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# Standing Committee on Justice and Human Rights

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—  
**Chair**

**Mr. Ed Fast**

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## Standing Committee on Justice and Human Rights

Wednesday, May 27, 2009

•(1530)

[English]

**The Chair (Mr. Ed Fast (Abbotsford, CPC)):** I call the meeting to order.

This is meeting number 26 of the Standing Committee on Justice and Human Rights. Today is Wednesday, May 27, 2009.

You have your agenda before you. Pursuant to the order of reference of Friday, March 27, 2009, we're considering clause-by-clause on Bill C-15, An Act to Amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other acts.

We have with us today Paul Saint-Denis, who is here representing the criminal law policy section. Welcome.

We will move to clause-by-clause.

I call clause 1.

Monsieur Ménard.

[Translation]

**Mr. Réal Ménard (Hochelaga, BQ):** Could the witness from the Department remind us of the purpose of this clause?

**Mr. Paul Saint-Denis (Senior Counsel, Criminal Law Policy Section, Department of Justice):** Mr. Chairman, the purpose of this clause is to impose minimum sentences for the trafficking of substances listed in Schedules 1 and 2, and when there are aggravating factors such as those listed in the bill.

**Mr. Réal Ménard:** I understand.

[English]

**The Chair:** Monsieur Ménard, you're making that amendment. Is that correct?

I'm sorry, we actually have a list here. I should probably go in order of the motions as we have them. You have the package before you. The first amendment is actually NDP-1.

Ms. Davies, are you making that amendment?

**Ms. Libby Davies (Vancouver East, NDP):** Yes. This is NDP-1.

**The Chair:** I've consulted our legislative clerk, and I'm going to be ruling the amendment out of order, the reason being that Bill C-15 amends the Controlled Drugs and Substances Act to provide for minimum penalties for serious drug offences. The amendment would have, as a consequence, that persons possessing for the purpose of trafficking a substance included in schedule II would no longer be guilty of an indictable offence and liable to imprisonment.

As *House of Commons Procedure and Practice* states on page 654: "An amendment to a bill that was referred to committee *after* second reading is out of order if it is beyond the scope and principle of the bill".

In the opinion of the chair, this amendment is a new concept that is beyond the scope of Bill C-15, and it is therefore inadmissible.

**Ms. Libby Davies:** I'd like to respond to your ruling and challenge it.

I don't know how many of my amendments are going to have such a ruling, but seeing as we're dealing with the first one, this particular amendment is basically a rationale to remove the schedule II drugs, which is basically marijuana. I actually cannot understand your ruling that this is somehow beyond the scope of the bill. This is within the bill. We're just saying that one of the particular schedules it deals with, in terms of the Controlled Drug and Substances Act, we believe should be removed from the parameters of this bill.

It's not beyond the bill. It's just removing something. It's not trying to go further. We are stating in this amendment that we don't think these provisions in the bill before us should apply to what is in schedule II, which is marijuana. I don't understand how you can say that it's beyond the scope of the bill.

**The Chair:** Ms. Davies, I want to assure you that I've had extensive consultations with the legislative clerk. I assume that you don't take this lightly. Many of your amendments are actually going to be ruled in order, but there are some that will be ruled inadmissible.

As I understand it, you're challenging the ruling of the chair. Is that correct?

**Ms. Libby Davies:** I am.

**The Chair:** Then the question for the committee is whether the chair's ruling will be sustained.

(Ruling of the chair sustained)

•(1535)

**The Chair:** We move on to the Bloc amendment. Are you making that amendment, Monsieur Ménard?

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, this amendment relates to the factors that give rise to a sentence that can be no less than one year in length—namely, committing an offence for the benefit of a criminal organization, resorting to violence, using a firearm, committing a repeat offence and committing an offence in places frequented by young people. So, we are suggesting a couple of amendments. The logic is the same in each case. I will explain it now.

The idea is to turn the eight factors currently listed in the bill into aggravating factors. As we all know, this provision already exists under section 718 of the Criminal Code. It allows the judge to set the tone in handing down a sentence, because the factors set out in the bill can give rise to a tougher sentence. However, you are all aware of our impeccable rigour when it comes to minimum sentences. We are not in favour of them. So, we will be suggesting a number of amendments aimed at changing the factors mentioned in clause 1 into aggravating factors. I do hope my colleagues will accept that logic, which has already proven its worth.

[English]

**The Chair:** Thank you, Monsieur Ménard.

As with the first amendment, I also have a ruling on that, as I have consulted with our legislative clerk.

Bill C-15, as I mentioned, amends the Controlled Drugs and Substances Act. The amendment you have put forward proposes to remove the minimum penalties provided for in this clause and replace it with a provision that gives the court the authority to impose a sentence while considering certain aggravating factors.

As *House of Commons Procedure and Practice* states on page 654, An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the introduction of the amendment is contrary to the principle of Bill C-15 as agreed to at second reading and is therefore inadmissible.

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, I must admit that you have caught me a little off guard. Having held consultations, we were convinced that this amendment was in order. I am sure you are aware that, by rendering this decision, you are interfering with my rights because, as a parliamentarian, it is my prerogative to work to amend a bill which is definitely perfectible.

This is an excessively conservative interpretation of the Standing Orders. I cannot blame you entirely for that, but I can certainly tell you that I am disappointed. Under the circumstances, there are two options: either you suspend the Committee meeting and we appeal your ruling to the Speaker of the House of Commons, or I appeal your ruling. For this particular amendment, I will be appealing your ruling here in the Committee, but I cannot give you any guarantees as to what will happen in future.

[English]

**The Chair:** Monsieur Ménard, as I mentioned on the first amendment, I certainly don't take this lightly. Even though this is my first time moving through clause-by-clause to this extent, I have consulted with our legislative clerk.

I am not preventing any amendments from coming forward. What I'm doing is ruling in accordance with *House of Commons Procedure and Practice*, and that's my role as chair. I think you understand that.

It's certainly open to you to challenge the chair. Is that what you wish to do?

[Translation]

**Mr. Réal Ménard:** Yes, I am definitely challenging your ruling.

[English]

**Ms. Libby Davies:** Could I just ask a procedural question?

**The Chair:** Yes, please.

**Ms. Libby Davies:** Before you deal with the challenge to the chair, I have actually proposed to move a subamendment, and it may well be that the subamendment is in order. If we vote on this now, will you still allow me to put the subamendment or would you like to hear it now?

**The Chair:** No. First of all, as I am advised by the clerk, a challenge to the chair is actually not debatable. So we have to determine whether the chair's ruling is sustained.

I will ask the question: shall the chair's ruling be sustained?

(Ruling of the chair sustained)

**Ms. Libby Davies:** On that same clause, then, beginning on line 10, I would like to delete the words, "or in or near any other public place"—

**The Chair:** No, Ms. Davies, we're proceeding with the amendments as submitted. I've already ruled that this Bloc amendment is out of order, so there is nothing to amend at this point in time.

As we continue through, you'll notice many of your amendments are actually acceptable.

• (1540)

**Ms. Libby Davies:** I know. Could I explain, though?

In actual fact, we had planned to get in a written amendment on this one, and for some reason it ended up just not getting there. I had always planned to have a written amendment. When I realized today that it had not gone in, I saw that the Bloc had an amendment covering a much larger extent, so I thought I would move a subamendment.

Even though you ruled their whole amendment out of order and have been upheld on that, I would argue that it doesn't prevent a further amendment, even if it's right on the floor. There are many committees.... I mean, obviously we would prefer them in writing, but this is very straightforward, so I would ask the committee if they would be willing to entertain this as an amendment that I will just give verbally. It's a matter of deleting two and a half lines, and I can explain why. I believe it will be in order, because it doesn't deal with the breadth of what you just ruled on. It deals with one small aspect, with being near a school or, if you remember, in a public place.

I believe it's in order and that I have the right to be able to put forward an amendment, even though it did not go in as a written amendment. Most committees operate that way.

**The Chair:** Ms. Davies, out of courtesy to the other members who have actually submitted written amendments and the process that I believe is going to work well for us, could I ask you to put that amendment in writing sometime during the period of this discussion and review, and at the end.... Oh, you do have it in writing?

**Ms. Libby Davies:** I do have it. It's not translated because it didn't go in, but I do have it.

**The Chair:** All right. Could you read it into the record?

**Ms. Libby Davies:** Yes. What it would do is replace lines 9 to 12 on page 2 with the following:

or near a school, or on or near school grounds

In effect, if my amendment passed, it would take out "or in or near any other public place usually frequented by persons under the age of 18 years".

You'll remember that when we heard the witnesses, there was a fair amount of testimony from witnesses who believed including this idea of a public place, which could be a mall, a cinema, or any kind of public place, would really incorporate any area where young people may be involved with other younger people who are passing a joint. We heard quite a lot of testimony that to include "any other public place" without having any definition of it was very problematic and would absolutely broaden the scope of the net in terms of capturing people, which I think would be very contrary to what we heard from many of the Conservative members in terms of their understanding of who this bill is aimed at.

That's why I've made this amendment. I hope that's clear for people.

**The Chair:** Ms. Davies, you have three other amendments on that clause, and this one sequentially would fall as the fourth amendment. Could we deal with it after we've dealt with the other three?

**Ms. Libby Davies:** Yes.

**The Chair:** All right. Thank you, and could you provide the clerk with the written copy you have there, just to make sure we're all clear?

We're moving on to the second NDP amendment under clause 1. That amendment is in order.

Ms. Davies, do you want to move that amendment?

**Ms. Libby Davies:** Thank you very much. I will move the amendment.

Basically this amendment is deleting lines 1 to 5 on page 2 of the bill. The purpose of this amendment is to remove item 1(1)(a)(i)(D) from subclause 1(1) so that previous convictions are not considered an aggravating factor that would result in a more serious mandatory sentence.

I would point out to members that this doesn't mean that a previous conviction wouldn't be considered, because under section 10 of the existing Controlled Drugs and Substances Act, prior

conviction is already an element that is included in the existing bill. In fact, the current sentence is up to life imprisonment.

We're very concerned that including this particular clause will mean that the bill will be very much broadening the net to go after people with convictions or sentences in the last 10 years. It will only serve to recriminalize drug addicts, users, and people with mental health problems, including street-level traffickers who are often users themselves. We actually see this as a very problematic clause and think that the current act is completely adequate in taking into account prior convictions. We see no need to go further in terms of what Bill C-15 is doing. We put it forward on that basis.

● (1545)

**The Chair:** Thank you.

Is there any further discussion on this amendment?

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

**The Chair:** Moving on to amendment NDP-3, you'll note we're again dealing with line 5 on page 2 of the bill.

Ms. Davies, are you moving the amendment?

**Ms. Libby Davies:** Yes, I do move.

**The Chair:** Is there any discussion?

**Ms. Libby Davies:** What this amendment would do, because the last one failed, is reduce the aggravating factor for someone from having a previous record of ten years to one of two years. Along the lines I've just said, we're just trying to minimize what we see as the damaging effect of the bill before us. So the amendment is changing it from ten years to two years.

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

**The Chair:** We'll move on to amendment NDP-4, which is also in order.

Ms. Davies, are you moving that?

**Ms. Libby Davies:** Yes, I'm moving NDP-4.

This particular amendment is replacing line 7 on page 2. The word is actually split, but the amendment replaces "imprisonment for a term of two years" with the following:

imprisonment for a term of two years if any of the factors set out in subparagraph (a)(i) apply and if

The purpose of this amendment is to ensure that the aggravating factors that are laid out would only apply if they could be connected to organized crime, or violence, or the use or threatened use of a weapon. These are actually aggravating factors already set out in proposed items 5(3)(a)(i)(A) and (B) and (C), and they're already within the Controlled Drugs and Substances Act. So we believe this is already adequately covered, and to impose a mandatory minimum of two years is something that goes beyond where it should go.

That's the reason we put forward this amendment. We want to make sure it's only to be connected to organized crime or violence, because we heard from government members that this was the intent of the bill. But the actual implementation of this bill, we believe, will go far beyond that. We want to be very clear that if that's what the target is, let's then be very specific about it in this clause of the bill.

**The Chair:** Thank you.

You've heard the amendment. Is there any further debate?

(Amendment negatived)

**The Chair:** The next one, Ms. Davies, we'll refer to as NDP-4.1, which is the one you just tabled a few moments ago.

Would you like to reintroduce it, or move it formally again?

**Ms. Libby Davies:** Basically what this amendment is doing is removing the lines, "or in or near any other public place usually frequented by persons under the age of 18 years".

So it would still contain "or near a school, or on or near school grounds". It's just removing something that we see as so broad that there is no definition of what it would mean.

We think it would have a very negative consequence and impact, particularly on young people. I don't believe it should be in this bill. We heard quite a lot of testimony on this point. I hope members will consider supporting it.

**The Chair:** Is there any further discussion on the amendment?

Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** Along the same lines as what Ms. Davies was saying, I would remind you, Mr. Chairman, that Ms. Davies and I have both sat on a sub-committee in the past. That sub-committee was struck following the tabling of a motion by a former Conservative member of Parliament, Randy White, about whom some less charitable individuals said that he represented the « *Flinstone* » wing of the Conservative Party. However, I very much enjoyed working with him.

That sub-committee made a certain number of recommendations, but never recommended as broad and as imprecise a definition as « public place ». Of course, the witnesses we heard did express some concerns with respect to the schools, which I fully understand. You may also remember that Ms. Beauchesne and the Réseau juridique du Québec appeared before the Committee to explain that having such an imprecise concept in the legislation could be dangerous.

That prompts me to put a question to Mr. Saint-Denis who, in fact, has appeared before the Committee a number of times since the year 2000. I hope that brings back some happy memories for him. I can assure him that, seen from afar, he would appear to be very well preserved. In the clause, why is reference made to as broad a concept as « in or near any other public place usually frequented by persons under the age of 18 years »? What is the rationale for that? Do you have legal expertise that would help us to better understand this concept?

• (1550)

**Mr. Paul Saint-Denis:** Thank you for the compliments, Mr. Ménard.

The concept found in this provision is already in the legislation at the present time. Subparagraph 10.2(iii) already talks about places usually frequented by young people.

As for potential legal considerations in that regard, in my opinion, the question has never come up.

**Mr. Réal Ménard:** Why is it so broad?

**Mr. Paul Saint-Denis:** Because there are places more usually frequented by young people—for example, shopping centres and parks. In some regions of the country, we know there is drug trafficking occurring. The idea was to target those activities in such places.

In terms of the imprecision of the wording, it will be up to the judge to determine whether the place in question falls within the parameters of that provision.

**Mr. Réal Ménard:** That can be determined by the judge or by the always informed judgment of parliamentarians with more than a decade of experience at the House of Commons.

**Mr. Paul Saint-Denis:** As well, yes.

**Mr. Réal Ménard:** That answers my question, Mr. Chairman.

[*English*]

**The Chair:** Thank you.

Do we have any further discussion?

Hearing none, I will call the question on NDP amendment 4.1.

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

(Clause 1 agreed to on division)

(On clause 2)

**The Chair:** On clause 2, we first have the Bloc amendment.

**Ms. Libby Davies:** Bloc-2?

**The Chair:** Yes. It would be page 7 of your package.

Monsieur Ménard, I take it that you're moving the amendment?

[*Translation*]

**Mr. Réal Ménard:** Yes, Mr. Chairman, I am moving it, because this clause relates to all the substances listed in clause 1 and clause 2. In clause 1, the list of substances is quite lengthy, whereas clause 2 deals mainly with cannabis. At the same time, we are alive to the negative social consequences of trafficking and possession of narcotics.

Based on the logic I explained earlier with respect to section 718 of the Criminal Code, we believe this should be an aggravating factor. My solid legal expertise led me to believe that this amendment was in order. I understand that you decreed the first amendment to be out of order, but you now have an opportunity to correct that error with this one. I am certain you will not want to pass up that chance, Mr. Chairman.

[*English*]

**The Chair:** Thank you, Monsieur Ménard.

Unfortunately, I am going to have to rule it out of order, again after consultations with our legislative clerk, because it does go against the key principle of the bill. Your amendment actually removes the mandatory minimums, and so I have to remain consistent with my earlier ruling, which I believe is correct.

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, you cut me to the quick. You will have to live with the consequences, but I certainly intend to appeal your ruling.

• (1555)

[English]

**The Chair:** Thank you.

I'm moving on to the NDP.

[Translation]

**Mr. Réal Ménard:** That means I am challenging your ruling.

[English]

**The Chair:** All right.

Is he respecting my decision?

**A voice:** No, he's appealing it.

**The Chair:** Monsieur Ménard, are you challenging the ruling of the chair?

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, that is one of the worst rulings I have seen in my life. Please do not take this personally, but I am challenging it; I do not agree with it.

[English]

**The Chair:** All right, thank you for clarifying that for me.

Shall the decision of the chair be sustained?

(Ruling of the chair sustained)

**The Chair:** We're going on to amendment NDP-5.

Ms. Davies, I assume you're making the amendment.

**Ms. Libby Davies:** Yes, I'm making the amendment. Again, this is trying to remove schedule II, which deals with marijuana.

My point here is that when we're dealing with exporting, the fact is it's saying this would apply to any amount of marijuana, even to a person going across the border with one gram and who didn't know they had it in the car or maybe was going to a party. Whether or not we think that's right or wrong, it seems to me this person will be captured under this bill. We've heard that's not what this bill is about; it's not meant to apply to the personal situation of people sharing with friends, particularly young people. But the fact is, if this goes through, they are the ones it will hit.

So we've put in this amendment to deal with that. But I have a terrible feeling you're going to rule out of order.

**The Chair:** Unfortunately, Ms. Davies, after consultation with the legislative clerk, I am going to rule you out of order, as removal of schedule II is clearly outside of the scope of this bill.

**Ms. Libby Davies:** I will have to challenge your ruling.

**The Chair:** The ruling of the chair has been challenged, so the question is, shall the ruling of the chair be sustained?

(Ruling of the chair sustained)

**The Chair:** We're moving on to NDP amendment 6.

**Ms. Libby Davies:** Given that amendment 5 didn't go very far, NDP amendment 6 is an amendment to say that by replacing line 45 on page 2 with the following:

or in Schedule II in an amount that is greater than the amount set out for that substance in Schedule VII is guilty of an indictable offence

Basically what this is doing is saying that at least we would make sure that the provisions of this bill apply only to three kilograms or more, which is what was set out in schedule VII. What we're trying to do is sort of mitigate the worst effects of the bill, given that the previous amendment was not allowed, and at least make it clear that this would apply only to larger amounts. That's the intent.

**The Chair:** This amendment is in order. Is there any further discussion?

Monsieur Ménard.

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, I am generally in agreement with Ms. Davies, alongside whom I have fought some major battles. My admiration for her is tempered but real. However, I do want to be sure that I understand what our colleague is proposing. I believe the suggestion is to decriminalize and therefore not affect the export and import of the substance in quantities of less than 3 kilos. In the Bloc Québécois, we are quite open-minded, as you know. In our view, this could mean that there would be relatively few restrictions regarding the import and export of quantities of less than 3 kilos. However, that is more than just a small joint that someone might smoke after taking an exam, as I am sure you will agree. Can you give us any reassurances in that regard or are you saying that this is a measure essentially aimed at substantial decriminalization?

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Everyone smokes a joint after an exam.

[English]

**Ms. Libby Davies:** Well, Mr. Chair, if I could respond to the question—

**The Chair:** Ms. Davies.

**Ms. Libby Davies:** —we think that the bill as it's written goes much too far in its scope in terms of what it captures. By putting in the three kilograms or more that's already in schedule VII, it seems to us that it's at least making it clearer that it's targeting the larger amounts.

That doesn't mean to say that enforcement doesn't already exist under the existing Controlled Drugs and Substances Act. I think we sometimes forget that. I think there's an attempt here to make out that somehow this bill is all we have and that this is the enforcement we have. We already have a whole regime under the Controlled Drugs and Substances Act around enforcement. We believe that's adequate; many of them already carry sentences of life imprisonment.

I don't know if that answers the question, but we believe the existing act is sufficient for under three kilograms.

• (1600)

**The Chair:** Thank you.

Does anybody else have a comment? Hearing no one, I will call the question.

(Amendment negatived)

**The Chair:** We're moving on to government amendment 1 and, I believe, the only government amendment.

Mr. Moore.

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

What this amendment would do is add to another aggravating factor, which is specifically targeted towards the problem of importation and exportation of drugs by organized crime groups. It would involve those who have access to secured areas like airport facilities, for example. It specifically mentions that if the person had access to an area that is restricted to authorized persons and used that access to commit the offence, that would be an aggravating factor, which would trigger the one-year minimum sentence.

**The Chair:** Thank you.

Is there any further discussion on this amendment? Hearing none, I will call the question.

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

**The Chair:** That's the last amendment to clause 2, so I will call the question.

(Clause 2 as amended agreed to on division)

(On clause 3)

**The Chair:** We have amendment NDP-7.

Ms. Davies.

**Ms. Libby Davies:** Amendment NDP-7 deletes line 14 on page 3 to line 19 on page 4.

Again, as we've seen in some of the earlier amendments, the purpose of this amendment is to remove schedule II drugs in any amount from the regime of mandatory minimum sentences in Bill C-15.

I do want to speak to some of the testimony that we heard, especially from the United States, and particularly from Mr. Eric Sterling, who was the former counsel to the U.S. House of Representative's Committee on the Judiciary. He spoke extensively of the failed experience in the United States with these mandatory minimums.

So in this particular clause, we are again trying to remove the schedule II drugs, because we don't think, from what we've heard, that this is the real intent of the bill as it's put forward in this committee. It will have a very broad scope, so we put forth this amendment.

**The Chair:** All right.

Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** Could I ask Mr. Saint-Denis what the implications of passing this amendment would be, in his view? Our sense is that this could mean there would be no consequences and no mention of offences involving production. It would create a vacuum that worries us. I would just like to be sure that I fully understand the issues here.

**Mr. Paul Saint-Denis:** Mr. Chairman, I believe Mr. Ménard's reading of this is absolutely correct. I have only just seen these amendments. As I understand them, they would eliminate all the current provisions relating to production in the bill. That would basically mean that the current provisions of the legislation would apply.

**Mr. Réal Ménard:** I understand. That is a road we are not anxious to go down, any more than we are to preserve what is in the legislation now. We are not prepared to support that, in spite of our openness and commitment to a more liberal society when it comes to the use of drugs. And here, I am not talking about politics; I am talking about drugs. As I say, that is not an avenue we are interested in pursuing, Mr. Chairman.

[*English*]

**The Chair:** Ms. Davies.

**Ms. Libby Davies:** I think there's a false impression left here that somehow if this amendment passed, it would mean we would have no enforcement. I would remind the committee that we're actually dealing with the mandatory minimums. That's what we're talking about here, that is, whether or not they would be imposed.

And on this particular amendment, what we're concerned about, just as an example, is how it might hit or be used against compassion clubs. I'm sure people are familiar with the compassion clubs set up across the country. They are involved in production, so they will be hit very much by this bill.

I have later amendments as well dealing more specifically with getting an exemption for that. But if this particular clause goes through, we may well see compassion clubs, which are very well established across the country and have very broad public support.... They're not into enabling or dealing with commercial trafficking. They are there to serve clients and members who use marijuana for medicinal purposes, and they are very well run and very well controlled. This is another example of how this particular part of the bill could hit those organizations, and I think it really contradicts what we've heard from the government on who they claim this bill is aimed at. It has a very wide net, and this is just another example of that. That's why we've put forward the amendment.

It doesn't mean there wouldn't be enforcement. There is enforcement that continues under the Controlled Drugs and Substances Act. The debate here is whether or not we should be applying a mandatory minimum.

● (1605)

**The Chair:** Just as a note to members, if in fact this amendment were adopted, the next 16 amendments would fall off the table.

Is there any further discussion?

(Amendment negatived)

**The Chair:** We are moving on to Bloc amendment BQ-3.

I will just give you a heads up. For the reasons I've already given, I'm inclined to rule the next five amendments out of order, again because they're outside the scope of the bill.

**Ms. Libby Davies:** Could you just name those? Is that BQ-3—

**The Chair:** They are BQ-3, NDP-8, NDP-9, BQ-4, and NDP-10.



On NDP-8 and NDP-9, I can read a formal ruling. The other ones I've already addressed specifically.

**Ms. Libby Davies:** Is it the same rationale?

**The Chair:** It's very similar, yes. They either go against the principle of the bill or are outside of the scope of the bill. In any event, I will deal with them one by one. I just wanted to give you a heads up.

Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** If I understood you correctly, you are ruling BQ-3859842 and BQ-3860231 out of order. I will not repeat our arguments over again, which are supported by solid legal expertise prompting us to believe these amendments should be in order. However, this time, given what is at stake, I will not only be challenging your ruling but, for reasons of principle, I will be considering the idea that we should have a recorded vote. This is just too egregious.

[*English*]

**The Chair:** That's fine.

Let's deal with BQ-3. I have ruled it out of order.

Shall the chair's ruling be sustained? We will have a recorded vote.

(Ruling of the chair sustained [See *Minutes of Proceedings*])

**The Chair:** We move on to NDP-8.

Ms. Davies, I am ruling it out of order, for the reasons given. Do you wish to challenge the ruling?

**Ms. Libby Davies:** Yes.

**The Chair:** All right.

Shall the ruling of the chair be sustained?

Do you want a recorded vote?

•(1610)

**Ms. Libby Davies:** No, that's fine.

**The Chair:** All right, thank you.

(Ruling of the chair sustained)

**The Chair:** The ruling is sustained.

Moving on to amendment NDP-9, again I've ruled that amendment out of order.

Ms. Davies, do you wish to challenge the ruling?

**Ms. Libby Davies:** Yes, and I'd like to speak to this one.

**The Chair:** It's not debatable, I believe.

Actually, for clarity, if you wish to move it and speak to it, I'll allow that.

**Ms. Libby Davies:** And then you'll make your ruling?

**The Chair:** Yes, that's correct.

**Ms. Libby Davies:** Okay.

This amendment, NDP-9, basically replaces lines 35 to 37 on page 3 with:

cannabis (marijuana), except if the production is for a medical purpose, is guilty of an indictable offence

and so on.

Basically, the rationale for this amendment, Chairperson, is that it would exempt medical marijuana in any amount from Bill C-15 in relation to production for the purposes of trafficking; and it would return the maximum sentence for marijuana production back to seven years, which it currently is in the Controlled Drugs and Substances Act.

As I mentioned with the earlier amendment, we're very concerned about the impact on compassion clubs. So this amendment is really trying to take out those circumstances where we are talking about marijuana for medical purposes, which has very strong support in Canadian society. We cannot understand why it should now be covered under the scope of this bill; and without making this differentiation, it will be covered under the scope of this bill for mandatory minimums. We think that's very problematic and it should be taken out.

**The Chair:** Because the bill itself increases the maximum penalty and your amendment keeps it unchanged, I have to rule it out of order.

**Ms. Libby Davies:** I would like a recorded vote on my challenge to your ruling, please.

**The Chair:** All right, we'll have a recorded vote.

(Ruling of the chair sustained [See *Minutes of Proceedings*])

[*Translation*]

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

[*English*]

**The Chair:** There's a point of order from Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** Would you agree to my chairing the meeting in my capacity as Vice-Chair between now and 5:30 p.m.? I have not had many opportunities to chair a meeting. It seems to me that you are feeling a little lost. You know that I am Vice-Chair of the Committee and I could certainly take the chair.

[*English*]

**The Chair:** Monsieur Ménard, I'm really enjoying my job. I'm not yet prepared to retire.

Mr. Bagnell.

**Hon. Larry Bagnell (Yukon, Lib.):** As a point of information, I wonder if Mr. Saint-Denis could comment on Libby Davies' point on that one. I know it's not relevant, but I think it would good to know.

**The Chair:** All right, briefly.

**Mr. Paul Saint-Denis:** Certainly.

The concern about medical marijuana, I believe, is covered by Health Canada's medical marijuana access regulations, where individuals are given a permit to grow it either for themselves or for another individual. So it would appear to me that this particular issue is already covered by existing regulation and law.

**Ms. Libby Davies:** Could I respond to that, please?

It is correct that there is a federal program. It is very, very limited, and in fact, the federal government has, on the last three occasions, been unsuccessful in court. We just had a recent court decision where the federal government tried to appeal an earlier Ontario Court of Appeal decision, which in effect said that the medical marijuana program is so narrow that it is really not accessible. And the Supreme Court of Canada threw out the federal government's appeal on that, so the government lost on that.

We know that the federal government has said that someone who has a licence to grow medical marijuana can now grow it for two patients instead of one. If you talk to anybody who is involved in a compassion club, where they may have several hundred members, they will tell you that the program Mr. Saint-Denis is referring to is virtually useless. It is being challenged all the time.

Yes, it does exist, but the reason the compassion clubs exist is that it's so ineffective and so inaccessible. The product itself is quite expensive and the quality has been seriously challenged.

That is to answer Mr. Bagnell's question.

• (1615)

**The Chair:** Thank you.

We're going on to the Bloc's amendment BQ-4.

Monsieur Ménard.

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, this is an amendment that, again, is based on the same logic—in other words, turning the offences relating to Schedules 1 and 2 into aggravating factors. I would remind you that such a provision already exists in our Criminal Code. This would create an obligation, not to impose a minimum sentence, but rather, to consider, for the purposes of sentencing, any aggravating or negative factors that would warrant social reprobation.

With your permission, Mr. Chairman, I would like to put a question to Mr. Saint-Denis. On a number of occasions, the Committee has looked at the relevance of the deterrent effect of minimum sentences. If I challenged you to bring forward some departmental studies in that regard, would you be in a position to provide studies that would reassure us as to whether minimum sentences really act as a deterrent? If they do not, do you not find that rather sad and believe that we would be demonstrating negligence in not acting on this—negligence that would ultimately be tantamount to ideological bias, which is certainly not something you would want to aid and abet?

[English]

**The Chair:** Monsieur Ménard, I'm not sure Monsieur Saint-Denis is here for the purpose of delivering studies to the committee. He's here to comment on the specifics of our clause-by-clause consideration of the bill.

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, that is my prerogative. We took an oath and swore to vote on the basis of meaningful and conclusive data. I consider that it is my prerogative to question Mr. Saint-Denis because this bill is about studies dealing with minimum sentences. If

there are no such studies, it seems to me we have a problem. I would appreciate getting an answer to my question.

[English]

**The Chair:** Well, Mr. Saint-Denis has been put at a really serious disadvantage, because he wasn't asked to bring studies here. But I'll leave it up to him to determine whether he's in a position to answer that question.

Mr. Saint-Denis.

**Mr. Paul Saint-Denis:** I have brought no studies concerning the effects or impact of minimum penalties as a deterrent, or any other type of impact. So I have nothing here on that.

But I believe Monsieur Ménard's question was whether or not I was aware of such studies. I am aware of a number of studies on minimum penalties, but not—

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, with your permission, I would like to clarify the situation. The Department of Justice is proposing a bill that attaches minimum sentences to current provisions of the Controlled Drugs and Substances Act. As parliamentarians, we have every right to expect that, if we are asked to consider a bill dealing with minimum sentences, that studies carried out in that regard be made available to us. I believe it would be quite irresponsible to vote on this without seeing those studies. I would be extremely surprised—indeed, disappointed and even shattered, if the Department had not itself carried out such studies. If it has not, Mr. Chairman, we have a problem—a problem that could even prompt us to adjourn our work here in Committee, although I dare say the Department has in fact done such studies.

[English]

**Mr. Paul Saint-Denis:** The Department of Justice has undertaken some studies on minimum penalties, in 2002 perhaps, and one in 2006. That's the extent of the work I believe the department has undertaken in this area. There may be others, but I'm not aware of them.

**The Chair:** In any event, I'm ruling the amendment out of order.

[Translation]

**Mr. Réal Ménard:** I am trying to stay calm, but I am somewhat troubled by this.

[English]

**The Chair:** The interpreter couldn't hear that comment. Could you repeat it.

[Translation]

**Mr. Réal Ménard:** What I said, Mr. Chairman, is that I am trying to stay calm, but I am somewhat troubled to hear that there are no studies. I am sure you can understand that it is quite troubling for a parliamentarian to discover that this information is not available.

• (1620)

[English]

**The Chair:** All right, I understand.

Mr. Bagnell.

**Hon. Larry Bagnell:** Mr. Chair, I agree with you that we should move on right away, but I would also ask that those studies just mentioned be tabled for the committee's information later on, because they would be useful for other bills.

**The Chair:** Could you do that, Mr. Saint-Denis? Thank you.

Ms. Davies.

**Ms. Libby Davies:** Because the question was asked, I would like to point out that when we were first hearing witnesses, it was made clear there was a 2002 study from the Department of Justice. The quote we've been using from that is that mandatory minimum sentences "do not appear to influence drug consumption or drug-related crime in any measurable way". There was a second study from the department in 2005, where they said, "There is some indication that minimum sentences are not an effective sentencing tool".

I would also point out that no witness, including the Minister of Justice, could provide any evidence to show that mandatory minimums worked; they couldn't produce the other side.

We did also get from the John Howard Society—because we asked them for this—the summaries of 17 studies from the U.S. and the U.K. on mandatory minimum sentencing, which came to the same conclusion, that they're ineffective.

So we actually have had information on this as a committee, but we've never had anything showing they worked—and we asked for it.

**The Chair:** I've made the ruling. Do you wish to challenge the ruling, Mr. Ménard?

[*Translation*]

**Mr. Réal Ménard:** Yes, Mr. Chairman; I have no choice.

[*English*]

**The Chair:** All right.

Shall the ruling be sustained?

(Ruling of the chair sustained)

**The Chair:** We now move on to NDP-10.

Ms. Davies.

**Ms. Libby Davies:** Before you rule on it, because I know you will, this is actually similar to the previous amendment, but it's making it clear that the term should not be more than seven years, as opposed to what's listed here, at 14 years. Again, this would be returning it to what the sentence now is in the Controlled Drugs and Substances Act.

**The Chair:** All right, thank you.

I rule it out of order. Do you wish to challenge the ruling?

**Ms. Libby Davies:** Yes, I do.

**The Chair:** Shall the ruling of the chair be sustained?

(Ruling of the chair sustained)

**The Chair:** We move on to amendment NDP-11, which is in order.

Ms. Davies.

**Ms. Libby Davies:** This amendment basically removes from Bill C-15 the sentencing for the production of less than 200 plants for the purpose of trafficking. A mandatory minimum sentence of six months for the production of one pot plant, we believe, doesn't belong in a bill that talks about being tough on organized crime.

Already, as I mentioned previously, the current sentence in the act is up to seven years. This is where we get into the detailed sentencing for the number of plants you have. We believe that nailing people by having a minimum mandatory of six months for, in effect, having one plant is absolutely absurd and completely contrary to what we've heard about this bill. It's going to have a huge effect on young people, so we'd like to see this ruled out of the bill.

**The Chair:** Monsieur Lemay.

[*Translation*]

**Mr. Marc Lemay:** Mr. Chairman, I put a question to Mr. Yost when he appeared before the Committee, but I still have not received an answer. I suppose that if things continue to proceed in the same manner, I will receive an answer once that clause has already been disposed of. However, I would very much like to get the answer before that.

[*English*]

**The Chair:** Monsieur Lemay, I believe Monsieur Saint-Denis may be able to answer your question.

[*Translation*]

**Mr. Paul Saint-Denis:** Mr. Lemay, my colleague, Greg Yost, made me aware of your question. As I recall, you had asked whether an individual found trafficking one or two plants of marijuana would receive a minimum sentence.

The answer is no, because he would be trafficking a quantity of marijuana that is less than three kilos, unless they are absolutely gigantic plants.

• (1625)

**Mr. Marc Lemay:** No, you misunderstand. Let us go to Schedule V. This is not a question; it's a comment. I suggest that you listen. We are currently talking about what happens under Schedule I. But, let's go now to Schedule V. That was what my question was about.

Schedule VII relates to sections 5 and 60. So, it has nothing to do with section 7, and here we are talking about section 7. So, the three-kilo standard does not apply.

**Mr. Paul Saint-Denis:** Could I interject?

**Mr. Marc Lemay:** Yes, of course you can, because this is the central issue of the debate.

**Mr. Paul Saint-Denis:** In the example I have here, and having read the transcript, it seems that the offence we are talking about concerns a young person engaged in trafficking.

**Mr. Marc Lemay:** No, I will stop you right there.

My question had nothing to do with a person who is young or old, an ancestor, or who is poor or rich. This was my question. Supposing the government's proposal passes; if someone—any one—were to give a pot plant, whatever its size—to someone else, would that person be subject to a minimum six-month sentence right off the bat?

**Mr. Paul Saint-Denis:** The problem is that giving a plant to someone is considered to be trafficking, under the definition of “trafficking”. And, if we are talking about trafficking, we are talking about quantities, volume and weight. Whether there is one plant or five plants, the important thing is that the weight be less than three kilos. When trafficking is involved, we are referring to section 4 and not section 7. So, Schedule VII is the relevant schedule and it talks about a weight of less than three kilos.

**Mr. Marc Lemay:** That is correct if I am charged under section 5. However, if I am charged under section 7... Do you follow me?

**Mr. Paul Saint-Denis:** Yes, I follow you.

**Mr. Marc Lemay:** So, if I am charged under section 7, of producing a plant—

You understand what I am getting at.

**Mr. Paul Saint-Denis:** Yes, I do.

We were talking about trafficking. We were talking about giving a plant to someone. When you give someone a plant, that is trafficking. However, if you are talking about an individual charged with producing or growing only one plant, there is no minimum sentence, because it is not for the purpose of trafficking. Unless you tell me that the plant was grown for trafficking purposes, there is no minimum sentence. A minimum sentence only applies if someone produces between one and 200 plants for the purpose of trafficking. That is what the bill says.

**Mr. Marc Lemay:** If I were charged with producing one plant, I could be charged with production of one plant and receive a six-month sentence.

• (1630)

**Mr. Paul Saint-Denis:** I am sorry, but if you look closely at the wording in this provision of the bill, which is subparagraph 7(2)(b) (i), as amended, it reads: “imprisonment for a term of six months if the number of plants produced is less than 201 and the production is for the purpose of trafficking.”.

It is an absolute condition that the grower's intention has to be to produce plants for the purpose of trafficking. But if that is not the case, no minimum sentence applies.

[English]

**The Chair:** Ms. Davies.

[Translation]

**Mr. Marc Lemay:** I have not finished yet, Mr. Chairman. What he says is interesting. I would have liked to receive that answer earlier.

As I understand it, then, if he produces plants for the purpose of trafficking, the minimum would be three kilos.

**Mr. Paul Saint-Denis:** Paragraph 7 does not refer to kilos or weight; rather, it refers to the number of plants. In your example, he would have to produce fewer than 201 plants for the purpose of trafficking in order for the six-month minimum sentence to apply.

**Mr. Marc Lemay:** I understand. Thank you.

[English]

**The Chair:** Ms. Davies, then Mr. Murphy.

**Ms. Libby Davies:** I'd like to ask Mr. Saint-Denis a question also to try to clarify this. Trafficking means to give, deliver, or to transport. This particular clause talks about production for the purpose of trafficking, and it imposes a minimum sentence of six months if there are fewer than 201 plants.

If we had a situation where a young person were moving from one apartment to another, and thus they were transporting, and they were stopped by the police because their car was overloaded, or something, and they happened to have a few marijuana plants in there. Maybe it was a silly thing to have done, but maybe that's what they did. But would they not be hit by this, because trafficking includes transport?

**Mr. Paul Saint-Denis:** Well, I guess the question then is, what offence are we talking about here?

**Ms. Libby Davies:** It's what's listed in the bill here: “the production is for the purpose of trafficking”. If it's under 201 plants, you get hit with a six-month minimum.

We're trying to think of who's going to be captured by this. I've given you one scenario of a person moving. They put their plants in the back. They get stopped not because of that but because they've got too much in the car, or whatever. I don't know. They look suspicious or something. They're transporting.

**Mr. Paul Saint-Denis:** That's correct. If they're transporting cannabis, the transportation itself is part of the definition of trafficking, so they would be charged with trafficking.

**Ms. Libby Davies:** Will they get hit by this section?

**Mr. Paul Saint-Denis:** No, because the traffic offence is concerned with weight. Unless the combined plants weigh more than three kilograms, there would be no minimum penalty, so there would be no minimum penalty. If it's one or two plants.... Since there is no standard average weight for a plant, you get plants of different sizes depending on circumstances and so on, and it's difficult to tell you—

**Ms. Libby Davies:** You're saying it would depend on how much they weigh.

**Mr. Paul Saint-Denis:** That's correct.

**The Chair:** Go ahead, Mr. Murphy.

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** In fairness to both Monsieur Lemay and Ms. Davies, I'm not sure if I'm clear on your answer. You seem to have given two different answers, so let's be clear.

Let's get off this idea of young people moving. Let's just say you've got one plant. You've grown the plant. You have possession of a plant. You have a plant. It can be proven one way or another that it was for the purpose of trafficking. Are you saying there's no six-month minimum unless that plant weighs three kilograms?

**Mr. Paul Saint-Denis:** We have to be clear here about what offence we're looking at. If we're looking at the production offence, if the crown or the prosecution can demonstrate that the one plant was being cultivated for the purpose of trafficking, then the minimum penalty will apply, but you have to be able to demonstrate that. You have to have some kind of evidence to show that the motivation for the cultivation of that one plant was for the purpose of trafficking it.

•(1635)

**Mr. Brian Murphy:** I hate hypotheticals—I'm sorry, I do—but I'm going to use one: a person who was producing a whole bunch of plants got rid of a whole bunch of plants somehow. He had a history, and the police can go in and prove that this guy had a business of producing plants, but at the time of the investigation, there was only plant there. They could have indices of trafficking and there could be an offence of trafficking proven, and the person would get six months for producing one plant. That's the direct answer, right?

**Mr. Paul Saint-Denis:** No, it isn't. My answer was that if we can demonstrate that the production of that one plant—not prior cultivation incidents, but that one plant—was for the purpose of trafficking, then the six months could apply.

**Mr. Brian Murphy:** A person can grow one plant, and if it's proven that it's for trafficking purposes, he gets six months. There's no discretion for the judge whatsoever.

**Mr. Paul Saint-Denis:** That's correct.

**Mr. Brian Murphy:** Okay—I mean not okay, maybe.

**The Chair:** Go ahead, Mr. Bagnell.

**Hon. Larry Bagnell:** To carry that to a conclusion, you said that giving a plant is trafficking, so if this guy is growing a plant to give to his sister, he would be in jail for six months. There is no judicial discretion.

**Mr. Paul Saint-Denis:** If it can be proven that he intended to do that, yes, that's correct.

**Hon. Larry Bagnell:** That's pretty harsh.

**The Chair:** All right. We have amendment NDP-11 before us.

All those in favour of the amendment? All those opposed?

It's a tie, so it fails, doesn't it? I'll be voting with the government.

(Amendment negated)

[*Translation*]

**Mr. Réal Ménard:** On a point of order, Mr. Chairman.

Out of respect for our colleagues, would you not have liked Ms. Jennings to be able to use her vote, given her position within this Committee? I think you should reconsider the vote.

[*English*]

**The Chair:** Monsieur Ménard, I didn't know whether Ms. Jennings would be coming back right away, or whatever. She was out of the room, I called the question, and the amendment failed.

I'm going to go on to NDP amendment 12.

Mr. Bagnell.

**Hon. Larry Bagnell:** On a point of order, Mr. Chair, I'm challenging your ruling that we cannot retake the vote.

**The Chair:** You're entitled to do that.

Shall the ruling of the chair be sustained?

**Some hon. members:** No.

**The Chair:** The ruling of the chair is overturned. That means we have to call the question again on NDP amendment 11.

Mr. Moore.

**Mr. Rob Moore:** Mr. Chair, I don't see that as a ruling that you would do. It's not like a ruling on admissibility. The vote has been taken. Now, because of a change, we're seeking to redo what has already been done?

I'd like some advice from someone at the head table on whether that's an appropriate challenge. I recognize that a challenge on admissibility is certainly within our rights. We've had several of those today. But what are they challenging here? They're challenging the results. The vote has already been taken. So I don't see where there's any discretion whatsoever being exercised on your part that can be challenged. We've taken a vote. Now we've moved on to the next amendment. There's nothing to challenge.

•(1640)

**The Chair:** Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** If you maintain your ruling, one parliamentarian, and not the least, who has served in the House of Common for a number of years now and is known for her tremendous ability to remain calm, would be deprived of her right to vote. That would be a direct violation of one of her prerogatives as a parliamentarian.

I recognize, Mr. Chairman, that this is a matter of interpretation, but I believe that the ruling you should make would be helpful in future, insofar as we all recognize that our purpose in being here is, first and foremost, to cast our vote.

I realize that this is a matter of interpretation, but should we not show some courtesy and kindness and rely instead on our ability to work together? That is really what is at stake.

[*English*]

**The Chair:** Monsieur Ménard, it's not a matter of courtesy. If a member of this committee leaves during deliberations, it is not for me to determine when they will return. I had no idea when Ms. Jennings would return. I called the vote in good faith. You all voted on it. To suggest that somehow that was an act of bad faith... I would object to that.

The only issue right now is whether the vote that was taken is subject to being challenged as a ruling of the chair. We have opinions on both sides of that. I'm just having the clerk check into it.

[*Translation*]

**Mr. Réal Ménard:** No one is questioning your good faith. It is true that you could legitimately have believed that Ms. Jennings had left, but is the role of parliamentarians not to vote? Would this not be a gesture of friendship and courtesy that would serve us in future? We are not questioning your good faith.

[*English*]

**The Chair:** Monsieur Ménard, if someone left the table and said, "Listen, I'm going to be back, I just have to go to the washroom", I would extend that courtesy. Ms. Jennings left. She took a phone call. I didn't know whether she would be gone for one minute or for fifteen minutes.

We have a tight schedule, as you know. We've committed to finishing this today. I called the vote. No one objected to the vote at the time.

**Mr. Brian Murphy:** May I speak on a point of order, Mr. Chair, while you're getting your answer?

**The Chair:** Yes, you may, Mr. Murphy.

**Mr. Brian Murphy:** Nobody meant to cause any trouble here. Madam Jennings had an urgent matter. It just came up. This is the way it happened.

The ridiculousness of one plant putting a person away for six months just hit us here. I apologize for that. The 200, 300, 400, 500 numbers—those are arbitrary numbers. Maybe the government can come up with some sort of number that makes some sense, such as 50 plants or 100 plants, but surely the government didn't intend that you go away for one plant.

On the point of order—this is rather unique—I propose that if you don't get an answer right away on whether the previous vote stands, we go on with the amendments.

If you do get a quick answer, just forget what I said.

**The Chair:** All right.

Ms. Jennings.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** I simply wish to apologize to this committee. I'm not a regular member of this committee; I'm replacing someone. I certainly didn't mean for my absence to cause this debate and discussion.

I don't usually reveal personal information. That call was from the insurance company for my home for an insurance claim, so I simply stepped out to say, "I can't take your call right now", and came back in. I apologize to the committee.

**The Chair:** We understand. We didn't know that, so as a chair I have to move the matter forward.

**Hon. Marlene Jennings:** Yes, and I do understand. I also understand that you called the vote, quite rightly so. There was no objection to it. But the vote now has been challenged, so we'll wait to see what, if any, decision there is and whether or not that challenge can in fact take place.

**The Chair:** We're going to suspend for a moment.

- \_\_\_\_\_ (Pause) \_\_\_\_\_
- 
- (1645)

**The Chair:** We're going to reconvene.

The vote that was taken is a decision of this committee. It's not a ruling in the normal course of events, so it's not challengeable. It stands as a decision of this committee. If it were otherwise, obviously I would allow it to be challenged, but it's not a challengeable ruling of the chair, so the vote will remain.

Here's what I would suggest we do, though. The concerns that have been raised are legitimate. I'm going to ask the parliamentary secretary to take it up with the minister. I think Monsieur Saint-Denis has clarified it a little bit more than it was before today's meeting.

Could I ask you to do that?

Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** Mr. Chairman, I understand that you are acting in good faith, but we are at a stage where we are called upon to vote. Could the legislative clerk tell me whether it would be acceptable, for example, to table amendments on the floor of the House? If you discuss this with the Minister and this is passed into law, it would be a little late then to realize that this bill contains an aberration. Does that mean that one of us could table an amendment on the floor of the House at third reading?

[*English*]

**The Chair:** All right. What I'll say is this.

It's my understanding that at report stage the Speaker can, in exceptional circumstances, accept amendments. That's at report stage. It will be the Speaker's decision as to whether amendments will be permitted, but our legislative clerk says that from time to time the Speaker actually does allow it, and this can be invoked, presumably, as an exceptional circumstance.

Ms. Jennings.

**Hon. Marlene Jennings:** You're quite correct. The Speaker does have the discretion to allow amendments at report stage. He generally does not allow them if the amendment has already been dealt with in committee in clause-by-clause, in which case I would suggest that this committee, because we're presuming good faith when the chair asks the parliamentary secretary...

Now that there has been clarification that production of one plant would come under the minimum mandatories, everyone appears to be convinced that this was not the intention even of the government, although we could be mistaken about that. This committee may wish, in its wisdom, to instruct the chair to send a letter to the Speaker saying that while this amendment was voted against, the committee, should a similar amendment be tabled at report stage, would be more than happy to have or would welcome a decision that the Speaker rule it in order and allow it.

- (1650)

**The Chair:** Let me read to you the relevant section of the Standing Orders. This is under Standing Order 76.1(5):

"A motion, previously defeated in committee"—which will be this one—"will only be selected if the Speaker judges it to be of such exceptional significance as to warrant a further consideration at the report stage." That's what the Standing Orders say.

I'm not sure whether Mr. Moore is prepared to make that commitment to actually... I think you're requesting that a formal motion be forwarded or a letter be sent by the committee.

**Hon. Marlene Jennings:** I would propose a motion to the effect that this committee request that the Speaker of the House, should a similar amendment that was defeated in committee be tabled in the House, rule such an amendment admissible. And you can give reasons for doing that, including the discussion here, as well as the fact, I believe, that the parliamentary secretary has in fact undertaken to take the concerns of this committee back to the government to clarify whether indeed the government's intention was that producing one marijuana plant should be subject to the minimum mandatory—

**The Chair:** Mr. Saint-Denis, is that what you said, that production of one marijuana plant, even if it's under three kilograms, would result in a mandatory minimum sentence, or does it require trafficking?

**Mr. Paul Saint-Denis:** No.

**The Chair:** It has to require trafficking.

Mr. Saint-Denis.

**Mr. Paul Saint-Denis:** What I said was that the production of one plant, if the production was the purpose of trafficking, was caught.

**The Chair:** Right.

**Hon. Marlene Jennings:** Thank you.

So I will clarify: that the production of one single marijuana plant with the intent of trafficking be liable to a minimum mandatory sentence of six months. We're asking for clarification from the government, through the parliamentary secretary, as to whether or not that is the express intention of this government. If it is not, then we're requesting that the government bring its own amendment at the report stage to make the changes; and if it's not its express intention, should the government not bring its own amendment at report stage, that the Speaker look favourably and rule favourably on such an amendment coming from any other party at report stage.

**The Chair:** Okay. I'm going to ask you to hold that thought, because we have all these other amendments we have to deal with. I'd like to walk through those. This may give you an opportunity to put whatever it is you're requesting in writing.

Mr. Moore has stated that he will take it up with the minister. I'm comfortable with that, but if you want to take it beyond that and get something in writing, we'll deal with it after we've gotten to the end of this.

Mr. Bagnell, on a point of clarification.

**Hon. Larry Bagnell:** So that means we won't pass the bill today if he takes that up?

**The Chair:** It's my understanding that we're all committed to having it passed today.

**Hon. Larry Bagnell:** I have another question. We have not approved this clause. We've just defeated one amendment on this clause.

• (1655)

**The Chair:** That's right. We have to approve the clause.

**Hon. Larry Bagnell:** So we could make other amendments on this clause?

**The Chair:** Yes, there are other amendments along the way. So let's just walk through the remaining amendments we have on this clause, if we might.

We're moving to amendment NDP-12.

Ms. Davies.

**Ms. Libby Davies:** Thank you very much.

Similar to the last one, what we're trying to do with this amendment is basically minimize what we see as the very substantive and harmful impacts of this bill and of this particular clause. We're dealing with the same clause, that is, a minimum mandatory sentence of "six months if the number of plants produced is less than 201 and the production is for the purpose of trafficking". As I've already pointed out, transport includes trafficking.

This particular amendment from us would read:

is less than 201 and more than five, and the production is for the

The effect of this amendment is to increase the minimum plant amount from zero to five, so up to five would be exempted.

I think this really addresses our concern if it's correct that this bill is not aimed at the small growers who might be sharing with a friend, transporting, and could be hit for the purposes of trafficking. The way the bill is characterized, they would get hit with a minimum sentence. With this, at least they would be exempt until they get to the five plants. I think that's pretty clear.

**The Chair:** Okay.

Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** Mr. Chairman, I would like to move a sub-amendment which, I believe, will achieve consensus. It would read as follows: "if the number of plants produced is less than 201 and more than 199,". I am prepared to pass that sub-amendment on to the clerk, as required. It is a sub-amendment that reflects the intent of the mover.

[*English*]

**Ms. Libby Davies:** It actually didn't really come through.

**A voice:** It's the translation.

**Ms. Libby Davies:** They just said 2,001.

**The Chair:** Monsieur Ménard, it sounded like 2,001, the way the interpretation came through.

[*Translation*]

**Mr. Réal Ménard:** I will read my sub-amendment again: "if the number of plants produced is less than 201 and more than 199,". That is my amendment, and I believe it reflects the intent of the mover while meeting the concerns of the Committee.

[*English*]

**The Chair:** We have a subamendment to the main amendment.

Is there any further discussion on the subamendment?

I call the question on the subamendment.

(Subamendment negated)

**The Chair:** Now we'll deal with the main amendment.

Monsieur Lemay.

[*Translation*]

**Mr. Marc Lemay:** If there is no agreement on 199 as a number, can we make it 12? Based on our experience, when there are more than 12, it becomes serious. So, I would suggest the following wording: "if the number of plants produced is less than 201 and more than 12,". That is my sub-amendment.

[*English*]

**The Chair:** We have another subamendment. I believe this time we're changing "5" to "12". Is that correct?

**Mr. Marc Lemay:** *Voilà*.

**The Chair:** Does everyone understand the subamendment? It's Ms. Davies' amendment, but this is changing the number "5" to "12".

All those in favour of the subamendment?

(Subamendment negated)

**The Chair:** We'll go to the main amendment, which is Ms. Davies' amendment, as written.

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

**The Chair:** The motion is carried, so we have an amendment to clause 3.

Let me ask you a question, Ms. Jennings. Does that dispose of the issue you had?

• (1700)

**Hon. Marlene Jennings:** Yes.

**The Chair:** All right. So we don't need to have Mr. Moore go to the minister?

**Hon. Marlene Jennings:** No.

**The Chair:** All right. Thank you.

**Hon. Marlene Jennings:** But of course I'm taking it on faith that the government is not going to table an amendment at report stage reinstating their own....

**The Chair:** Ms. Jennings, you know that's not an issue of faith. That's a decision in the sole discretion of the government.

Let's move to amendment NDP-13. Ms. Davies.

**Ms. Libby Davies:** Yes, again, this is another amendment that is trying to minimize the impact and scope of the bill for what we believe to be consequences that, by the government's own words, were not intended. This amendment clarifies that "trafficking" is for commercial trafficking and not for personal use or medical use. That's what this amendment is.

**The Chair:** Monsieur Ménard, and then Mr. Murphy.

[*Translation*]

**Mr. Réal Ménard:** We understand Ms. Davies' concern. However, I would like to put a question to Mr. Saint-Denis.

It is our sense, as members of the Bloc Québécois, that the concept of commercial trafficking does not exist legally, in the law as we

know it now under the Controlled Drugs and Substances Act. Perhaps you could clarify that.

**Mr. Paul Saint-Denis:** I am sorry, Mr. Ménard, but I did not understand the last part of your question.

**Mr. Réal Ménard:** If you are not listening to me, I can tell you we are moving closer and closer to a conjugal type of relationship, you and I.

The concept of commercial trafficking does not appear to us to be part of the current Controlled Drugs and Substances Act. Is that correct?

**Mr. Paul Saint-Denis:** I believe it is. Where a sale is involved, most of the time, it is for some form of consideration, normally money. So, there is a commercial aspect to it.

**Mr. Réal Ménard:** It does exist then.

**Mr. Paul Saint-Denis:** It certainly does exist. However, in the definition of "trafficking", the possibility of a sale being involved is included, even though consideration per se is not mentioned.

**Mr. Réal Ménard:** If this amendment were to pass, what would the consequences be, in your opinion?

**Mr. Paul Saint-Denis:** Well, it is a little difficult to say because the definition of "trafficking" includes terms such as "give", "transfer" and "carry". Furthermore, if we add commercial trafficking, it is possible we will start to exclude certain activities that are currently included under the definition of "trafficking". That could be a problem.

[*English*]

**The Chair:** Mr. Murphy, you're fine? Okay.

**Ms. Libby Davies:** Can I just add one little point, Chair? I actually followed this up based on what the minister himself said.

When the minister appeared before the committee, he tried to convince us—I don't think he convinced me, but maybe he did others—that this bill was aimed at these big drug dealers that he talked about and the big commercial grow ops. He went on and on about that. He went to some length to explain that this was not levelled at the street-level people, people who were facing addiction and so on. I think the Conservatives have tried to argue that very strenuously, even though my belief, when you read this bill...and believe me, I've talked to lots of people about this bill who know this issue very well, both from a legal perspective as well as what's actually happening out in the real world. Their opinion is that this bill goes so far, it will hit so many people, that it will clog up our prison system. It will have huge implications on the provincial and territorial systems.

So this amendment is another example of how we're trying to say that if what the minister is saying is correct and this bill isn't that broad, then let's really narrow it down. Let's be clear that it is about commercial trafficking, and we're not talking about personal use, and we're not talking about medical use. That's exactly what this amendment is zeroing in on.

**The Chair:** All right, I'll call the question on amendment NDP-13.

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



**The Chair:** We move on to amendment NDP-13.1, which is in order.

Ms. Davies.

• (1705)

**Ms. Libby Davies:** This amendment would decrease the mandatory minimum from nine months to six months, and we have a whole number of these, and you'll see more of them. It's for production of fewer than 201 plants for the purpose of trafficking, where aggravating factors apply. Again, we're just trying to move down the sentence so it isn't so severe.

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

**The Chair:** We'll move to amendment NDP-14.

**Ms. Libby Davies:** Is this one in order?

**The Chair:** Yes, it is.

**Ms. Libby Davies:** Given that the previous one failed, we're trying another tack here.

This amendment would change the nine months to six months if it were over five plants and if it were commercial trafficking. Again, we're trying to minimize the impact of the bill here. It would be when the aggravating factors would apply, so we're getting back to saying it would apply only if there were more than five plants.

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

**The Chair:** Amendment NDP-15 is in order.

**Ms. Libby Davies:** This is a similar amendment in that again we are making it clear that we're talking about commercial trafficking. We're trying to move away from what we see some of the broad impacts of the bill being by making it clear that we're talking about commercial trafficking.

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

**The Chair:** Amendment NDP-16 is in order.

**Ms. Libby Davies:** Amendment NDP-16 decreases the nine-month sentence to six months for the production of 200 to 500 plants.

**The Chair:** Is there any discussion?

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

**The Chair:** Amendment NDP-17 is in order.

**Ms. Libby Davies:** Similar to the last amendment and the ones after as well, this amendment is looking to decrease the mandatory minimum from 18 months to six months for the production of more than 201 and fewer than 501 plants. I would add that this is another one where we're very concerned that groups like compassion clubs could be hit where they're actually growing, and they could suffer very severe consequences.

**The Chair:** Is there any discussion?

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

**The Chair:** On amendment NDP-18.

**Ms. Libby Davies:** This is a similar amendment, but it's dealing with the two-year provision and seeking to bring it down to six months for the same reasons I've just outlined.

**The Chair:** Is there debate?

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

**The Chair:** Amendment NDP-19 is in order.

**Ms. Libby Davies:** Amendment NDP-19 is similar to the other ones in that it's bringing the sentence down to six months from three years in this case.

**The Chair:** Thank you.

Is there any debate?

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

**The Chair:** Amendment NDP-20 is also in order.

**Ms. Libby Davies:** We had a number of witnesses who spoke on the subject of this particular amendment. This is the one that deals with a third party, when a person used real property that belonged to a third party in committing the offence.

One of the concerns that were put forward to us involved students who are renters. They would get hit by this and would receive a nine-month sentence simply because they were renting. For us, that seemed to be very over the top and unfair. I don't think it was intended, from what we heard at the beginning from the minister. This is another case of my not knowing why something's in there. It's going to hit people who just happen to be renting.

• (1710)

**The Chair:** Mr. Murphy.

**Mr. Brian Murphy:** I'd like to ask Monsieur Saint-Denis, because I don't remember this, about the question Ms. Davies asked. If the people in the rented apartment are growing 200 to 500 plants, or whatever nine months is triggered by, what difference does it make that they're renting the facility as opposed to owning it?

**Mr. Paul Saint-Denis:** One of the problems we've had in the last few years, and in fact in the last several years, has been a tremendous increase in the phenomenon of indoor grow operations. Typically what happens is that rather than using one's own property, one will rent a property, thereby saving one's own money, and essentially will turn someone else's apartment or house into a grow operation. In the process, one will end up completely ruining, if it's an individual's house, the house itself, and if it's an apartment in an apartment block, this will definitely ruin the apartment and, quite possibly, apartments adjacent.

**Mr. Brian Murphy:** Okay. I remember now. That's fine.

[*Translation*]

**Mr. Réal Ménard:** That raises another question. If the property of a third party is used for production purposes, under existing mechanisms relating to the confiscation of property, particularly in cases involving gangsterism, is there not a risk that the house belonging to that third party would be confiscated, for instance? Is it not possible that new legislation passed in 2005-06 could have an unforeseen impact on the confiscation of property?

**Mr. Paul Saint-Denis:** It is important to understand that we are talking about other people's property here and not the offender's own property. If it is someone else's property and that third party is innocent, his property cannot be confiscated.

**Mr. Réal Ménard:** In the legislation that was passed in 2005, are there not certain provisions dealing with property from the perspective of the place where the offence occurred, as opposed to being aimed at proving property title? If you can reassure me in that respect, I will not have a problem with this.

**Mr. Paul Saint-Denis:** Yes, provisions were indeed enacted in 2001 that deal with offence-related property. At the same time, this Part of the Criminal Code does include provisions whereby an innocent third party can defend his or her interests. In the case under discussion, if a person rented his house in good faith but someone else ruined it, the Crown would not be authorized to confiscate that property because it belongs to an innocent third party and not to the accused.

**Mr. Réal Ménard:** All right. That is reassuring.

[English]

**The Chair:** Thank you.

Let's call the vote on NDP-20.

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

(Clause 3 as amended agreed to on division)

(On clause 4)

**The Chair:** Moving on to clause 4, we have amendment NDP-21.

Ms. Davies.

**Ms. Libby Davies:** Amendment NDP-21 is basically here to try to get a review of this bill. It looks like it's going to go through, so we think it's fairly serious. We have had other bills pass through the House where there have been reviews, so we think it's important to build it into this particular legislation before us so as to ensure that there is a report to Parliament as laid out here.

**The Chair:** Is there any further discussion?

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

(Clause 4 as amended agreed to)

(On clause 5)

**The Chair:** We'll move on to amendment BQ-5.

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, the Bloc Québécois is withdrawing amendments BQ-5 and BQ-6, in light of the previous votes.

• (1715)

[English]

**The Chair:** Thank you, Monsieur Ménard.

We'll go to BQ-7.

Monsieur Ménard.

[Translation]

**Mr. Réal Ménard:** Mr. Chairman, my understanding is that clause 5 of the bill deals with eligibility for drug addiction treatment programs. We would like to delete certain provisions of the bill which restrict access to these programs. That would enable us to broaden the concept of "court program", as well as the other

provisions of the Criminal Code, obviously. I believe it is section 720 that provides for other measures.

I would just like to remind the Committee that access to drug addiction treatment, based on the current wording of the bill, is really quite restrictive. Government members, and even the Minister, when he appeared, tried to present this as almost a panacea. However, as I say, in order to be eligible to receive treatment, the individual must have pled not guilty and must follow a specific program of treatment. He is not eligible under certain other restrictions, including minimum sentences.

What we are proposing would make treatment programs more meaningful and generous and would better reflect what the witnesses described.

[English]

**The Chair:** Mr. Murphy.

**Mr. Brian Murphy:** Mr. Saint-Denis, the effect of this would be to take out the consent of the prosecutor as being necessary for a drug treatment court program approved by the Attorney General and other conditions that are set out there. But proposed paragraph 10(4) (b) says that an offender could attend a treatment program under subsection 720(2) of the Criminal Code.

An important thing for us, I think, is that this is a very interesting interregnum: you're convicted, and you have the choice to better yourself, such as get treatment at the drug treatment court or deal with that, as opposed to being given the mandatory minimum.

So does Mr. Ménard's amendment make access to the DTC easier or more difficult?

**Mr. Paul Saint-Denis:** I don't believe it actually changes much of anything, in a sense. The limiting factors that are listed here are already the types of factors that are taken into account when the drug treatment courts look at admitting an individual. An individual has to have been found guilty and then must meet a number of criteria.

For instance, if you committed a drug offence and there was an element of violence attached to it, or if you used a weapon, or if you made a threat, or if you did it for the purpose of aiding an organized crime group, you would not have access to the drug treatment court program.

**Mr. Brian Murphy:** Maybe I can just cut to the chase here. That's with respect to the second part of what's eliminated here. But what about the prosecutorial consent? Why is that in here, first of all, and does it make much difference if we take it out?

For the Liberals here, as I say, our objective is to get people to those DTCs, to push the government to expand DTCs. There isn't a DTC anywhere near where I live, or where a lot of us live.

**Mr. Paul Saint-Denis:** Well, as perhaps you're aware, I think there are only six drug treatment courts in the country, and those are being evaluated. Some regions of the country have expressed an interest in opening up a court. I guess that's being looked at.

In the end, I guess the admission criteria will always be there.

**Mr. Brian Murphy:** But what about the prosecutorial consent? That's part of what Mr. Ménard is taking out, right? Why is "if the prosecutor consents" in there, and what difference does it make if it's taken out? That's all I want to know.

• (1720)

**Mr. Paul Saint-Denis:** It would be in there because admissibility criteria are managed by the prosecutors. If the admissibility criteria are not met, a prosecutor would not consent to an individual going into the drug treatment court program. Someone has to make a decision as to when an individual is admitted into the drug treatment court program, and that is made by the prosecution.

**The Chair:** Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** As you know, the witnesses expressed deep concerns about this provision of the bill. Requiring that someone plead guilty in order to be eligible is the first cause of concern. A whole set of restrictions apply. Furthermore, we do not understand why it is the prosecutor who decides, rather than the court.

**Mr. Paul Saint-Denis:** Mr. Ménard, that is the way the program is structured at the present time. If you want us to reorganize it entirely—

**Mr. Réal Ménard:** To make me happy?

**Mr. Paul Saint-Denis:** I would love to make you happy, but I would not be the one responsible.

**Mr. Réal Ménard:** In any case, those are our concerns.

[*English*]

**The Chair:** Ms. Jennings.

[*Translation*]

**Hon. Marlene Jennings:** Regarding the amendment proposed by the government, I would like to point out that it is not the Crown prosecutor who accepts or refuses. It is the court that decides. The administrative judge or presiding court official decides whether or not sentencing will be postponed to allow the convicted offender to participate in a program. The Crown has an opportunity to say whether it is, or is not, in favour of the individual's participation and to state its reasons.

**Mr. Paul Saint-Denis:** I believe that, initially, it is the Crown prosecutor who determines whether the person is eligible or not for a drug addiction treatment program. Once that person has been admitted to a program and appears before the court, it is the court—you are right about that—which decides whether or not the individual has met the objectives of the program. Based on the new amendment, a minimum sentence might or might not be imposed.

**L'hon. Marlene Jennings:** So, it is not necessary to specify that here. If the legislation does not already specify that the consent of the Crown prosecutor is necessary, I see no reason why the government would want to specify that now through this bill.

**Mr. Paul Saint-Denis:** We wanted to codify the practice, Ms. Jennings.

[*English*]

**The Chair:** All right, we're dealing with Bloc amendment 7.

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

**The Chair:** We also have Bloc 8.

[*Translation*]

**Mr. Réal Ménard:** Mr. Chairman, let us just hope that this trend will continue. Let me just write "agreed to" on my little paper here. You see how smoothly things run when people are reasonable?

Amendment BQ-8 is consistent with the one we just passed. I suppose that the vote on this amendment will be in keeping with the last one, so that people who have met the objectives of a drug addiction treatment program will not be subject to a minimum sentence. That is the purpose of this amendment.

• (1725)

[*English*]

**The Chair:** Is there any further discussion?

Monsieur Saint-Denis, does this particular amendment have the effect of simply reflecting the previous amendment that was adopted? I know it adds (b), but it reflects the fact that the wording in Bloc amendment 7 changes the current bill.

**Mr. Paul Saint-Denis:** Actually, no, it doesn't. At least, I don't believe it does. The motion BQ-8 applies to both the drug treatment court program and the treatment program under subsection 720(2) of the Criminal Code. So it goes beyond what the previous amendment would do.

**The Chair:** Mr. Murphy.

**Mr. Brian Murphy:** This treatment under subsection 720(2) is what?

**Mr. Paul Saint-Denis:** Well, section 720 allows for the court to refer an offender to a treatment program of some sort. It doesn't have to be a drug treatment program; it could be any type of program. But it does not take away the obligation of the court to impose a minimum penalty, even if the individual successfully completes the program.

**Mr. Brian Murphy:** The 720 treatment is imposed and agreed upon, but ordered by the court?

**Mr. Paul Saint-Denis:** Yes.

**Mr. Brian Murphy:** So it's a court-ordered treatment program different from the drug treatment court.

**Mr. Paul Saint-Denis:** Yes.

**Mr. Brian Murphy:** So it would seem to me that the government shouldn't have a problem with this, then. It's the same objective.

**Mr. Paul Saint-Denis:** If I can just point this out, the individuals who would go to a 720 treatment program would be individuals who are not eligible for the drug treatment court program. So individuals under the 720 approach would be individuals who possibly used a weapon to commit the offence or may have used violence to commit the offence. And the thinking here is that while those types of individuals would benefit from a treatment program, the nature of their offence was such that it still warranted at least a minimum penalty.

Under the 720 approach, once an individual has successfully completed the program, the court would have to impose the minimum, but would not necessarily impose more than the minimum. Depending on the circumstances, individuals who are open to the 720 approach could get considerably more than the minimum. It depends on the severity of the violence or the use of a weapon, and so on. It was felt that allowing the court to impose the minimum was the least we could do in light of the fact that these types of offences were of a much more serious nature than the type of offender who went into the drug treatment court program. And the judge, in those cases where an individual has successfully completed that approach or that program, could impose a lesser sentence—i.e. perhaps just the minimum—if an individual has successfully completed the 720 treatment program.

**The Chair:** Mr. Bagnell.

**Hon. Larry Bagnell:** Just briefly, carrying on from that, it could also be a person who was thought to be harmless and the drug treatment program wasn't the place they should go, so they went under a 720. This would give the court the option of not having to provide the mandatory minimum sentence.

**Mr. Paul Saint-Denis:** This amendment would do that, yes.

**Hon. Larry Bagnell:** And this case I talked about is possible, right?

**Mr. Paul Saint-Denis:** I'm sorry, then perhaps I misunderstood.

**Hon. Larry Bagnell:** I basically said that maybe the drug treatment court wasn't the place for someone if the person appeared to be relatively harmless to the judge or jury. But if they need this other type of treatment—I don't know what it is, anger management or something—then this amendment would allow the court not to have to provide the mandatory minimum to a harmless person like that.

• (1730)

**Mr. Paul Saint-Denis:** Yes, that's correct.

**Hon. Larry Bagnell:** And that's a possible situation?

**Mr. Paul Saint-Denis:** With this amendment, that would happen. That's correct.

**The Chair:** Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard:** I want to provide a couple quick clarifications, so that everyone has a clear understanding of the purpose of this amendment.

You are right to say that it goes a little bit further. This will allow a judge, in circumstances where the programs provided for under section 720 apply—of course, everyone understands that there will still be minimum sentences—to ensure that no minimum sentence applies in two specific cases, namely in all cases where individuals have received the treatment provided for under paragraph (a) or (b). Do we all agree on that?

[*English*]

**The Chair:** Monsieur Ménard, the bells are going. Unfortunately, I'm going to have to suspend and we're going to reconvene after the votes.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

•

• (1830)

**The Chair:** I would like to reconvene the meeting.

We were discussing BQ-8. Were we finished discussion on it, or does anyone else want to address it?

Mr. Saint-Denis, do you have anything else to add on this amendment?

**Mr. Paul Saint-Denis:** No, I don't.

**The Chair:** All right, there's no further discussion.

We're dealing with BQ-8. I will call the question

**Mr. Brian Murphy:** We are not on the ball here. What's the vote?

**The Chair:** We're voting on BQ-8, page 31.

**An hon. member:** We're going to call you Happy Trigger McGraw here.

**The Chair:** I don't think so. I asked the question clearly—whether there was any further discussion on BQ-8.

**An hon. member:** Yes, there is further discussion.

**The Chair:** Oh, there is? All right.

**An hon. member:** You are too fast.

**The Chair:** That's my name.

[*Translation*]

**Mr. Réal Ménard:** Mr. Chairman, allow me to quickly explain the purpose of this amendment, so that everyone knows exactly what we are voting on.

The idea here is that all individuals admitted to a drug addiction prevention program under paragraph (a) or subsection 720(2) of the Criminal Code, as Mr. Saint-Denis explained earlier, would be exempt from a mandatory minimum sentence. That does not mean that there would no longer be any minimum sentences. It simply means that these individuals could be exempt. That is the qualification that needed to be made here. I believe that people of good will sitting around sitting at this table will be inclined to support my amendment.

[*English*]

**Hon. Larry Bagnell:** They “may” not be subject to it.

**The Chair:** Monsieur Ménard, was that your explanation?

[*Translation*]

**Mr. Réal Ménard:** Yes, Mr. Chairman. Thank you.

[*English*]

**The Chair:** Any other discussion on BQ-8? None?

I call the question.

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

[*Translation*]

**Mr. Réal Ménard:** Mr. Chairman, I expect a brief note of congratulation from you.

**Voices:** Ah, ah!

[*English*]

**The Chair:** All right, I will now call the question on clause 5.

(Clause 5 as amended agreed to)

(Clauses 6 and 7 agreed to )

(Clause 8 agreed to on division)

**The Chair:** Monsieur Ménard.

• (1835)

[*Translation*]

**Mr. Réal Ménard:** I simply want people to understand what the implications of that division are. There are no more amendments, but that does not mean that we do not want to take the time to check a number of points. Clause 8 will pass on division. In any cause, if you could slow down a little, that would be appreciated.

[*English*]

**The Chair:** All right.

(Clauses 9 to 15 inclusive agreed to on division)

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**Some hon. members:** On division.

**The Chair:** Shall the bill as amended carry?

[*Translation*]

**Mr. Réal Ménard:** I would like to request a recorded vote.

[*English*]

**The Chair:** All right, we'll have a recorded vote on the bill.

(Bill C-15 agreed to: yeas 8; nays 3)

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

**Some hon. members:** Agreed.

**Some hon. members:** On division.

**The Chair:** Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

**Some hon. members:** Agreed.

**Some hon. members:** On division.

**The Chair:** *Merci.*

We're adjourned.

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