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Chair

Mr. Rick Dykstra

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● (1635)

[*English*]

The Chair (Mr. Rick Dykstra (St. Catharines, CPC)): I want to welcome everyone back here this afternoon. I know there's been lots of activity in the House and there's still some going on across the street, I understand, but as Ms. Jennings said this morning, we have a lot of hard word to do here on a bill, so we're going to get started.

Pursuant to the order of reference of Friday, October 26, the Legislative Committee on Bill C-2 will now resume its study on the bill.

We welcome Minister Nicholson to make a presentation. We will hear his presentation of approximately ten minutes and then go to questioning.

Thank you.

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada): Thank you very much, Mr. Chairman. I'm pleased to be joined at the table by Catherine Kane, the acting senior general counsel, criminal law policy section; and Douglas Hoover, counsel, criminal law policy section.

Mr. Chairman, I'm pleased to appear before your committee as it begins its review of Bill C-10, the Tackling Violent Crime Act.

This is the government's first piece of legislation in this session of Parliament. The Tackling Violent Crime Act underscores our commitment to safeguard Canadians in their homes and on their streets and in their communities. It is a confidence measure. Bill C-10 reflects the depth of this unwavering commitment by the Government of Canada.

[*Translation*]

As a confidence measure, Bill C-10 reflects the depth of this unwavering commitment.

[*English*]

Canadians are losing confidence in our criminal justice system. They want a justice system that has clear and strong laws that denounce and deter violent crime. They want a justice system that imposes penalties that adequately reflect the serious nature of these crimes and that rehabilitate offenders to prevent them from reoffending. Bill C-10 seeks to restore Canadians' confidence in our system by restoring their safety and security in their communities, and this is in fact what is reflected in the preamble to Bill C-2.

The proposed Tackling Violent Crime Act brings together five criminal law reform bills that we introduced in the previous session of Parliament. One of them, Bill C-10, imposed higher mandatory minimum penalties of imprisonment for eight specific offences involving the use of restricted or prohibited firearms or in connection with organized crime, which of course includes gangs, and also for offences that do not involve the actual use of a firearm—namely, firearm trafficking or smuggling—or the illegal possession of a restricted or prohibited firearm with ammunition. The Tackling Violent Crime Act reintroduces the former Bill C-10 as passed by the House of Commons.

It also includes one of my favourites, Bill C-22, which increased the age of consent for sexual activity from 14 to 16 years of age to protect young people against adult sexual predators. There is proposed, as I'm sure you are aware, a five-year close-in-age exception to prevent the criminalization of sexual activity between consenting teenagers. The Tackling Violent Crime Act reintroduces Bill C-22 as passed by the House of Commons.

It also includes Bill C-32, which addressed impaired driving by proposing the legislative framework for the drug recognition expert program and requiring participation in roadside and drug recognition expert sobriety testing; by simplifying the investigation and prosecution of impaired driving; and by proposing procedural and sentencing changes, including creating the new offences of being “over 80” and refusing to provide a breath sample where the person's operation of the vehicle has caused bodily harm or death. The Tackling Violent Crime Act reintroduces the former Bill C-32 as amended and reported back from the justice committee.

We also have Bill C-35, which imposes a reverse onus for bail for accused charged with any of eight serious offences committed with a firearm, with an indictable offence involving firearms or other regulated weapons if committed while under a weapons prohibition order, or with firearm trafficking or possession for the purpose of trafficking and firearm smuggling. The Tackling Violent Crime Act reintroduces the former Bill C-35 as passed by the House of Commons.

The Tackling Violent Crime Act also reintroduces reforms proposed by the former Bill C-27, addressing dangerous and repeat violent offenders, with additional improvements.

As I have noted, and with the exception of the dangerous offenders reforms, all of these reforms have been thoroughly debated, reviewed, and supported in the House of Commons.

These reforms included in Bill C-27 had not progressed to the same level of understanding and support in the previous session and now include additional improvements to address concerns that have been identified in the House of Commons as well as by my provincial and territorial counterparts. Let me take a moment to go through these reforms.

● (1640)

The Tackling Violent Crime Act retains all of the reforms previously proposed in Bill C-27 regarding peace bonds, which had been well received within the House of Commons and beyond. Accordingly, Bill C-10 proposes to double the maximum duration of these protective court orders from one to two years and to clarify that the court can impose a broad range of conditions to ensure public safety, including curfews, electronic monitoring, treatment, and drug and alcohol prohibitions.

I believe this particular provision will be well received across this country. Many people have complained for many years that by the time you get a one-year peace bond, it's too short a period of time, and that two years would be much more appropriate in terms of getting the bond and having it put in place.

Under this bill as well as under the former Bill C-27, crown prosecutors will still have to declare in open court whether or not they intend to bring a dangerous offender application where an individual is convicted for a third time of a serious offence.

We have retained some procedural enhancements to the dangerous offenders procedures, allowing for more flexibility regarding the filing of the necessary psychiatric assessments.

As in the former Bill C-27, an individual who is convicted of a third sufficiently violent or sexual offence is still presumed dangerous.

Bill C-10 also toughens the sentencing provision regarding whether a dangerous offender should receive an indeterminate or a less severe sentence. This amendment modifies Bill C-27's approach to make the courts impose a sentence that ensures public safety.

Finally, it includes a new provision that would allow a crown prosecutor to apply for a second dangerous offender sentencing hearing in the specific instance where an individual is convicted of breaching a condition of their long-term supervision order.

This second hearing targets individuals who were found by the original court to meet the dangerous offender criteria but were nonetheless able to satisfy the court that they could be managed under the lesser long-term offender sentence. If they show by their conduct, once released into the community, that they are not manageable and are convicted of the offence of breaching a condition of their supervision order, they would now be subject to another dangerous offender sentence hearing.

Importantly, this new proposal does not wait for the offender to commit yet another sexual assault or violent offence to bring the offender back for a second hearing for a dangerous offender sentence. Instead, it would be triggered simply by the offender's failure to comply with the conditions of his release contained in his long-term supervision order—for example, for failing to return to his residence before curfew or for consuming alcohol or drugs. Of course, this second hearing would also be triggered if the offender in fact did commit a further sexual or violent offence after his release into the community.

These new proposals directly respond to a serious problem identified by provincial and territorial attorneys general in recent months. Indeed, some of these issues have been flagged since about 2003. Since the 2003 judgment by the Supreme Court of Canada in the Johnson case, many violent offenders who meet the dangerous offender criteria have nonetheless managed to escape its indeterminate sentence on the basis that they could be managed; that is, the risk of harm that they pose to the community could be successfully managed in the community under a long-term offender sentence.

So we reviewed the dangerous offender cases since the 2003 Johnson case and identified 74 such violent offenders. We then looked at how these individuals fared once they were released into the community. To date, 28 of these 74 dangerous offenders have been released into the community. Of these 28, over 60% were subsequently detained for breaching the conditions of their long-term supervision and 10 were convicted of breaching a condition of their long-term supervision orders.

● (1645)

Bill C-10 will prevent dangerous offenders from escaping the dangerous offender indeterminate sentence in the first place and will enable us to more effectively deal with those who nonetheless receive the long-term offender sentence but then demonstrate an inability to abide by the conditions of their long-term offender supervision order.

Of course I have carefully considered the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights in respect of the totality of these new dangerous offender reforms, and I am satisfied that they are fully constitutional. These measures have been carefully tailored to provide a prospective, targeted, and balanced response to the real and pressing problem posed by these dangerous offenders.

[*Translation*]

To sum up, Mr. Chairman, the Tackling Violent Crime Act proposes reforms that have already been supported by the House of Commons.

[*English*]

In the case of the new dangerous offender provisions, it proposes modifications that many have signalled an interest in supporting.

I appreciate the collaborative spirit this committee and members have shown thus far to enable the commencement of the review of Bill C-10, and it is my hope and that of all Canadians that this collaboration will continue to enable expeditious passage of this bill.

Thank you, Mr. Chair.

The Chair: Thank you, Minister.

We'll now start the rounds using a process very similar to the one we use in standing committees. The first round will be seven minutes, and the following rounds will be five.

Madam Jennings.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Mr. Chairman.

Thank you very much, Minister, for your presentation. There are a few facts I would like to raise before asking you two questions. I will be very brief.

[*English*]

On October 26, 2006, the Liberals made the first offer to fast-track a package of justice bills through the House. This included Bill C-9 as it had been amended; Bill C-18, which is the DNA identification; Bill C-19, street racing; Bill C-22, age of consent, which we now find as part of Bill C-9,; Bill C-23, criminal procedure; and Bill C-26, payday loans. This offer effectively guaranteed the Conservative government a majority in the House to pass those pieces of legislation, including the one that is in Bill C-9, the age of consent, at that time. Had the government accepted the Liberal offer, Bill C-22, the age of consent, would have become the law before the end of 2006 and our children would no longer have been vulnerable to sexual predators.

On March 14, the Honourable Stéphane Dion, leader of the official opposition, added Bill C-35, bail reform, to the list of bills that the Liberal caucus was offering to the Conservative government to fast-track. Despite again this offer of majority support, it took the Conservatives until May 30 to actually move it up on the order paper so that it would get to committee.

Finally, on March 21, 2007, Liberals again attempted to use an opposition day motion that, if passed, would have immediately resulted in the passage at all stages of four justice bills: Bill C-18, DNA identification; Bill C-22, age of consent, which is the bill that we see again before the House in your tackling crime bill, Bill C-9; Bill C-23, criminal procedure; and Bill C-35, bail reform. Incredibly, the Conservative House Leader raised a procedural point of order to block the motion. In other words, the Conservatives have in fact fought the Liberals' attempts three times to pass justice bills, including the one that's incorporated in Bill C-9.

Now, I notice that in Bill C-9, the section that deals with the dangerous offender, two categories of amendments have been brought forward. One deals with the long-term offenders. A breach of supervision orders, for instance, could trigger a new dangerous offender hearing in order to make them liable to the kinds of sentences that dangerous offenders can be liable to. Minister, if you studied the transcripts of the House committee that studied Bill C-27, or was in the process of studying it last spring before the prorogation of the House, you would see that Liberals actually made proposals for the very kinds of amendments that we now find in the Bill C-27 section of Bill C-2, and they received support from the Canadian Police Association, Mr. Tony Cannavino, and from other witnesses who appeared and who thought it was a great idea and that it would actually strengthen Bill C-27 and make the system more effective.

So I'm pleased that the government listened; however, we also made another proposal. Right now the Crown continues to enjoy discretionary authority as to whether or not an application for remand and assessment for a dangerous offender designation will actually be made, and so your reverse presumption will operate and become effective only if the Crown makes that application. Liberals had been proposing that a third conviction automatically trigger a dangerous offender hearing. That would then allow every single offender who had been convicted three times of a type of crime that can lead to a dangerous offender hearing to actually be called before such a hearing, to actually be assessed and evaluated.

May I ask why the government has decided, in its wisdom, not to go forward with an automatic trigger rather than a reverse presumption, which will possibly never or very rarely be put into effect because the Crown retains the discretionary authority to make the application or not?

I am finished.

● (1650)

Hon. Rob Nicholson: Thank you very much.

Hon. Marlene Jennings: I may have other questions, but they will have to wait for another day.

Hon. Rob Nicholson: Or you may get Mr. Lee to ask them.

Hon. Marlene Jennings: No. Mr. Lee has his own questions, and they're substantive.

Hon. Rob Nicholson: Thank you.

You've covered a lot of ground, Madam Jennings. One of the things you said is that Canadian children weren't as well protected from sexual predators as they would have been if the age of consent bill had been passed. I agree with you. I wish it had been passed. I was very disappointed that the Senate went home and didn't pass that, and when I was asked this question, I said, “Canadian children aren't as well protected as they should be if that bill had been passed”. I agree. It should have been passed.

Now, with respect to the offer regarding the fast-tracking, I know this came in the form of a—

Hon. Marlene Jennings: May I interrupt for one moment, please?

Hon. Rob Nicholson: I'm sorry. I thought you were done, but please go right ahead.

Hon. Marlene Jennings: Thank you very much.

The Chair: You have about 40 seconds left.

Hon. Marlene Jennings: Do you mean that you wish it had been passed October 26, 2006, when the Liberals offered the Conservative government a formal offer to fast-track Bill C-22, age of consent?

Hon. Rob Nicholson: Thank you.

If I could continue, you indicated as part of your question that on a couple of occasions the Liberal Party proposed motions and then on an opposition day proposed to fast-track a number of justice bills. The problem with that, as I'm sure your House leader and others could probably confirm, was that it was procedurally out of order. It was confirmed by the Speaker of the House to be procedurally out of order, and it didn't have the support of the NDP and the Bloc Québécois. So that was a bit of a problem in terms of trying to move this forward.

Nonetheless, I'm looking for support for this legislation anywhere I can get it for any of these particular issues, and again we have that—

The Chair: Minister, we've come up to time, so we'll have to go to Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Good day, Minister. I also extend greetings to your officials.

I will begin with three questions, with your permission. You will understand that my questions are on Bill C-27 since for us, this is the most problematic aspect of the bill.

Firstly, to what extent can one see parallels or make comparisons with legislation in effect in the United States? More particularly, 25 states and the federal government have provisions for what is known as "three strikes and you're out". I would like you to establish parallels, if there are any. You know that the committee has had access to literature which was not conclusive as to the benefits of this legislation in the United States.

Secondly, I would like you to explain what is wrong with the current regime. For instance, is the burden of proof too onerous for the prosecutor, so much so that the Crown does not use these provisions as it should? The Bloc Québécois does not call into question the fact that there should be provisions on dangerous offenders in the Criminal Code. We are simply trying to understand why we need a system like the one you are proposing.

Thirdly, I would like to go back to a question Ms. Jennings raised without going into it in depth. The obligation relating to the designation of a person as a "dangerous offender" is to make an announcement, but if I understood correctly, there will be no obligation on the part of the prosecutor to use that provision. Could you clarify that for me?

Those are my first three questions. If the chair is willing, I will have three more.

● (1655)

[*English*]

Hon. Rob Nicholson: I'm not sure, Monsieur Ménard. I caught all but the third one. You said there are provisions in the Criminal Code.... Sorry.

[*Translation*]

Mr. Réal Ménard: Is there an obligation on the prosecutor? When one reads the bill, one gets the impression that he has the obligation to divulge or not, but that he's not obliged to use that provision. To put the question simply, what is the new obligation on the prosecutor pursuant to Bill C-27 concerning dangerous offenders?

[*English*]

Hon. Rob Nicholson: Thank you, Mr. Chair. I think I've got it.

In your first question, Monsieur Ménard, you asked how this was different from American legislation. All legislation in the United States, of course, is not the same. The criminal law power is part of each state. You may be referring to what is usually referred to as a law in the state of California—and again I'm not an expert on California law—which carries automatic convictions or rather automatic sentence provisions for individuals who have been convicted of three crimes.

In Canada we have what is known as a rebuttable presumption. If an individual has been convicted of the three types of crimes that I indicated in my opening statements, then there is an onus on the Crown to direct the court's attention to whether the Crown will proceed with a dangerous offender application. The onus would shift to the individual to demonstrate—and it's a rebuttable presumption, and that individual would have all the safeguards built into the Canadian system.... They can bring evidence to show that they cannot or should not be designated a dangerous offender. So to that extent, there's nothing automatic about it. There, of course, would be a hearing that would determine this, but again the individual could rebut that presumption.

What are the problems with the dangerous offenders law as it stands? I think there was some need for clarification after the R. v. Johnson decision in 2003 to clarify some of the procedures and the criteria with respect to dangerous offenders.

You made reference to Madam Jennings' comments about some of the issues that arise regarding an individual who has been designated a dangerous offender but nonetheless receives a long-term offender sentence, and about how there have been some problems. She identified a couple of groups that have indicated there were problems in that area. In addition, I can tell you there are provincial attorneys general who believe that there should be some resolution, some clarification on that. So I think there are a number of problems, a couple of which I've just mentioned to you.

You have another question?

[*Translation*]

Mr. Réal Ménard: Could you be more specific about the current regime? A person may be declared a dangerous offender—and we understand the difference between a "long-term offender" and a "dangerous offender"—after committing a serious offence if a person is at risk for re-offending and does not have the adequate qualities in terms of self-control. Can you tell us something about the reasons why you are introducing this bill?

Do the Crown prosecutors not use these provisions? The statistics the researcher sent us mentioned 384 dangerous offenders, 333 of which were imprisoned. What is the problem you are trying to correct? None of the opposition parties is questioning the need for such provisions in the Criminal Code. I'm trying to understand. Is it because the burden of proof is too onerous? Is it because the prosecutor finds this too demanding administratively speaking, before the courts?

● (1700)

[*English*]

Hon. Rob Nicholson: One of them is just what I indicated. There are those individuals with whom we believe there is a problem. If they get a dangerous offender designation and then they are subsequently released into the public and they then don't comply, the way the law is set up it becomes very difficult. They basically have to start all over again, and as you may know, this is a very time-consuming, difficult, expensive operation that crown attorneys are sometimes reluctant to pursue.

So that is very much a concern that I believe is being addressed. It is also one of the reasons why in Bill C-27, since the Johnson case, which I'm sure you're familiar with, we've actually seen a reduction in the number of attempts to designate individuals as dangerous offenders. That reduction, I believe, was a direct result of the Johnson decision. We are attempting to clarify that as well, and I think that would be helpful and would be welcomed by crown attorneys.

Mr. Hoover, I believe, has something else that he might be able to add.

Are we out of time on this, Mr. Chair?

The Chair: Minister, he may have something to add, but Mr. Hoover may have to do that at the next opportunity.

Hon. Rob Nicholson: Okay, fair enough.

The Chair: Mr. Ménard's time is up.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Mr. Chair, on the basis that we don't want to delay this and we've heard from the minister, including even on the one amendment they've made to that part of Bill C-2 that was the old Bill C-27, I'll pass—even though, Mr. Minister, I always enjoy having you here.

Thank you.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: If I might say, Mr. Comartin, I always enjoy listening to you. Even from the comfort of my own home in Niagara Falls, I did hear your comments with respect to this bill. I've listened to you on a number of occasions. I think your comments are, as usual, helpful, and I appreciate hearing them.

The Chair: Thank you, Mr. Minister.

Mr. Harris, seven minutes.

Mr. Richard Harris (Cariboo—Prince George, CPC): Thank you, Mr. Chair.

Mr. Minister, thank you for coming today.

I want to say that Bill C-2, upon study, is a bold bill. It has substantive changes to the Criminal Code, and I'm sure it will be appreciated by Canadians who have been looking for an extra measure of safety for themselves and their families. The bill does have some very bold moves, and it's tough on violent crime. History will show that in many cases when a bill such as this has come up for legislation, or is even passed through legislation—and it's been decades since anything like this has come along—the constitutional challenge people are just rubbing their hands together, waiting to get at it.

So that Canadians can avoid being disappointed about any hitches that might be in this bill, what assurances can you give us, Minister, that all of the due diligence has been done that will enable Bill C-2 to withstand any possible constitutional challenges?

Hon. Rob Nicholson: I appreciate your comments, Mr. Harris, and quite frankly, I appreciate your sitting on this committee. You're not a regular member, I know, of the justice committee, and to you and your colleagues who are prepared to give your time and efforts to get legislation like this through, it is much appreciated.

The drafting of these pieces of legislation undergo considerable scrutiny. It's incumbent upon me, as Minister of Justice, to confirm in my own mind that the bill, first of all, meets the test set out by the Canadian Bill of Rights. That's an obligation that rests on the Minister of Justice for every piece of legislation that is tabled in the House of Commons. In addition, our department is very careful in terms of making sure that legislation, to the extent that we are able to predict these things, will withstand a challenge under the Charter of Rights and Freedoms.

Now, that being said, it is the right of individuals who are charged with offences in this country, or of their solicitors on their behalf, to file applications to have these measures tested. That function has been around in Canada since about 1960, I guess, with the introduction of the Bill of Rights. A number of bills were challenged, and of course since the Charter of Rights and Freedoms we have seen quite a bit of testing. It presents extra challenges to those who draft these, but appropriately so. I remember that in the mid-1980s, when I was a member of Parliament, part of our challenge was to just check on legislation that was already in place—never mind new pieces of legislation, just the legislation that was already on the books. Many—I shouldn't say many, but a fair number—were found to have some constitutional deficiencies. So part of the challenge the justice committee faced was to deal with many pieces of legislation that were updating Canada's laws, to take into consideration that there were these other considerations that had to be met.

Coupled with that was the assurance that whatever we tabled would meet a constitutional challenge. I remember the bill in 1993 to make it a crime to possess child pornography. I'm sure that in my office I had comments, briefs, and articles a foot thick questioning whether this was going to meet a constitutional challenge, and as a member of the committee, looking at that and having looked at the Charter of Rights, it seemed to me that in fact it probably would, that this was a very reasonable piece of legislation: for the first time, to make it an offence to possess child pornography. But I was under no illusions. It was challenged, of course, on at least a couple of occasions, and there have been some changes to that legislation since, but it has managed to stick-handle its way through the years and is still part of the law of this country.

So it's not just me; the people in the Department of Justice who are experts in this area take their responsibility very seriously. So yes, they draft every piece of legislation, every line, every clause, with a view to ensuring to the greatest extent possible that these will withstand constitutional challenge.

● (1705)

But as I indicated to you, it is the right of individuals who are charged with or convicted of an offence to have the benefit of every law in this country and, I think most people say, the constitutional protections. And quite frankly, they predate both those two pieces of law that I indicated to you; you can go right back to the Magna Carta. Indeed, when I was in law school...all the provisions for the writs of mandamus and habeas corpus are constitutional protections. They are part of the laws of this country. I think most people would agree that the justice system we have in this country is a good one and that it has done a pretty good job of protecting the rights of Canadian citizens.

The Chair: Thank you, Mr. Harris.

We are now into five-minute rounds.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you, Mr. Minister.

I want to ask a question that I think goes to one of the core charter issues in this legislation. I think it's a core issue. It goes something like this.

By the way, thank you for not reading your speech word for word and for dispensing with the repetition of the Tackling Violent Crime Act, which was getting a little bit Orwellian there for a while. Good decision. You'll have to get a new speech writer, though.

Here is the issue. It's purely technical, but here it is. The right to remain silent is a principle of fundamental justice protected by the charter. The question is, does the right to remain silent extend through the trial phase and into the sentencing part of a trial?

● (1710)

Hon. Rob Nicholson: Which particular trial? A trial in the first instance?

Mr. Derek Lee: In all trials. The right to remain silent certainly exists during the trial of an accused. I'm just asking whether that right to remain silent for an accused exists during the sentencing part of a trial, of a criminal procedure. That's just the opening question. And that's been confirmed by the courts in—

Hon. Rob Nicholson: In the R. v. Lyons case?

Mr. Derek Lee: —Hebert and others in 1990.

If it does, then the existence of the presumption in this section of the new Bill C-27, which is...your staff will know what I'm talking about. The existence of a presumption in section 753(1.1) would seem to undermine the right of the accused to remain silent. If you foist a presumption upon a convicted person, he or she has to rebut, and they've then lost the right to silence.

If the answer is no, that the right to remain silent doesn't exist after conviction, then I would also put this question to you. We are asking the convicted person to rebut, to prove a negative, i.e., that they're not dangerous. We're asking an individual who's just been convicted for the third time, by way of a presumption foisted upon him or her, to prove a negative, i.e., that they're not dangerous. I don't think in philosophy 101 anyone can be asked to prove a negative, because you can't prove a negative on balance of probabilities or by any standard.

Those are the three questions I would ask you: the right to remain silent before and/or after conviction, and whether you can, under the charter, foist upon a convicted person the need, by way of a presumption, to rebut a negative. If you want to call me an advocate for convicted persons, I guess we'll have to do that, but that's my job.

Mr. Harris, that is our job here. We have to actually charter test the thing before we squirt it out the end of the toothpaste tube. That's my job.

There's a question.

Hon. Rob Nicholson: Starting at the beginning, thank you for your comments.

I usually don't stick too closely to a prepared text, but I have to tell you, Mr. Lee, that the people who do put these things together, in my opinion, do an excellent job. I can tell you that I have been very well served by the background papers and the notes I have received from them.

You then began to talk about the right of a person not to either testify or speak. It's based on the person's right to prevent self-incrimination. That's the basis of that. You don't have to say anything that might incriminate yourself.

Go ahead. Did you want to add something?

Mr. Derek Lee: I was just going to say that there is a distinction between the right of a person not to incriminate himself or herself in giving evidence or in confessions, but the right to remain silent is a principle of fundamental justice standing on its own.

I'll stop there and let you continue.

Hon. Rob Nicholson: But what we're saying, Mr. Lee, on this particular piece of legislation is that these are individuals who have been convicted. They're already before the court with three serious offences for which they have been given conviction. We're indicating to them that they had better put something on the table to rebut the presumption that they are a dangerous offender.

In a sense, we're at the sentencing stage of this. You're right, an individual doesn't have to bring forward any evidence. They don't have to say a word. But I think it's clear, and I think it's fair enough to say, that we're talking about some of the most dangerous individuals in Canadian society. We're not talking about common assault here. As you know, that list...so again, I think it's reasonable to....

I'm sorry, we're running out of time?

● (1715)

The Chair: Yes, thank you, Minister.

Mr. Derek Lee: Could I ask the staff to provide an answer to those questions?

The Chair: Fair enough. As long as everyone—

Mr. Derek Lee: It's a technical thing. If they can't give it today, they'll have to come back. While we can't have an answer now, it could be prepared in writing for later.

Thank you.

The Chair: Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you very much.

Good afternoon, Mr. Minister.

Firstly, I am happy that you were able to group all of the bills into Bill C-2. I want to share with you testimonials from the province of Quebec in particular.

Mr. Boisvenu, whose daughter was killed, read a part of the bill. He was very happy about it because he is a member of an association many members of which have seen their children killed by recidivists using firearms.

Another person thanks you, in a way. That is Mr. Livernoche, the father of the young boy who was strangled following the release of a sexual offender. Perhaps in future, that sort of thing will no longer happen.

A third group from the city of Montreal might also want to thank you. I don't live there, but I know that my colleague Mr. Ménard does. There are 36 extremely violent street gangs. Ms. Mourani has written a book on the topic. These street gangs can decide to kill you just because they don't like the colour of the clothes you are wearing. In some cases, it is that extreme.

Another group with which I have often dealt in my personal practice would thank you also. This concerns impaired driving. The MADD group is very well aware of everything concerning deaths due to impaired driving. You know that in Quebec several people have literally been killed by people who were driving in an impaired state due to alcohol or drugs.

The question I would like to put to you, Minister, is important. Even though this has been said and repeated, I would like you to explain, because this must be well understood, why you decided, at this time, to group into Bill C-2 all of these laws that were dispersed all over the place, in the House of Commons or at the Senate. Can a Canadian citizen listening to you today expect that things will proceed quickly? What message would you like to give him?

[*English*]

Hon. Rob Nicholson: Thank you, Monsieur Petit, for that question.

You're quite correct that this bill covers a wide range of areas within the Criminal Code. I believe all of them stand up for the rights of victims. I think they are a reasonable response to a number of different issues that have confronted us. These were certainly issues we talked about in the last election that we would proceed with.

You're asking me why we put this together in one comprehensive piece of legislation. I'll begin by saying that it's because we didn't get them passed in the spring, or the winter for that matter, and I think these are pieces of legislation that will generally and for the most part be welcomed by Canadians. They want to see the different components of this piece of legislation in place.

I said in my opening comments that one of my favourites was the age of protection. It's long overdue in this country. We can argue about whether it should have gotten through in the spring or the summer, but I would go so far as to say that it's a century overdue. That piece of legislation reflects the mores and some of the thoughts of the 19th century, the idea that...and it happens. It happens. A 40-year-old can be preying upon a 14-year-old and then make the case or something that Canadian law doesn't cover this. It's wrong. It doesn't make sense to me. So I want to see this get passed, and I'm hoping that putting this together....

Again, we could argue for another hour about why it didn't get passed last spring or last summer, but I think this is a good way of profiling these issues. I think they have been thoroughly aired. I'm hoping this committee will move forward and say that these are reasonable items. All of them have been in the public arena for at least a year. Granted we made some changes, some amendments, in response to a number of groups, including the attorneys general, but I'm hoping this committee will move forward on this. I truly believe Canadians will thank us if we move forward and get this comprehensive piece of legislation passed.

Thank you very much for your comments. I appreciate your commitment to this.

● (1720)

The Chair: Madam Freeman.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Good afternoon, Mr. Minister.

First, I would like to put a rather technical question to you. I think that your officials will probably be the ones to reply to it. Subsection 42(4) of the bill states that:

> (4) Subsections 753(4) and (4.1) of the Act are replaced by the following:

In the subsection 753(4) in question, one reads the following:

> (4) If the court finds an offender to be a dangerous offender, it shall impose a sentence of detention in a penitentiary for an indeterminate period.

The proposed amendment states the following:

> (4) If the court finds an offender to be a dangerous offender, it shall:
>
> (a) impose a sentence of detention in a penitentiary for an indeterminate period;
>
> (b) impose a sentence for the offence for which the offender has been convicted which must be a minimum punishment of imprisonment for a term of two years [...]
>
> (c) impose a sentence for the offence for which the offender has been convicted.

Could you explain to me the purpose of the amendment you introduced? It is not entirely clear to me.

[*English*]

The Chair: Mr. Hoover.

Mr. Douglas Hoover (Counsel, Criminal Law Policy Section, Department of Justice): As the minister has already stated, the broad scope of the reform to the dangerous offender legislation is to respond to the case of R. v. Johnson. In fact, R. v. Johnson laid out a bit of a different landscape from what was there previously. It suggested that even though an individual meets the dangerous offender criteria, they still will not be designated dangerous offender nor receive the dangerous offender indeterminate sentence if in fact there's a finding by the court that a lesser sentence can manage the risk posed to the general public.

These provisions respond directly to the Johnson case. First, they separate a sentence from designation, and second, basically the court first will determine that if they meet the criteria, they're designated as a dangerous offender, and they're a dangerous offender for life. Once that occurs, then the court turns to the issue of the appropriate sentence. The test is now emphatically laid out, in accordance with the Johnson decision, whereby unless the court is satisfied that the lesser sentence will manage the risk the offender poses of future offending, then they have to receive the indeterminate sentence.

So with regard to what those two provisions do, proposed subsection 753(4) now lays out the three sentence choices for the court. Proposed subsection 753(4.1) sets out the Johnson test, the actual criteria they are to apply in terms of whether or not to make the indeterminate sentence or the lesser sentence.

[*Translation*]

Mrs. Carole Freeman: Thank you for those explanations.

There are 12 primary designated offences in the bill. I would like the minister to tell us why he did not add other offences such as terrorism, impaired driving causing death, child pornography. Why did you limit yourself to these 12 offences?

[*English*]

Hon. Rob Nicholson: It's always a judgment call, Madam Freeman.

For instance, maybe it was you who asked, why not manslaughter? Again, we're trying to get those individuals who have the necessary *mens rea*, the necessary guilty mind to go out and deliberately commit a number of serious offences. That doesn't mean that other offences aren't serious. Nonetheless, we've gathered together to make a reasonable package that would address those individuals who we would categorize as career criminals, the individuals who are prepared to do it over and over again, inflict violence or sexual assaults on others. Those are the individuals we've zeroed in on, and not for terrorism, treason, or something else, unless it comes within that definition.

● (1725)

The Chair: Is there anything you want to add, Mr. Hoover?

Mr. Douglas Hoover: Just that one of the issues raised was how this compared to U.S.-style legislation. Again, in the U.S. there are three offences that automatically trigger a life sentence. This does not do that. This is designed very deliberately to narrow the scope towards the target individuals who typically are going to be subject to a dangerous offender application, and in many cases a successful one.

This allows for a viable procedure whereby the Crown can in fact avoid a protracted and expensive hearing and basically go to the same result they were going to anyway, which then leads to the real issue at the heart of these hearings since Johnson, which is, what is the appropriate sentence to give an individual who has in fact met the criteria of section 753.1?

Hon. Rob Nicholson: Some of those individuals, to be fair, Madam Freeman, would get a life sentence in any case if they committed a premeditated murder. That's not who we're targeting here particularly. They've already got the life sentence.

[*Translation*]

Mrs. Carole Freeman: I have one last question for you. In the case of a supervision order...

[*English*]

The Chair: Unfortunately, we're over five minutes, so we'll have to wait for the next round.

Mr. Keddy, five minutes.

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): Thank you, Mr. Chair.

Thank you, Minister Nicholson, for appearing before the committee today.

I think this is a timely piece of legislation. Just listening to the discussion around the table and whether or not this infringes on the right to remain silent, the existence of the presumption of guilt, and a lot of legalese, if you will, my understanding is that there have been some flaws in the Criminal Code and this is an attempt to address those flaws. Canadians have been asking this government, and they asked the previous government, to address the inequities and the failures that are in the Criminal Code and to bring in substantive changes.

I don't see this as any attempt in any way, shape, or form to subvert the charter. We do have this incidence out there of...you used the words “career criminals”, or recidivism amongst criminals who reoffend and repeat offend. That's only one portion of this particular piece of legislation, but I think that's the portion that Canadians are extremely concerned about.

I would like some of your further thoughts on that subject.

Hon. Rob Nicholson: I'm always prepared to give them, Mr. Keddy.

Thank you very much for your comments, and thank you for being a member of this committee. I appreciate your commitment to the issue of fighting crime in this country.

I think what we're doing is a commendable exercise in our responsibility as legislators. I have sat where you have sat on many occasions with various pieces of legislation, and for the most part throughout the eighties and the nineties we gave guidelines to judges as to the seriousness with which we took the crime. We usually did it in terms of maximum sentences.

I remember on a number of occasions when we revisited certain sections of the Criminal Code and said that the maximum sentence doesn't reflect the seriousness with which society views this type of behaviour. That was a legitimate exercise of our legislative responsibilities. And putting minimum sentences, in my opinion, is also a responsible exercise of our legislative responsibilities.

What we're trying to do is to give some guidance as to the seriousness with which Parliament views some of this activity. You know and I know some of the serious problems that have arisen and can arise in this country with respect to firearms offences and crimes that are committed with firearms. You, as a representative of your constituents from Nova Scotia, know how seriously people take that and how upsetting people find that.

I think it's incumbent upon us to try to draft legislation to take into consideration these legitimate concerns of law-abiding people while at the same recognizing the charter and the rights under the Canadian Bill of Rights of individuals who are accused of a crime. What we are trying to do is strike that reasonable balance. I'm convinced that we are doing that. Again, it's a legitimate exercise and it's why we are sent here and what we are supposed to do.

I think all parliamentarians—and I hope I can say that—when this bill gets passed, can take a lot of pride in getting these pieces of legislation. It's a substantial piece of legislation. As you know, this is the first bill introduced into this session. It's not just a coincidence that it's Bill C-2 and that it's put all together. These are steps in the right direction.

I appreciate your support, and indeed the support of all committee members. Again, I wish you well in your deliberations. I hope this bill gets passed as expeditiously as possible.

● (1730)

The Chair: Thank you, Mr. Minister.

We are now coming up to a vote. We started about an hour ago, so we're probably a minute and a half short of an hour.

What I would like to ask, Mr. Lee, is one point of clarification. We are going to have staff back tomorrow for an hour. Your issue with respect to some of the technical questions you may want to reiterate at that time, to get that out. Whether that requires anything in writing, I'm not sure, but at least I'll offer you the opportunity to do that.

Secondly, if we could suspend for at least the period of the vote and then come back about fifteen minutes after the vote, one of the issues we need—

Mr. Réal Ménard: Some of us have obligations.

The Chair: You do? Okay.

Before we leave, I would just ask if we could at least have a list of priority witnesses, the top four or five that you would like to see. The reason I make the request is that we are having some difficulties in arranging for witnesses for the next two days. If there are priority witnesses that you would like to see here and you believe would be able to attend, we would appreciate getting that from each of the parties. It would allow us the opportunity to pursue them from here. Please get them to the clerk.

Thank you.

The meeting is adjourned.

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