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—
Chair

Mr. Art Hanger

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• (1530)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I would like to call to order the Standing Committee on Justice and Human Rights this Tuesday, March 11, 2008. The orders of the day, pursuant to the order of reference of Wednesday, January 30, 2008, are to consider Bill C-27, an act to amend the Criminal Code in regard to identity theft and related misconduct.

Appearing before our committee, I'd like to thank the Minister of Justice, the Honourable Rob Nicholson; and from the Department of Justice, Mr. William Bartlett, senior counsel, criminal law policy section; along with Mr. Christopher Ram, legal counsel, criminal law policy section. Thank you all for being here.

Minister, you have the floor.

Excuse me, there's a point of order.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): This won't take long.

At five o'clock, are we to stop and discuss committee business, given that there's a vote at 5:30?

The Chair: Committee business will be brought forward approximately 10 minutes prior to end of the session, so we will stop at about 5:20.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): That is not enough. Considering how important the motion is, I think we should stop at 5 o'clock.

[English]

The Chair: Before we get into any further discussion of this, what's the desire of the committee? Is it 20 minutes?

Mr. Brian Murphy: I think we did agree to an hour and a half for the minister's testimony. That's all.

The Chair: I don't remember that discussion. How about just having a saw-off here? We'll use the last 15 minutes for the discussion of committee business.

Mr. Réal Ménard: Or 20 minutes?

The Chair: Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): We're going to have to stop by 5:25. The votes are at 5:30.

The Chair: That's understood.

Mr. Joe Comartin: If you're going to give this 15 minutes, we'll have to break at 5:10.

[Translation]

Mr. Réal Ménard: It is going to take twenty minutes. So we should stop around 5 o'clock.

[English]

The Chair: All right. So we'll make it five o'clock.

Thank you, gentlemen.

Minister, you have the floor.

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Mr. Chairman.

I'm pleased to be here on Bill C-27, the identity theft bill. It has received widespread support. I've been quite encouraged by the response we have had to the bill, and why not, Mr. Chairman? We are trying to catch up with changes in technology. There have been very many rapid changes, as you know. Our job is to try to stay on top of them.

I was in Montreal a couple of months ago and indicated the government's intention to introduce a bill on identity theft. One reporter said to me, "Is this your attempt to stay ahead of the bad guys?" I said, "Look, I want to make sure we catch up with the bad guys."

What happens is with changes in technology...you've got wording that's been in the Criminal Code since 1892, in some cases—and it wasn't new in 1892, as I like to point out to people; it was adopted then.

Our challenge as legislators is to try to make sure that the legislation stays up to date. In fairness, we've always had a number of identity-based offences. Those offences that are in the Criminal Code include impersonation, forgery of identity documents, and secondary offences such as fraud. We also have some offences to protect specific forms of identification, such as the Canadian passport.

This bill makes changes to modernize these long-standing offences, but its main focus is the creation of new offences that focus specifically on abuses of identification and identity information. These new offences do not depend on whether other crimes are committed with the information, and they can be applied before the offenders have a chance to misuse it.

We believe this is important for several reasons. First, it recognizes that in the modern era, identity crimes generate a couple of groups of victims. The harm to victims of secondary offences has always been addressed by such offences as fraud, but there is also harm to those whose identity has been misused and misappropriated. Reputations, creditworthiness, and even criminal liability may be affected. False information can spread quickly, and we should realize it's not just across Canada but across international borders as well. These victims suffer harm whether or not other crimes are committed with the identity information. That damage, as I'm sure you're aware, can be very difficult to correct.

The bill recognizes these victims in two ways. The new offences criminalize the actual taking and trafficking in victims' identities, which means the police can investigate and intervene at an earlier stage, without waiting for offenders to actually use those identities for other crimes.

We are also proposing an amendment to allow the cost of repairing or restoring identity to be included in restitution orders.

Second, the proposed new measures will close gaps created by new technologies and new crimes.

Physical documents are property and taking them is theft, but simply copying electronic information is not addressed by traditional property offences. In serious cases, digital identities have been taken en masse and then criminally trafficked as a new form of illicit and valuable commodity. Credit card information is skimmed directly from cards or taken from databases and sold internationally, using e-mail and the Internet.

Criminal groups have also learned to specialize and to cooperate with one another. One may steal or fabricate information; another may produce physical or electronic documents for sale; the end users of the identities then commit other crimes with them. In transnational schemes, offenders can carry out key functions on websites offering the open sale of false identities in countries where legislation or law enforcement is weak.

•(1535)

The proposed amendments respond to both these problems. For the first time in Canada, we are proposing a definition and offences based on the underlying concept of identity information. These will apply to taking or copying the actual information itself and not just documents containing the information.

Adding specific offences also means that every stage of the process is addressed, including obtaining information, making illicit documents, trafficking in both the documents and information, and illicit use of the documents or information. This is the aspect of this bill that I have had law enforcement agencies across this country point out to me as a step in the right direction, because it's a complete package that we have to talk about. We have to get everybody all the way along. This ensures that the criminal law applies, even if only part of the scheme takes place here in Canada. I think that's very important.

Third, from a more practical standpoint, the new offences enable law enforcement agencies to become engaged in earlier aspects of the criminal enterprise, and I think this is what they like so much about it. These new offences will provide additional deterrence

focused specifically on identity crime. They will provide an additional tool against criminal activity, including major frauds, crimes related to immigration, smuggling of immigrants, trafficking in persons, money laundering, organized crime, and terrorism.

And fourth, identity-related crime, as you know, is an expanding problem at the international level. Credit cards may be copied or skimmed here in Canada and that information can be transferred abroad in minutes. Long before the cardholder or card issuer is even aware that the information has been compromised, it can be used to commit crimes and fraud in other parts of the world. The government has been actively engaged in raising this issue in international fora for some time. A few other countries have enacted identity crime offences or are considering them.

By bringing forward these amendments, Canada will be sending a strong signal to other countries that we take the problem seriously and that we are committed to doing something about it. The proposed maximum sentences for the major offences also ensure that the UN Convention against Transnational Organized Crime, which Canada ratified in 2002, will allow us to seek mutual legal assistance, extradition, and other forms of international cooperation in cases where an offence is transnational in nature and involves a criminal organization.

I would propose to leave some of the more technical amendments for your questions, of course, but let me now turn to what I believe are the key amendments in this package.

The first of these would form a new section 56.1 and would criminalize the procurement, possession, transfer and sale or offering for sale of specific physical identity documents. At present, simply possessing or trafficking in another person's identity documents is not a crime, and we believe it should be, subject to the appropriate exceptions. We have thought very carefully about those exceptions, and you'll see them listed in the bill. I think they all make sense.

As an added safeguard, the offence also allows for other lawful excuses of a more general nature. For example, a person caught trying to enter Canada with a collection of different passports might trigger an investigation, but obviously a parent in possession of a child's passport would have a lawful and reasonable excuse.

The second key amendment expands the existing offence of uttering forged documents. This would now include trafficking in forged documents and the possession of forged documents with the intent to traffic or use them. This is subject to the definition of document, which includes both physical and electronic documents.

The third key amendment and a most important change in this package is composed of three elements: the establishment of a new definition of identity information; a new offence of identity theft; and the modernization and expansion of the old offence of personation, resulting in a new offence of identity fraud.

Existing criminal law does not extend to merely taking or copying personal information or trafficking in it as an illicit commodity unless other offences are committed with it. The proposed new identity theft offence deals primarily with obtaining or possessing identity information in circumstances that show intent to commit one of a series of other related offences.

A similar offence will be established to cover trafficking in such information, knowing or believing it will be used for one of those same offences. To address the problem of false identity information being used to deceive others, the proposed offence of identity fraud focuses on the misuse of identity information for an improper purpose, such as evading criminal liability or to gain some advantage for the offender or to disadvantage the victim. This is an expansion of the existing personation offence, adding scenarios related to the offender's misuse of the information in ways other than actual impersonation.

• (1540)

Finally, in proposing these amendments the government realizes that officials from legitimate investigative agencies often must conceal their identities or impersonate others in the course of undercover investigations. To address this, legitimate investigative agencies are excluded from the new offences for otherwise unlawful conduct undertaken in the course of their duties or employment.

The proposed exemptions do not change the status quo or extend new investigative powers. I want to be clear about that. They merely ensure that our capacity to ensure the law and protect Canadians is not adversely affected by the changes we are proposing.

Mr. Chairman, this concludes my summary of the legislation.

I am here with the officials to respond to any questions or comments you may have.

The Chair: Thank you, Minister, for your presentation.

We will go to questions. Go ahead, Mr. Murphy.

Mr. Brian Murphy: Thank you, Mr. Chairman.

Thank you, Minister and officials, for being here. It's nice to get back to some black letter law and discuss what I think is a very good initiative, Mr. Minister.

I think some credit has to go to a member of Parliament, Mr. Rajotte, whose private member's bill we discussed. It's somewhat fresh in my mind.

Not to be overly protective of backbenchers and private members, I see there is a provision in this law that seems to suggest that if another piece of legislation, Bill C-299, comes into effect, this legislation will kill it.

We were aware at the time that there were some gaps in it. Are you satisfied that Bill C-27 covers everything that Bill C-299 was going to cover? I am just going from memory, but it seemed to me there

was a fair amount of nervousness from the private investigating community and from other communities with respect to what they could and couldn't do.

Do you think Bill C-27 makes things better with respect to what we identified as gaps at previous hearings?

Hon. Rob Nicholson: I know Mr. Bartlett has a few comments on this, but let me start by acknowledging your comments.

I certainly did comment before the House of Commons that my colleague and yours, James Rajotte, was one of the inspirations behind this bill. His bill is more limited, as you know, than this particular piece of legislation.

I can tell you that I discussed this with him and indicated that we'd be coming forward with this. He is completely supportive of this because it incorporates the principles of his bill and expands it. He was quite understanding of that.

In answer to the second part of your question, about whether we have encapsulated some of the issues raised, I think we have done that. I know Mr. Bartlett wants to make a comment on that, and I will let him do that, but we looked very carefully at his bill when we drafted this one. Again, I think this one goes considerably further.

Mr. Bartlett, would you comment?

• (1545)

Mr. William Bartlett (Senior Counsel, Criminal Law Policy Section, Department of Justice): Yes, thank you, Mr. Chairman.

The primary focus of Mr. Rajotte's bill was on what's called "pretexting", a particular means of gathering identity information for the purposes of particular offences that were spelled out in the bill.

Bill C-27 goes well beyond that in terms of the means that might be used to gather the identity information. It's any means, as long as the purpose is to commit an offence involving fraud or some form of deception, so it's a broader range of offences that they might then put that information to.

It's also somewhat broader in terms of passing that information on. Mr. Rajotte's bill was limited to passing it on for money, essentially; this measure involves passing it on whether you're charging or not, or if you know or believe or are reckless as to whether the person you're passing it on to might then use it for an offence involving fraud or deception. It deals with all the major objectives of Mr. Rajotte's bill in a somewhat broader way.

I think, as the minister has said, when Mr. Rajotte's bill was being dealt with in committee, there was a recognition that the bill was fairly narrowly focused and that government legislation might come along, deal with it in a broader way, and subsume it.

Mr. Brian Murphy: I do have a question, because I recall as well that some of the issues surrounded the definitions of information.

I see in this bill—and I'll sort of can it here for you, or for me, maybe—first, “identity information”, which is in the legislation and in the Criminal Code, “means any information...commonly used...to identify...an individual”. I'm cutting out a bunch of words. It includes biological or physiological, of course, but it's any information commonly used to identify an individual.

In PIPEDA, the definition is “information about an identifiable individual”, but then, importantly, “does not include the name, title or business address or telephone number of an employee of an organization”. So, essentially, what Bill C-27 does is use “personal information” from PIPEDA and add—am I right or not?—the name, title, business address, or telephone number of an employee of an organization. If I recall, that was one of the problems with Bill C-299.

Hon. Rob Nicholson: You got it right, Mr. Murphy. Well done.

Mr. Brian Murphy: Thank you.

Do I have much time left?

The Chair: You have time for another question.

Mr. Brian Murphy: The pretexting was one of the other questions that came up. I know Mr. Rajotte's bill dealt primarily with that, and now you're subsuming all that.

I did address the private investigators' investigation element. Would their concerns be met? I guess we'll find out, perhaps, but would their concerns be met by Bill C-27?

Hon. Rob Nicholson: I think they are.

Mr. Brian Murphy: They can go about their business...?

Hon. Rob Nicholson: There are a couple of provisions that specifically address the people who have a legitimate purpose for what they are doing, where they're carrying out an investigation.

I gave one example of the parent who might have passports. Again, I believe there are three different areas where we make specific provision for people who have a legitimate purpose for what they're doing, so that we're not catching them with this.

Mr. William Bartlett: The bill also makes the obtaining of the identify information an offence only if you either intend to use that for a further offence that involves fraud or deception or you're passing it on to someone else who you know or believe is reckless as to whether or not they're going to use it for that purpose. It's the addition of the very specific purpose for the obtaining of the identity information that should deal with the concerns of the private investigators.

• (1550)

The Chair: Thank you, Mr. Murphy.

Madame Freeman.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Thank you, Minister and officials.

First, I would like to underscore the relevance of the introduction of this bill, because it responds to the emergence of a major problem

both here in Canada and elsewhere. As the minister so aptly put it, different types of criminals have a hand in identity theft, including organized crime networks. Currently, organized crime networks from Ukraine, Russia and other countries have taken over the identity theft network here, in Montreal and Vancouver.

Given the international dimension that identity theft has taken on, is the federal government cooperating with other countries to combat this problem? To what extent does Bill C-27 deal with the transcontinental nature of identity theft? Could the minister give me an answer?

[*English*]

Hon. Rob Nicholson: I did mention, Madam Freeman, in my remarks the international convention that we had signed on and ratified in the year 2002. The drafting of this legislation took particular interest in the convention to make sure that we were on side. I indicated in my opening remarks that this will assist us when there are questions of extradition because we will have laws in place that are similar to other like-minded countries.

In terms of my own personal involvement, I can tell you that in June, when I was at the G-8-plus meeting of justice ministers and public security ministers, this was one of the topics we talked about. We talked about furthering the cooperation between our countries, trying to bring in laws with a view to the legislation in other countries, so that there are some similarities and so that they could work together in terms of, for instance, the extradition. It seems to me that there was a widespread belief that we have to do more.

Interestingly enough—I think you mentioned the Russians—I had the Russian minister of justice, or the public security minister equivalent, indicate that they had sent out a memo with some information with respect to some pedophiles that they had identified. I was both pleased and concerned—pleased that he said that Canada and Switzerland were the only two countries that immediately responded to their APB, their bulletin, that they sent out, and concerned that it didn't get picked up by everybody, that they didn't move. I think that's the trend you're seeing. You've seen where international pedophile rings have been taken down and the information is transported through a number of different countries. I think that's a measure of the cooperation. Certainly, in terms of the convention we have ratified in this area, this will be very helpful. Indeed, we did have a look in drafting the legislation to make sure it complies and that we will be in a position to cooperate with others.

[*Translation*]

Mrs. Carole Freeman: Thank you.

It is abundantly clear that cooperation with the United States has been established and has developed quite substantially. There are costs associated with all these investigations. Have you provided for additional resources and tools to help police officers combat this scourge of identity theft?

[English]

Hon. Rob Nicholson: You know the provisions in the budget with respect to more police officers in this country. The budget that was just passed in the last few days has, among other things, \$400 million for new police. That being said, we have ensured that there are greater resources for the federal police force, the RCMP. I think for the most part these resources are in place right across the country. For example, I think you mentioned Montreal. I talked to police agencies in Montreal. They made it very clear that one of the frustrating parts of this is that they identified people who are components of this, but they're stymied. They can't do anything about it because the exact activity is not now covered by the Criminal Code, even though that information gets shipped many times outside of the country.

I believe the resources are in place. The government has indicated its intention and demonstrated its commitment to making sure there are resources with the RCMP and more police officers right across this country. There are investigative units right now in this country that I think will welcome this legislation. They have the resources already. They just want the law to catch up with where they're at.

•(1555)

[Translation]

Mrs. Carole Freeman: I would like to know what the government is doing, when it issues identification, to ensure security and oversight of the process. My question is based on the Auditor General's 2006 report, which found that the number of social insurance numbers, or SIN numbers, was far higher than Canadians would normally be expected to have been issued. Enacting legislation is all well and good, but the federal government itself has to set an example. I mentioned SIN numbers, but I could give other examples too, such as the theft of computers in Laval that provided information on 120,000 individuals. What steps is the federal government going to take in this regard?

[English]

Hon. Rob Nicholson: It's not specifically, of course, my responsibility as justice minister to regulate the security of government documents.

I would point out to you one of the interesting provisions recently announced in Parliament, and that's with respect to more security-sensitive passports and increasing the time for which passports need to be renewed from five to 10 years. It would be done, I believe, in the year 2011 on the basis that there would be increased security components incorporated into the passports.

I agree with you, Madam Freeman, on the security of all government documents. You'll notice one of the specific offences in this particular identity theft bill goes to the possession and trafficking of government-issued identification. My part of this scheme is to make sure that those who traffic, possess, and illegally acquire or otherwise interfere in one way or another with government ID are properly addressed in this particular legislation. You'll see there's a section that deals specifically with it, and it's something that I think is a step in the right direction.

The Chair: Thank you, Madam Freeman.

Mr. Comartin.

Mr. Joe Comartin: Mr. Chair, you'll recall—and I'm not sure the minister is aware of this—that I was going to be given the opportunity to question the minister about the appointment of the director of public prosecutions. I assume this is the time when I would be allowed to do that, because I'm not likely to get a second round, given the time.

The Chair: Well, Mr. Comartin, I can only caution you that we are dealing with identity theft and other related matters. Whether the minister will answer your question is up to the minister, but put it.

Mr. Joe Comartin: Does that mean I can go ahead?

Mr. Minister, were you advised that I would be asking questions about the appointment?

Hon. Rob Nicholson: I wasn't advised that you'd be asking today. I heard that you had questions about that. Somebody indicated that to me. My understanding is that the acting director of public prosecutions will be here—is it tomorrow?—before the committee to answer questions, but go ahead.

Mr. Joe Comartin: Okay.

There were a set number of steps that had to be taken for this appointment of individuals. I think there's a total of 10 who were appointed. That process was taken and fulfilled. All of those appointments were made to the committee.

Hon. Rob Nicholson: Which committee, now? The committee that advised with respect to the appointment?

•(1600)

Mr. Joe Comartin: Yes.

Hon. Rob Nicholson: My understanding, Mr. Comartin, is that it was an all-party committee that made a number of recommendations to me. I believe you sat on that committee. I don't have that here before me, but I was advised that in the case of Mr. Saunders, he was an acceptable candidate for it, and in due course I made the decision.

Mr. Joe Comartin: Okay. I want to be clear because I want it on the record. In addition to the one member from each party, there was a person named by the Federation of Law Societies, the four party members, the deputy minister of justice, the deputy minister from the Department of Public Safety and Emergency Preparedness, and a person selected by the Attorney General.

Hon. Rob Nicholson: I believe that sounds like a complete list, Mr. Comartin, but again....

Mr. Joe Comartin: Thank you.

The process was such that a number of names were given to the selection committee. That was done as well.

Hon. Rob Nicholson: As far as I know, it was.

Mr. Joe Comartin: Okay, and from that list, the committee was to recommend no more than three names to you. Is that correct?

Hon. Rob Nicholson: Exactly.

Mr. Joe Comartin: And that occurred?

Hon. Rob Nicholson: Yes, it did.

Mr. Joe Comartin: Within that list of names, was there any priority given to the names?

Hon. Rob Nicholson: I don't believe there was, Mr. Comartin. I believe I was given three names, with a recommendation from the committee that any of the three would be acceptable. I received quite a bit of documentation—CVs, background information, that sort of thing.

Mr. Joe Comartin: Did you read the entire report that you received from the committee?

Hon. Rob Nicholson: It depends on which report you're referring to. It's been quite some time since I've looked at it, but I remember reading all the material that was given to me in coming to my decision.

Mr. Joe Comartin: I'm conscious of the confidentiality issue here, so I won't mention any names. From reading that, was it not obvious that one of the other candidates, other than the one put forward, was in fact given a priority, without naming him as number one?

Hon. Rob Nicholson: Well, what was obvious to me—and I know I have this right—was that the individuals had the approval of the committee and that all of them were deemed to be competent and appropriate individuals from whom to choose.

My understanding is that as Minister of Justice I had the ability and the right to choose any one of the three recommended to me. My understanding was that they were all competent and all well qualified. Indeed, I believe it'll be confirmed tomorrow when you have a chance....

I know you're quite familiar with the individual who's been doing this job for the last 14 or 15 months. He's done a good job up to this point, and he was one of the individuals recommended to me.

Mr. Joe Comartin: That wasn't my question. What I asked was whether it wasn't obvious that there was in fact a preferential candidate. I'm not suggesting that all three were not qualified; I'm not suggesting that, Mr. Minister.

Hon. Rob Nicholson: I have to tell you that at this point, Mr. Comartin, it's been several months since I looked at the material. Inasmuch as I actually came here for the identity theft bill, I haven't had an opportunity to review what I read quite some time ago about this. But as I said, I remember reading very carefully the CVs and the material on three individuals recommended by the committee and I made a recommendation. I believe I have the constitutional ability to do that—to move forward—according to the legislation.

Mr. Joe Comartin: I'm not disputing any of those. The question remains as to whether your analysis of the report did not lead you to the conclusion that there was a superior candidate.

Hon. Rob Nicholson: My analysis did, and that's the individual I recommended to you. My understanding is that he will be here before you tomorrow.

The Chair: Thank you, Minister.

Mr. Comartin, I think you can focus your attention now on identity theft. I believe you've—

Mr. Joe Comartin: Given that answer, I agree with you.

[*Translation*]

Mr. Réal Ménard: Mr. Chair, I have a point of order.

Excuse me, Mr. Comartin, but there have been a number of references to a selection committee on which all political parties were apparently...

[*English*]

The Chair: Monsieur Ménard—

[*Translation*]

Mr. Réal Ménard: Let me finish my point of order.

The Bloc Québécois was never approached about this selection committee. I checked the facts with the office of the leader. We can settle this tomorrow.

[*English*]

The Chair: I believe the matter on Mr. Comartin's questions has been dealt with by the chair.

Mr. Comartin, may we have your questions on identity theft now?

• (1605)

Mr. Joe Comartin: With regard to proposed section 402.2 of the act, or the proposed law—

The Chair: I have a point of order here, Mr. Comartin.

Hon. Larry Bagnell (Yukon, Lib.): Mr. Chair, the committee agreed at the last meeting that questions on this candidate would be acceptable at this meeting. Whether or not the minister was informed is not our problem, but Mr. Comartin should be allowed to ask whatever he wants in his timeframe.

The Chair: Mr. Comartin has moved on.

Mr. Comartin, you have the floor.

Mr. Joe Comartin: I'm serious. Based on the last answer I got from the minister, there's no use pursuing it.

With regard to proposed section 402.2, at the briefing, Mr. Minister, your staff was kind enough to pass me some information. I was concerned about this proposed section. They pointed out the section of the code around housebreaking tools. This is what this is drawn from, and the Supreme Court of Canada decision, *R. v. Holmes*, back in 1988.

You may want some assistance from Mr. Bartlett on this.

The section of the Criminal Code on the housebreaking tools uses the wording “without lawful excuse”. It seemed to me that was an essential ingredient in the decision by the Supreme Court of Canada. That wording doesn't appear here; we substituted for it “who knowingly obtains or possesses”.

When I first read the bill, and before I looked at that case in the other section of the code, I was really concerned about the ability of our prosecutors to be able to prove this section. I wonder if you or somebody else could comment on it. I have real problems with whether this is going to be useful.

Let me just add to that. I think we've all expressed support for the rest of the bill, Mr. Minister. We just want to be sure that it can be as effective as possible.

Hon. Rob Nicholson: I'm with you on that one.

Mr. Joe Comartin: This is the one section I'm worried about.

Hon. Rob Nicholson: Well, you'll get no disagreement with this. I know Mr. Bartlett will want to make a comment.

You're right about the wording; it's slightly different from the section you referred to.

I'll read it. I think this is the one. Is it proposed section 402.2?

Mr. Joe Comartin: Yes.

Hon. Rob Nicholson: It says:

Everyone commits an offence who knowingly obtains or possesses another person's identity information in circumstances giving rise to a reasonable inference that the information is intended to be used to commit an indictable offence that includes fraud, deceit or falsehood as an element of the offence.

Any time you draft these things, you draft them in a way that you believe is going to work and that will improve the law on this. I think it's straightforward.

That being said, Mr. Bartlett, would you comment on it, please?

Mr. William Bartlett: The housebreaking tools offence is a question of simple possession, so it is qualified by the "without lawful excuse", the general defence. In this case, it's quite specific to possession of housebreaking tools under certain circumstances, for example, out at night near somebody else's house as opposed to in your—

Mr. Joe Comartin: Mr. Bartlett, because I'm going to run out of time—I'm sure I'm going to get cut off—can you give us a scenario? Pretend you're the prosecutor and you have a fact situation in front of you. Is it possible to do that?

Mr. William Bartlett: Sure. What this requires is that the possession be for the purpose of using it for an offence that involves fraud or deception, or passing on to someone else who will do that.

If somebody is found in possession of identity information relating to multiple people, and that's a very common scenario, that would certainly be a circumstance that could give rise to the reasonable inference that they intended to use it for a fraudulent or deceptive offence.

It might be the nature of the information, particularly, say, financial information, and again, particularly financial information relating to either more than one person or very extensive financial information concerning one person to whom the person in possession of the information had no particular connection. That could give rise to that inference.

The Chair: Thank you, Mr. Comartin.

Mr. Komarnicki.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): Mr. Minister, it was good to hear that this legislation is finally on its way. It's been long awaited by the public, and it has a lot of features that are new and innovative, particularly in dealing with the preparatory stages of having information.

I wonder what steps you might take to ensure that the public is aware and fully educated in terms of the provisions there, because they are new provisions.

Also, while you were speaking, Mr. Minister, you indicated that a lot of the legislation deals with catching up with technological changes that are happening in the criminal world, of course, and they use that to advantage. Is there any provision in the wording of this material that would allow for any forward type of thinking that may happen in the criminal element that this legislation can attach itself to in anticipation of other uses? This is probably more a technical question that can go forward.

Finally, when dealing with the international aspect of it, there are obviously issues with jurisdiction and to what extent this bill is able to deal with matters beyond the country of Canada itself.

● (1610)

Hon. Rob Nicholson: Thank you very much.

Let me just take your last question first, Mr. Komarnicki. There were three parts to it.

I didn't have the name right in front of me. It was the UN Convention on Transnational Organized Crime. That was what the Government of Canada ratified in 2002. That will allow us to seek mutual legal assistance from other like-minded countries that have signed on to this. Part of our object in drafting this is to make sure we comply with the convention, and by complying with the convention, it puts us in a position where we can ask for extradition assistance from other countries, because we're talking about the same thing. I think there has been certainly a greater recognition in recent years that to the extent that we can harmonize our laws with the laws of other like-minded countries, we're moving in the right direction.

That leads me to the second part of your question. You'll find that when you deal with the Criminal Code, first of all, you're dealing with a document that is 116 years of age. It wasn't new in 1892; it was a collection of a number of statutes that were put together. Making sure it's updated has been a constant challenge. When I was here back in the eighties, one of my colleagues, Blaine Thacker, talked about completely revising it, redoing the whole Criminal Code, and modernizing it. That's a daunting task. It would be a huge undertaking, but it made a lot of sense at the time.

The approach we are taking, of course, is to look at the sections, try to keep up with the technological changes, and come forward with those amendments. We tried to be as broad as we could with respect to the inclusions. We listed a lot of examples. You'll see a couple of grocery lists in a couple of sections of the bill where we try to capture what is used today as information.

I'm keenly aware, as you are, as implied by your question, that you must constantly revisit these things to make sure. You have Criminal Code sections that talk about telegrams and telegraphs. This is very outmoded, and again, we have to stay on top of these.

Again, one of the things we most welcome about this is that you are getting those people who are at the preparatory stage. As I indicated, I think to Madam Freeman, in talking, for instance, with the Montreal police force, they're saying they uncover these schemes, but the people who are in Canada many times are not subject to the present Criminal Code. They get rid of this information outside the country, and this information is used for improper and illegal purposes outside of Canada. It makes it very difficult then to deal with this. This is why I think this will be very welcome.

In terms of your comments with respect to international cooperation, if part of the offence is being committed in Canada and part of it's in the United States or Europe or another place, it will be welcome because we'll be able to take action against those individuals who are part of this, just as they will, rather than the present situation, where many times the police have to throw up their hands because the present Criminal Code doesn't cover those provisions.

So you're right, it's a comprehensive approach to a very specific issue, and it will be most welcome.

Mr. Ed Komarnicki: One of the last points, of course, was that there are differences between the private member's bill and what you have here, and how comprehensive it is and how it ties into the Criminal Code. Obviously, there are some technical amendments, and when you look at the bill itself, it's "technoese".

Will there be efforts made to put this in common or lay language to the public and do a public education campaign on what is changing, what's available, and how it might end up benefiting specific groups of people?

•(1615)

Hon. Rob Nicholson: There's no question about that. The department has been very proactive in getting information out to people, and certainly on its website they make this information available. We have to get the message out to law enforcement agencies and crown attorneys, and again, they stay apprised of these changes. I can tell you I have people calling my office right now wanting to know when some of these changes are coming into effect. So I think it will be readily welcomed; they will be right on top of this and they will know what's in here because they have been asking for some of these provisions for quite some time.

The Chair: Thank you, Mr. Komarnicki.

One thought that had crossed my mind as a former investigator—and I know some of my former investigative colleagues had a problem—relates to situations in which an individual is in possession of a number of blank Visa cards, say, or blank cards with no identity information on them. Let's say there are 150. It could be that they might come across them as a result of another investigation. Is that a charge under this legislation, and is it enough to trigger further investigation?

Mr. William Bartlett: Well, it would certainly be enough to trigger a further investigation.

The cards themselves aren't covered by this legislation, although this legislation deals with it if they have the kind of equipment used to produce cards. It deals with instruments for general forgery purposes.

If all you had were the blank cards, that would trigger further investigation, but generally in those circumstances there are going to be some other facts that, when added together, will probably trigger something in this legislation.

The Chair: Thank you, Mr. Bartlett.

Go ahead, Mr. Lee.

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

I have a number of technical questions. Maybe the minister will want to answer them, but it's as likely that Mr. Bartlett would probably want to take a stab at them, Mr. Minister. However, you're equally competent.

I'll just confirm for the record—

Hon. Rob Nicholson: Is that a vote of non-confidence, or what?

Mr. Derek Lee: No, no, it's not that at all. It's just that they're very technical. I don't even know the answer.

I just want to confirm whether the term "credit card", which we use here, includes a debit card.

Mr. William Bartlett: Yes. There is a specific definition in section 321—

Mr. Derek Lee: It's okay. A firm yes is—

Mr. William Bartlett: —that makes it clear that it includes all of those kinds of cards used to draw financial resources.

Mr. Derek Lee: Thank you.

In relation to clause 9 of the bill, in my mind there's some confusion about who a public officer is. The section refers back to the definition of public officer in section 25.1 of the Criminal Code, where the definition of public officer is "a peace officer, or a public officer who has the powers of a peace officer", and who would have been designated. This issue around a public officer is important because a public officer, in clause 9, gets a pass. It says:

No public officer as defined in subsection 25.1(1) is guilty of an offence...if the acts alleged to constitute the offence were committed by the public officer for the sole purpose of establishing or maintaining a covert identity

As I read it, a public officer is going to have to be designated, and if they're designated, the exemption provisions here may—I'm only suggesting—conflict with and are going to have to be congruent with the other general exempting provisions of section 25.1, because we have placed in the law there certain exemptions for public officers.

I'm worried about a conflict here. I haven't had the chance to think it through. Has the department—line by line, word for word—walked through the exemptions in clause 9 of this bill and the exemptions in section 25.1 for public officers? I'm going to ask you point-blank: is a member of the military a public officer? Are you a public officer if you're a member of the military police and you're out doing military reconnaissance and you've got to ask somebody to use a false document somewhere to get by a checkpoint? God forbid that should ever have to happen in Canada, but this bill reaches transnationally, in any event. Is a member of the military a public officer if he or she is not designated?

•(1620)

Mr. William Bartlett: This does not require that that public officer be designated for the purposes of section 25.1. There is a definition of public officer in section 2 of the code. It includes:

- (a) an officer of customs or excise,
- (b) an officer of the Canadian Forces,
- (c) an officer of the Royal Canadian Mounted Police, and
- (d) any officer while the officer is engaged in enforcing the laws of Canada relating to revenue, customs, excise, trade or navigation;

Now, most of these people are actually going to have peace officer status. Some public officers have law enforcement duties without specific peace officer status, so an officer of the Canadian Forces is a public officer. Military police actually have peace officer status as well, but this is simply intended to cover any public officer with—

Mr. Derek Lee: Is Corporal Smith a public officer? That's the military Corporal Smith.

Mr. William Bartlett: Well, they have to be an officer to be a public officer, and they have to have law enforcement responsibilities.

Mr. Derek Lee: No, this guy would not. This guy is out doing reconnaissance and he has to show a false document to get by a checkpoint somewhere. He has to use a false identity.

A voice: In Canada?

Mr. Derek Lee: No, not in Canada.

Mr. William Bartlett: In Afghanistan, this legislation doesn't cover that.

Mr. Derek Lee: Okay, I'm just raising it as a point.

In clause 7 there's a reference to the use of a false document at the request of a federal or provincial authority. Clause 7 of the bill amends section 366 by adding a proposed subsection (5), and it says:

No person commits forgery by reason only that the person, in good faith, makes a false document at the request of a police force, the Canadian Forces or a department or agency of the federal or a provincial government.

What in the world did the department have in mind when it raised this exemption of a government official requesting that somebody forge a document, someone who's not already provided for—just an example?

Mr. William Bartlett: Most of the documents that an undercover law enforcement officer would use are not produced in-house by the police force. They're produced by the same people who issue the genuine documents. The driver's licence, or whatever documentation is required for an officer's covert identity, is produced usually by the third-party private manufacturers who do this documentation either for government or private entities that are issuing documents.

So this is to cover those. Canada Bank Note, I think, for example, may do this sort of work. But any entity that's producing documents for government, when they're asked to produce a false document—

Mr. Derek Lee: By government for use for government purposes.

Mr. William Bartlett: —by government for the use of an officer's covert identity—is protected insofar as they're not committing forgery in doing that. They're providing a document to a government agency that's requesting it and they're doing so in good faith.

The Chair: Mr. Lee, thank you.

Mr. Derek Lee: This will just take one—

The Chair: You're well over your time, sir.

Mr. Derek Lee: This will just be a very short question.

The definition of passport in the Criminal Code does not appear to include travel documents or visas. Was it intended that the definition include travel documents and visas? It appears to, but it doesn't make reference to them.

The Chair: Thank you, Mr. Lee.

Mr. Bartlett can answer the question.

Mr. William Bartlett: The definition you find here is intended to bring this definition in line with the passport order, and this is how a passport order defines passport. Visas and so on are attached to passports.

•(1625)

The Chair: Thank you, Mr. Lee.

Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Chair.

I welcome the justice minister back again. It seems like he's had almost as many meetings here as we have as committee members, but that means good things for the country.

I have a couple of questions. Mr. Lee mentioned the passport issue, and perhaps for a different reason. Obviously some work has been done on your behalf and with the Ministry of Finance as we move forward with a new passport in 2011, which will not only have some influence from your ministry in terms of security but will move forward as a 10-year passport rather than a five-year passport. Because the passport is so central when we talk about issues of security and travel, I wonder if perhaps you can comment on the importance of that.

Hon. Rob Nicholson: I would be glad to, Mr. Dykstra, and you being a member from the Niagara area, with four border crossings, are particularly attuned to all issues in terms of identity documents and passports in light of the western hemisphere initiative south of the border.

That being said, Canada, unlike the United States, Britain, and a number of countries, has continued for many years to issue passports for a period of five years. It creates a number of challenges. It creates a number of opportunities. By having passports that will expire fairly quickly, it allows the government to get new technology into the system a little quicker than if they had to wait 10 years to get rid of an older passport. So that indeed is what the government has done.

With the five-year passport, while there were some advantages in the sense of the technology changes, it was challenging for some individuals. It takes you a while to get the passport issued. You really don't have it for five years; it's four years plus. Even in my own constituency of Niagara Falls, I've had a number of senior citizens who have indicated to me that they'd like to have had that for 10 years. They're away; they're travelling, and to be constantly having to update it presents some challenges to them.

That being said, this is a security measure, and you'll see that the provisions recently announced in Parliament make specific reference to increasing the security provisions of those passports. That goes hand in hand with increasing the period of time from five years to 10 years. I'm sure you advise your constituents, as we all do, that whether we like it or not, this is becoming an important document that people have to have. People who travel by planes know this, but increasingly now those who cross international borders by car are coming to the realization that they have to have this. This has been something that's been in process for quite some time, and it's an important document.

There are specific provisions within this legislation that I was very pleased to have in it. There are different provisions that call upon you to come up with an explanation for what you're doing with other people's passports or other government-issued documentation. And why shouldn't the onus be on you? We're careful. In fact, in the example I gave in my opening remarks, I said, as we all have done, a parent might be handling three or four or five passports if they have all their children with them. Well, they have a legitimate reason to be crossing an international border with a number of passports in their possession because of course they have their family with them. But quite apart from something obvious like that, we do want to put an onus on you to explain what you're doing with government-issued identification. So as I say, there are slightly different provisions and tests with respect to government documentation than with other information. But I think that is as it should be.

So I appreciate your comments and your question on that. I hope my comments underscore how important that document is for a number of reasons.

• (1630)

Mr. Rick Dykstra: Thank you.

The Chair: Thank you, Mr. Dykstra.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chair, I am sorry I had to leave.

As my colleague says, the Bloc Québécois, with its reputation for being reasonable, obviously supports this bill. It's a wanted pregnancy, one that was long awaited. It's also shared paternity that you cannot claim exclusively for yourself.

Hon. Rob Nicholson: Congratulations.

Mr. Réal Ménard: Thank you, Minister.

It's shared paternity, given that your colleague had also tabled a private member's bill. However, we would like to know why the definition of "identity information" is not the same as for "personal

information". What is the meaning of this need to draw a distinction between the two?

As you know, there is a definition in the Personal Information Protection and Electronic Documents Act. In the bill that you are proposing, the definition of "identity information" is based on the Criminal Code. However, these two definitions are different, but are probably meant to serve the same purpose.

[*English*]

Hon. Rob Nicholson: I'll let Mr. Bartlett speak, but first of all, Monsieur Ménard, I'm very pleased that you and your colleagues, Madam Freeman and others, are going to be supporting this legislation. As I say, I think it will be very well received. The next time you're in Montreal and speaking with members of the Montreal police force, I think they will confirm what I've said to you, that this particular bill will be well received by them and will be of great assistance to them.

As you indicated, there's a slightly expanded definition. I think Mr. Murphy pointed out some of the differences between PIPEDA and what we have here, and perhaps to enlarge on that, I'll ask Mr. Bartlett to make a comment.

Mr. William Bartlett: The PIPEDA definition is intended as a privacy protection and covers information that is simply about someone. It could be information about their shopping preferences or whatever. What we're dealing with here is a more specific focus on information that actually identifies the person, the sort of information that could be used to then personate them or commit fraud using their identity information. It's specifically crafted to cover only that information that actually identifies the person, as opposed to simply information about the person. It's a different purpose, a different focus.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I'd like to come back to a question Mrs. Freeman raised.

This bill is wanted. I have read documents that said that impersonation, or identity theft in Canada, costs billions of dollars, to say nothing of the other consequences. Obviously, the most widespread form is cloned credit or debit cards. This is a real nightmare for the people this happens to, and it's an entirely legitimate concern.

But this raises the following question. There's the public information dimension, which we will have to talk about when the bill is passed, and there's the procedural dimension, which is related to the investigations, which will be up to those who will be laying charges and who could end up requesting additional resources. According to your bill, a trust will provide for the hiring of 2,000 police officers. I imagine that one-third of those resources will be allocated to Quebec. Your public safety colleague is responsible for that file.

Don't you get the feeling that apart from the charges that may be laid by police officers, it all has to do with investigative techniques? How do you think this bill is going to make it easier to lay charges and prosecute criminals?

[English]

Hon. Rob Nicholson: Well, I think the resources and the will are already in place. I've had law enforcement agencies tell me that they uncover these things now. Their frustration is that the law isn't there. It's not a question of finding them. They get tipped off sometimes, outside of the country, that this information is being transferred, and when they zero in on it, they're very frustrated that in some cases, in many cases, they're not covered by the present Criminal Code.

I think this will be welcomed. I think the investigation techniques...and in terms of getting the message out, a couple of charges on these things will get the message out.

You and others were quite concerned about video piracy, for instance. We managed to pass through this committee and through the House of Commons a very short bill on that. What I've been told is the message got out really quickly that this country will not be a haven for those individuals who want to steal other persons' intellectual property.

I think the message will get out that this country isn't a safe haven for this sort of activity. Again, a couple of charges get laid.... We found that out with child porn. You get a few people charged with this and then the word spreads to people who are in this business.

•(1635)

The Chair: Thank you, Monsieur Ménard.

No, your time is up. Thank you.

[Translation]

Mr. Réal Ménard: You are quick to cut me off, Mr. Chairman. I find you more liberal with others than with me.

[English]

The Chair: I've been very generous with you in the past, Mr. Ménard.

[Translation]

Mr. Réal Ménard: Yes, you are a generous man, let us never forget that.

[English]

The Chair: I don't think you have anything to complain about.

Mr. Bagnell.

Hon. Larry Bagnell: Thank you.

I hope you'll be as generous with me as you always are with Mr. Ménard.

Before I ask my questions, I want to go on record and say that of course we're in strong support of this. Our leader, Stéphane Dion, speaking on a major crime bill a year ago in Toronto said:

To protect Canadian seniors, we will act on the recommendations of the Privacy Commissioner to address the problem of identity theft. There were almost 8,000 reports of identity theft in the past year, resulting in more than \$16 million being lost, much of it taken from vulnerable seniors. A lifetime of hard work and

savings can vanish in an instant. We need tougher laws to prevent this type of crime.

As I said at length in my speech in the House, and just for Canadians watching, make sure you don't give up your address, phone number, bank account, or your social insurance card for anything because people can set up bank accounts in your name and take out mortgages. Businesses should be careful because they could have to spend lots of money on employee information that's been lost.

We really appreciate your doing this, Minister. I have a couple of questions.

One, a Conservative member from Saskatoon—Wanuskewin was caught by this and lost a lot of money. Of course, he greatly supports this. I think he erred when he said the government would not be accepting much in the way of amendments. I'm hoping he wasn't speaking for the minister. I know the minister is not anti-democratic. We have a purpose in having committees. We want to improve the bill if there's a way and maybe make it tougher if things come up from witnesses. I certainly hope the minister is in agreement with our improving the bill if that's what comes forward from our deliberations.

Hon. Rob Nicholson: Sometimes we can have different definitions of what it means to improve a bill, Mr. Bagnell. One person's improvement could be another person's gutting of a bill. I remember the conditional sentencing bill.

Hon. Larry Bagnell: That was much improved.

Hon. Rob Nicholson: It was improved. I said, thank God there's something left in it. It was just about improved out of existence.

Mr. Bagnell, sometimes there are technical amendments. I've been on this committee myself for about nine years. I know that if you get into substantive amendments, they'll be ruled out of order, in any case, since the bill has been approved in substance at the second reading stage.

Again, I think the bill is very good the way it is. If you've got some amendments you want to have, Mr. Bagnell, we'd certainly be glad to look at them.

Hon. Larry Bagnell: Thank you.

Hon. Rob Nicholson: I thank you as well for identifying one of the major problems with this, that people from all age groups and all walks of life can become victims, but it's particularly heinous when senior citizens are targeted. One of the things it seems to me we can do as members of Parliament, and certainly when I practised law, is to try to get that message out to seniors that you do not have to part with your personal information. I used to type out a little card—

Hon. Larry Bagnell: Minister, I'll never get all my questions in.

Thank you.

In some bills, I think even under your government, we've made penalties stronger if it were—

Hon. Rob Nicholson: Even under my government—particularly under my government.

Hon. Larry Bagnell: Would certain offences have even stronger penalties if they involved organized crime or terrorism?

Hon. Rob Nicholson: I think, Mr. Bagnell, they're involved with organized crime almost by definition. My analysis of what this bill is covering are groups of individuals who are strung out many times in different countries. Each person has a component of this. Again, I'm satisfied the penalties are reasonable and appropriate in the circumstances, but I wouldn't want to add one more component, that if you can prove this is part of a gang or part of organized crime...because almost by definition this is organized crime. That's what we're talking about here.

Hon. Larry Bagnell: One last quick question.

One of my constituents suggested that to stop mortgage theft, which can be very expensive and is a huge crime, people being approved for mortgages should have their photo taken by law. Do you have any thoughts on that idea?

• (1640)

Hon. Rob Nicholson: Give me that again. If you're applying for a mortgage you get your picture taken?

Hon. Larry Bagnell: Yes, because people will go in with a false identity and get a mortgage. This way it would be easier to track down the person who took all your money, put a mortgage on your house, and took hundreds of thousands of dollars from you without your knowing it. It would be easier—

Hon. Rob Nicholson: That's a very good point. There are fraud provisions in the Criminal Code right now that deal with this. Much of this is actually being dealt with by provincial law societies and at the provincial level. They generally regulate the mortgage business, the legal profession.

One of the challenges the legal profession is dealing with right now is conspiracies and groups of individuals working together to either mortgage a property or in some way commit a fraud. Sometimes the detection of these is very challenging.

I was told recently, for instance, that if the phony mortgage is being serviced, it takes a long time. The mortgage money gets advanced, but as long as it's being serviced, nobody discovers it for a while, and when it is discovered, it's too late, or the people have long since gone.

So those are some of the challenges.

You're right. It's caught now, and if anything, this would help.

The Chair: Thank you, Mr. Bagnell, Minister.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Chair.

Thank you, Minister, for appearing today on what I think is another very important bill, which I would add is long overdue.

Since being elected in 2004, I've had a number of representations from individuals in my riding, particularly seniors, about the issue of

identity theft. I know that's probably something that all of us, as elected officials, have heard representation on.

It scares people, because it's somewhat hard to understand. People can relate to someone stealing their lawn mower from their shed, but to find out that your identity has been stolen is quite another thing. Often people feel quite violated by that.

You started talking a few minutes ago about some tips you offer. You were just getting going. I was quite eager to hear what some of those were, because I think it is important. So if you would finish what you were saying there...then if there's time, I do have another question.

Hon. Rob Nicholson: I'd be pleased to do that. I didn't want to take up Mr. Bagnell's time because he had other issues.

A lawyer friend of mine suggested that when people get calls about anything they're uncomfortable with, just say, "No, thank you, I'm not interested." You never deviate from the script. No matter what the person says to you afterward, you say, "No, thank you, I'm not interested."

My experience is that about 80% to 90% of people give up after you've said the same thing twice, and almost 100% of them give up after you've said it the third time.

I used to give them a little card and say put this beside your telephone, and if somebody calls you and you're uncomfortable talking about it on the phone, you keep repeating the same lines: "No, thank you, I'm not interested. No, thank you, I'm not interested." And that's good enough.

That's the suggestion I always make to people, Mr. Moore.

People are entitled to make their own decisions about where they spend their money or what information they give. They should never be put in a position where they're uncomfortable or compromised.

We, in this country, are very, very polite. We don't want to cut people off who are intruding, in many cases, into personal information. I encourage people to say the same thing over again, and that generally works.

• (1645)

Mr. Rob Moore: Do I still have time?

The Chair: One quick question.

Minister, you have some commitment, do you?

Hon. Rob Nicholson: Yes, I have a cabinet meeting that started 15 minutes ago, but I want to be here.

Mr. Rob Moore: That's it, let the minister get to this meeting.

Hon. Rob Nicholson: This bill is important. We want to get it passed.

The Chair: Mr. Moore.

Mr. Rob Moore: Is mine the last question, Mr. Chair?

The Chair: I know Mr. Comartin had one quick question.

Minister, could you indulge Mr. Comartin?

Hon. Rob Nicholson: By all means.

The Chair: Mr. Comartin.

Mr. Joe Comartin: Could Mr. Bartlett stay? I want to follow up with the question we were cut off on.

Mr. Minister, has there been any progress by the government on the whole issue of regulatory responsibility by the federal government in the situation where databases have been stolen or misplaced and the responsibility of the person or corporation holding that database to advise people that their personal data had been stolen or lost or that it may be in somebody's hands...? In effect, Mr. Rajotte tried to address this in his private member's bill.

I know it isn't your department; it's probably Industry. Is there any progress being made in placing additional legal responsibilities on the holders of the databases if that happens?

Hon. Rob Nicholson: Well, you've raised a very interesting and important question, Mr. Comartin. And you're quite correct that it would be within my responsibilities as Minister of Justice. But I'd certainly be glad to pass those comments and your concerns on to the responsible minister, with your admonitions that the government should move on that.

Mr. Joe Comartin: And those of Mr. Rajotte.

The Chair: Thank you, Mr. Comartin.

Mr. Joe Comartin: I wanted to finish my question from before, to Mr. Bartlett.

The Chair: Very quickly.

Mr. Joe Comartin: If the minister wants to leave, that's fine, unless Mr. Bartlett is going with him.

The Chair: Minister.

Hon. Rob Nicholson: Again, thank you very much, and I wish you well in your deliberations. And again, I'm absolutely confident this will be well received by your constituents and people right across this country.

Thank you very much.

The Chair: Thank you very much, Minister.

Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chair.

Concerning that scenario we were dealing with, the housebreaking tools, let me give you this scenario. We have somebody who claims, "Look, I just came across this briefcase. It has all this data in it. I didn't steal it, but I've got it." I'm not sure we'd get a conviction under subsection 402(2) in those circumstances.

Mr. William Bartlett: Well, if all you've got is that the person has a briefcase with one person's information in it, then presumably if that's all there was, perhaps you shouldn't be getting a conviction for possession of identity information in circumstances giving rise to the intent that you might use it. And in fact, that might be true. It might be true that they've simply found a briefcase.

But if they have a briefcase with identity information relating to 50 people in it, or if you investigate and find that the briefcase was stolen, for example, and that person fits the description of somebody who might have stolen it, you may actually have physical theft of the briefcase.

What you're stating is the very reason why we require the showing of some evidence of at least circumstances that suggest they have the intent to use it for a further offence. You could well have a case where somebody loses a briefcase, somebody finds the briefcase, and they've acquired it quite innocently.

Now, have they made any efforts to return it, and so on? All of these might be relevant circumstances, but if all you had was simply the person and the briefcase belonging to somebody else, there might well be that sort of innocent explanation.

The Chair: Thank you, Mr. Comartin.

Mr. Calkins.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Mr. Chair, and I certainly appreciate the insights we've had here.

I have a few questions in regard to this legislation. I'm just wondering about this. The way the Criminal Code is currently laid out, we have an offence for murder, but we have another offence for attempted murder.

When I'm reading through this documentation, I don't see anything here that... I see a few words about attempt, but it's attempt after they've already procured or garnered some personal information. I don't see anything in here that actually would result in investigators being able to lay a charge if someone is even attempting to procure or steal or collect personal identification. All the offences seem to deal with the information once it's already in their possession—for example, "Every person who, fraudulently and without colour of right, possesses, uses, traffics in or permits". But there is nothing in that subsection 130(3). And as I go through, there are a few other clauses in here where it talks about nefarious activities once the information is actually collected, but there doesn't seem to be anything that addresses an attempt.

I'm very, very much concerned, coming from a bit of an IT background, about the ability to hack into information systems or the attempt of hacking into information systems to collect information. I know there have been several cases in recent months where large retail stores have lost large amounts of credit card information or have had large amounts of credit card information taken from their databases.

That brings up another whole can of fish I really don't want to get into right now, which is whether or not it's ethical for companies to keep credit card information they don't really need, because the transaction can happen without them keeping the credit card.

But on the attempted part, is there anything in the changes that are proposed here, or is there anything else in the Criminal Code that would allow an attempt at garnering this information to be considered an offence?

• (1650)

Mr. William Bartlett: Yes, attempts are dealt with generally in section 24 of the code. Whenever there's an offence, there's also an applicable offence of attempting to commit that offence, and then there's case law that's built up around that. You have to take certain steps to effect your intent. It can't be just a matter of pure intent. But if you have the intent to commit an offence and you take steps to do so—and the case law is quite full in terms of what those steps are—then you have the offence of “attempt to commit” whatever offence you had the intent to commit and had taken steps to commit.

Mr. Blaine Calkins: Thank you very much.

That was my main question, Mr. Chair.

The Chair: Thank you, Mr. Calkins.

Mr. Moore, you wanted to finish off.

Mr. Rob Moore: Yes, I was going to ask the minister—and Mr. Bartlett, you can perhaps answer this—what are some of the more typical examples? I know you can't comment on anything that's ongoing, but people have certainly raised to my attention a number of high-profile cases of widespread identity theft. We're not talking about, in some cases, small-scale operators, but about something that is very well organized, very internationally connected, and in many instances hard to track down.

When this bill is passed, how are things going to change? What's the impact going to be on the ability of, for example, the police to combat identity theft today versus after this is passed? Obviously, there are provisions in this bill that are new, but in the overall objective of tackling identity theft, how is this improving on the current situation?

Mr. William Bartlett: As the minister noted, the bill deals with all of the aspects of the chain of acts that lead to what in the bill is called identity fraud, where you actually use false identity to commit a fraudulent offence, the collection of the information with that intent. There are provisions dealing with the instruments you can use to create a false identity, and then the final end-use offences. By breaking it down this way and capturing the various aspects of it, you have additional tools to get at the kind of organized activity you're speaking of, where very often those steps are broken down. And different groups of people, sometimes in different countries.... Organized crime might quite commonly collect identity information on Canadians, use that to produce false credit cards or other kinds of false identity in Romania, and then the documents are used in Britain.

If the only thing that goes on in Canada is the collecting of the identity, that's very difficult to get at if you have to follow the chain through. But if you have an offence that deals with the collecting of the information in Canada in order to pass it on, and then passing that information on, then you have something that can capture whatever stage in this chain of events occurs here that you can capture the evidence about.

It also simply helps to deal with the whole.... Even if it's one person who's doing all of these, you can catch them at an earlier stage or you can catch them at various stages of what they're doing. So whether it's broken down and several different people are doing different stages or it's the same person, it gives you far more tools to deal with, as you've described it, the very sophisticated kind of activity that's both national and international in scope.

• (1655)

Mr. Rob Moore: There's a perception out there, and I think I've seen some evidence that this is the reality, that certain types of identity theft.... While none of us are completely safe from identity theft as the law is now, in some instances it is seniors who are very much the focus and the target, overwhelmingly, over other demographics. Is there anything you can enlighten us on regarding that? Is that indeed the case in some instances, where seniors would be specifically targeted for some types of identity theft?

Mr. William Bartlett: I don't think there's any information that seniors are targeted for a particular kind of identity theft. They certainly are targeted for some of the end-use fraud schemes. There are fraud schemes that appear to have been fairly carefully tailored to target seniors. Undoubtedly, they're probably somewhat more vulnerable to the earlier stages as well, the actual techniques that are used to gather the identity information. It's a very sophisticated operation; the technological sophistication is amazing at times. Seniors are probably much more vulnerable to all of the various techniques they use at all stages of this kind of fraud.

I'm not aware of cases where they seem to have tried to take the information particularly from seniors. There certainly are cases where seniors are a target population for the end use of the fraud.

The Chair: Thank you, Mr. Moore.

Mr. Lee, do you have a quick question?

Mr. Derek Lee: Yes, I have just one question.

Clause 10 of the bill creates a new section 402 involving identity theft, which, Mr. Bartlett, you were just referring to. In the new section 402.2, describing identity theft, one of the components of the crime is that there is a reasonable inference of an intention. It struck me as odd that in a Criminal Code offence, in order to convict, you have to have evidence or proof beyond a reasonable doubt—that's the standard, beyond a reasonable doubt—when buried in the definition all that is required is a reasonable inference. If it is only a reasonable inference required in the section—if that's all the proof required—doesn't that undermine the need to prove beyond a reasonable doubt? In other words, if the reasonable inference is a weak link in the chain of the components of the offence, that could undermine the ability to convict based on evidence beyond a reasonable doubt.

I'm simply asking if that has come up. It's only my initial reaction to reading this section, and it strikes me as slightly incongruous.

Mr. William Bartlett: The crown would ultimately still be required to prove its case beyond a reasonable doubt. The offence covers possession, and if they can prove the possession beyond a reasonable doubt.... The reasonable inference that the information is intended to be used eases the burden on the crown somewhat, and at some point may shift the burden of adducing evidence to the accused, but ultimately the trier of fact will still have to be satisfied of all of the required elements of the offence. This is simply a matter of, at a certain point, shifting a certain evidentiary burden to the accused, and it is used in other sections of the code and has been upheld by the courts.

• (1700)

Mr. Derek Lee: Good. Those references are very helpful. Thank you.

The Chair: Thank you, Mr. Lee.

It is now five o'clock, and we have committee business to attend to.

I want to thank Mr. Bartlett and Mr. Ram for their appearance here. I think there were a number of questions, and we certainly appreciate the response. Mr. Ram, unfortunately, we never had to call upon you for any response, but your presence here was appreciated. Thank you.

We'll suspend for one minute.

[*Proceedings continue in camera*]

• _____ (Pause) _____

•

[*Public proceedings resume*]

• (1710)

The Chair: We're good to go.

Mr. LeBlanc.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chairman, and thank you, colleagues.

I'm conscious of the fact that the bell is going to ring for a vote soon; therefore, I'll be very brief.

Mr. Chairman, I would like to move the following motion, notice of which was given last week to the committee. The motion, of which the committee has a copy in English *et en français évidemment*, would read as follows:

That, in order to determine whether Section 119 of the Criminal Code and Section 41 of the Parliament of Canada Act currently serve as effective deterrents in preventing attempts to bribe Members of Parliament, this committee hold additional meetings specifically for the purpose of conducting an immediate study into allegations that Chuck Cadman was offered financial inducements in exchange for voting with the Conservatives in the House of Commons.

Mr. Chair, that would be the text of the motion. I understand a colleague may wish to make a friendly amendment in a second.

Mr. Chairman, you'll notice that we've asked for additional meetings. Many colleagues have been at this table longer than I have, and I respect that this committee has, up until now, and certainly from my experience at the committee, worked in a collegial, non-partisan way, with a very heavy agenda because of the

legislation that ultimately is referred to this committee. In no way are we seeking to disrupt that process. We're not seeking, I hope, to make the committee more partisan than necessary. That's why we'd like additional meetings.

Mr. Chairman, in our view, there should be three or four additional meetings. That would probably conclude the matter. And if this motion passes, we would then hope the steering committee could quickly look at a list of witnesses and schedule perhaps our first meeting for the beginning of April.

Merci, monsieur le président.

The Chair: Thank you, Mr. LeBlanc.

I have had an opportunity to look at your motion and I do have a judgment, which I would like to put forward.

I would first begin by saying that I am going to rule the motion out of order, but I do have an explanation.

I rule along two points, the first being that this motion falls outside the mandate of this committee. Second, this motion requires the committee to act in a manner contrary to the purpose it was created for.

On the first point, in relation to the mandate of this committee, it is clear that the procedure and House affairs committee is where this study should be taking place. I will save members from reading the entire Standing Order related to mandates for committees, but I will draw your attention to Standing Order 108(2) which reads:

The standing committees, except those set out in sections (3)(a), (3)(f), 3(h) and (4) of this Standing Order, shall, in addition to the powers granted to them pursuant to section (1) of this Standing Order and pursuant to Standing Order 81, be 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 general, the committees shall be severally empowered to review and report on:

- (a) the statute law relating to the department assigned to them;
- (b) the program and policy objectives of the department and its effectiveness in the implementation of same;
- (c) the immediate, medium and long-term expenditure plans and the effectiveness of implementation of same by the department;
- (d) an analysis of the relative success of the department, as measured by the results obtained as compared with its stated objectives; and
- (e) other matters, relating to the mandate, management, organization or operation of the department, as the committee deems fit.

As committee members can see, there is no fodder here for an investigation into specific events outside the management and effectiveness of the justice department. The justice department is responsible for drafting legislation, not the implementation or application of that legislation. That would be a matter for the public safety committee, which oversees law enforcement agencies.

On the same point, members are quite aware that the central figure in this business was Mr. Chuck Cadman. As a member of Parliament, Mr. Cadman was subject to the conflict of interest code, which members know is part of the mandate of the procedure and House affairs committee. Under Standing Order 108(3)(a)(viii), the procedure and House affairs committee is mandated to review and report on all matters relating to the conflict of interest code for members of the House of Commons.

This motion also explicitly names section 41 of the Parliament of Canada Act. As the department assigned to procedure and House affairs is Parliament itself, the provisions of 108(2)(a), which delegates the statute law relating to the department assigned to them, clearly relegate the Parliament of Canada Act to the procedure and House affairs committee.

While there is no specific mention of this fact in the motion, it has clearly been alleged in the House of Commons in relation to events named in this motion that the then leader of the opposition had a role to play in these events. While there has yet to be any definitive proof of the member's involvement, and the claims made thus far are more defamatory than they are substantive, that member would also have to be investigated under both the Parliament of Canada Act and the conflict of interest code for a member of Parliament, again putting this study under the mandate of procedure and House affairs.

With regard to my second reason, it is my ruling that this motion requires the justice committee to do something beyond what the committee was created to do. This motion would require our committee to act as a trier of fact, which is the role of the judiciary and should be respected as such. As we all know, the courts are charged with applying and interpreting the law and not with creating the law. In response, the House of Commons and the membership thereof is expected to create laws and to review the findings of the courts to see if those laws are adequate.

● (1715)

It is a well-established principle that neither parliamentary committees nor the Speaker of the House is in a position to determine questions of fact. Indeed, when disputes as to questions of fact have arisen in the House, the Speaker has consistently taken the position that he is simply not prepared to rule in favour of one member against another. Similarly, this committee is not a trier of fact and should not be expected to make such determinations.

A parliamentary committee can hardly be expected to be an unbiased, impartial body. Further, the rules of its operation and the limited questioning opportunities inherent in our rules of order simply do not allow for proper cross-examination or fact-finding as is customarily found within a judicial or quasi-judicial entity. I'd suggest that we would all be in agreement with the statement that we are neither properly trained on this committee nor in a position to make any such determinations as to matters of fact. It's one of the basic tenets of parliamentary law that the Speaker, and by extension parliamentary committees, does not engage in such matters that would require him, them, or us to make such determinations of fact.

I think it would be self-evident that this committee is not in a position to make any kind of legal ruling to consider issues of legalities or to make pronouncements as to operational intricacies of legislation and regulations. The committee isn't a court. It's not a tribunal. Its personnel and its membership are not legally trained. I don't think we could be described as being entirely unbiased or non-partisan. Therefore, this matter is a matter for the courts to decide. As no judicial or quasi-judicial body has made a finding on this topic, this committee cannot commence with a review of the effectiveness of this clause until such a finding is made. This motion is deficient and out of order.

On a personal note, I would like to make the observation that this committee has worked well in the past despite the various partisan positions that members have brought to this committee. We have always agreed to debate legislation when it was handed to us. I would hate to see this committee descend into political gamesmanship, which has ground so many of the other committees to a halt.

Our committee is responsible for a significant load of both government and private members legislation. That is what our committee is tasked with and this is what Canadians sent us to Ottawa to accomplish. I would be very disappointed if our committee was turned into a partisan witch hunt that went down the road of unsubstantiated scandal for the sake of electoral grandstanding.

For these reasons, I find this motion out of order.

● (1720)

[Translation]

Mr. Réal Ménard: Mr. Chairman, I wish to speak.

The Chair: Mr. Ménard.

Mr. Réal Ménard: I am under an obligation, beyond the moral judgments that you have passed, to appeal your decision. I think you have made a bad decision. I challenge it, I ask that it be overturned and I call for a recorded division on your decision. I challenge and appeal your decision.

[English]

The Chair: On that basis, Mr. Ménard and committee members, I am going to step out of this room. I am not going to sit as chair. If you seek to bring someone forward from the opposition to sit as chair, then you may do so.

I believe this committee has functioned very well up to this point. We have engaged in 14 pieces of legislation. This is another issue that has created—

[Translation]

Mr. Réal Ménard: Point of order, Mr. Chairman. I don't know what you are talking about. It is my prerogative as a member of Parliament to appeal your decision. You say you're going to leave the chair and you give us a lecture.

[English]

The Chair: You have the prerogative to appeal any decision, but I am not going to sit here as the chair. I will not call it. No. I am going to remove myself from the position of the chair.

Mr. Derek Lee: In the absence of the chair, we move to the vice-chair.

Which vice-chair would...? I'm not vice-chair.

[Translation]

Mr. Réal Ménard: Me neither. I'm not going to take the chair.

[English]

I'm not going to take the chair.

[Translation]

I move that Mr. Comartin, as our most senior member, take the chair.

[English]

Mr. Derek Lee: I'm going to make a suggestion that the matter not be disposed of today, that—

Mr. Réal Ménard: No chair?

Mr. Derek Lee: Well, we can put a person in the vice-chair. I'm going to suggest that a person take the vice-chair....

Mr. Rick Dykstra: Mr. Clerk, can you give us an official ruling on what we can do without a chair in the seat, before everybody decides to turn the microphones off?

• (1725)

Mr. Derek Lee: Mr. Murphy, the vice-chair, will take the chair in the absence of the chair.

The Vice-Chair (Mr. Brian Murphy): Ladies and gentlemen, I'm here.

Mr. Derek Lee: I'm going to move that we adjourn—

The Vice-Chair (Mr. Brian Murphy): We'll adjourn; it's non-debatable.

Mr. Derek Lee: —and I'm also going to ask if members would allow.... I intend to take this up at the steering committee meeting tomorrow. The steering committee meeting will be in camera. So I'm going to move—

The Vice-Chair (Mr. Brian Murphy): Mr. Lee, this is non-debatable. You have a motion to adjourn.

Mr. Derek Lee: I'm moving to adjourn.

The Vice-Chair (Mr. Brian Murphy): All those in favour of adjournment. All those against?

The meeting is adjourned.

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