list of possibilities to select a judge? Why?

The Chair: Is this in reference to his motion?

Mr. Myron Thompson: Well, "Whereas this modified review procedure bears flagrant signs of partisanship and ideological influence"....

The Chair: Understood. We are going to vote either yea or nay for this motion. The content of it you may not agree with; then we will vote against it. Right now, we're not going to look at the content, apart from whether we agree with it or disagree with it. And that vote is going to be taken very quickly.

•(1100)

Mr. Myron Thompson: I'd like to see our legal system referred to as a justice system for once.

The Chair: Yes. Thank you, Mr. Thompson.

Mr. Moore.

Mr. Rob Moore: I would like to deal with this as quickly as we can. I want to hear about Ms. Jennings' amendment.

Hon. Marlene Jennings: Thank you, Chair. I appreciate that.

I've had discussions with both Monsieur Ménard and Mr. Moore about how there seems to be a consensus, on the part of the majority, at least, that the intent of Monsieur Ménard's motion has support from the Liberal members. I'm not sure about the government members.

However, I would propose that point two of Monsieur Ménard's motion—which stipulates that as soon as the study of Bill C-18 is completed, the committee devote three sessions to hearing witnesses who will inform the committee and so on and so forth—be amended in order to state that the committee would devote two sessions to hearing witnesses and that one session would take place the week coming up.

The Chair: The schedule is full for the next week.

Hon. Marlene Jennings: If you hold on, it would be one hearing per week when the House is in session, beginning the sitting of next week. It would be in addition to the two regularly scheduled hearings of the committee.

This committee regularly meets on Tuesdays and Thursdays, from 9 to 11 a.m. The committee would schedule a third session in order to proceed with Bill C-22.

On the Tuesday beginning next week, we would hold our first session on the judges. The Thursday regular session would be on Bill C-22. We would add a third session that would be a second session for Bill C-22.

We would do the same thing the following—

The Chair: If I may clarify the schedule for next week, we have Bill C-18, witnesses on DNA. On March 1, which is Thursday, we have clause-by-clause.

Hon. Marlene Jennings: If the amendment and motion of Monsieur Ménard are accepted, we would add an extra session of this committee to begin the study of the procedure for selecting judges. When we come back the week of March 19, we would again add an extra session. The study of the selection of judges would take place on Tuesday, March 20, from 9 to 11 a.m. The other business that had been scheduled would be covered by the extra session and by the Thursday session. And then the same thing the following week.

The Chair: Mr. Moore.

Mr. Rob Moore: I hear what people are saying. My thought is that we should stick to our regular schedule when it comes to the bill. So if we're scheduled to meet Tuesday and Thursday, we should meet Tuesday and Thursday on what we were scheduled for.

If we're going to study the judges, then I think that should be the extra day, not one of the days we've already scheduled to study Bill C-18 or Bill C-22. I don't want anything to impede our study of Bill C-22.

If we have an extra day to study this, as Mr. Ménard is suggesting, then I think that should be the extra day.

•(1105)

Mr. Réal Ménard: This is not my motion.

Mr. Rob Moore: Well, look, we're talking about the amendment from Ms. Jennings.

Certainly, on this side, I'll tell you we're not going to support Mr. Ménard's motion, with all the “whereas the Conservative government” and all of that. If we strip all of that from it and just say this committee is going to study the judicial appointments on these extra days, that's one thing. If you want support from this side for the motion, we're not going to have one that has this slant to it. We won't support that, but we will support the study.

The Chair: Okay. The time is now five after 11. We're past the hour.

[*Translation*]

Mr. Réal Ménard: We can continue, if you like, Mr. Chairman.

[*English*]

The Chair: Is that the desire of the committee?

Mr. Rob Moore: It's not my desire.

The Chair: Well, we don't have agreement.

[*Translation*]

Mr. Réal Ménard: All right, but I will make sure that we begin our next meeting with this, before we move to clause-by-clause. Mr. Chairman, we will not support having additional meetings and we will make sure that the desire expressed in the motion is respected. I want to be quite clear on that.

[*English*]

The Chair: We have an amendment that has been expressed by Ms. Jennings. Before we walk out of this room, I want clarification on the amendment to Mr. Ménard's motion, and that is to have one extra session next week to deal with the issue of judges. Am I correct?

Hon. Marlene Jennings: It's to begin dealing with the issue of judges, starting next week, with an additional—

The Chair: It's an additional meeting.

Hon. Marlene Jennings: Yes. For the week of the 19th when we come back, the Tuesday would then be the second session of dealing with the judges, and it's from 9 to 11. If the committee wishes a third session, it would continue the following week.

Mr. Réal Ménard: That's unacceptable.

Mr. Rob Moore: Mr. Chair, I'm prepared to support Ms. Jennings' amendment, but does her amendment then strike the preamble? It would be striking "That the Government postpone the reform made to the composition of the judge selection...".

If she could put into writing or read into the record exactly what her amendment would do, I'm prepared to support it now.

[*Translation*]

Mr. Réal Ménard: Point of order. The amendment is out of order because I called for the work to be done within our regular meetings. If you want an amendment to be in order, you need the mover to agree to it because the amendment goes beyond the scope of the motion.

[*English*]

The Chair: Mr. Lee.

Mr. Derek Lee: Maybe we should put Monsieur Ménard's motion and let it sink or float, and then the steering committee could address this.

We're actually proposing a sequence of three hearings under this amendment, when we haven't done any footwork or planning on what the meetings would consist of. We don't have a work plan, and it's only six days away. It really is the kind of thing that should be sorted out at the steering committee. I realize it's been there and it's come back.

As it is, the motion is a motion for future business. It's also a comment on what the government should or shouldn't do, and it's really too much. On the intent of it, I'd like to get into the issue, but I can't support the motion as it is now.

If the member wants to see his motion put now, the chair might put it, without the amendment or with the amendment. I'll vote accordingly.

The Chair: Will we put the motion?

[*Translation*]

Mr. Réal Ménard: No, we'll get back to it at the next meeting, we won't go back before the steering committee; the motion comes from there. That would be ridiculous. I'm prepared to sit down with the Liberals at the next meeting.

[*English*]

The Chair: It was not decided at the steering committee how this was to operate as far as the schedule. It was served and it was discussed. It was not finalized, if you recall.

Ms. Jennings, shall we put your amendment to the floor?

Hon. Marlene Jennings: Before I put my amendment to the floor, may I point out that point two says:

[*Translation*]

"[...] that, as soon as the study of Bill C-18 is completed, the committee devote three sessions to hearing witnesses who will inform[...]"

It does not say that it will be during the three meetings following the completion of Bill C-18. It is not as clear as that.

• (1110)

[*English*]

The Chair: Is there a question on the amendment?

[*Translation*]

Hon. Marlene Jennings: That is why my amendment is for specific weeks and dates for the next three meetings.

[*English*]

The Chair: Mr. Moore.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, point of order. I move adjournment. It is past 11 o'clock.

[*English*]

The Chair: I recognized Mr. Moore.

[*Translation*]

Mr. Réal Ménard: After the adjournment.

[*English*]

The Chair: I recognize Mr. Moore.

Mr. Rob Moore: Dealing with Ms. Jennings' amendment is difficult to try to incorporate into Mr. Ménard's motion. If we want to vote on Mr. Ménard's motion, then Ms. Jennings can bring forward a motion, because I think hers makes a lot of sense if we're going to study this. I think we can dispense with Mr. Ménard's motion and then start afresh with something that perhaps we can all support.

The Chair: Are you calling for the question, Mr. Moore?

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: No, I called for the adjournment, which is automatic.

[*English*]

The Chair: The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.