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Tuesday, March 23, 2010

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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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•(1110)

[English]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting number three of the Standing Committee on Justice and Human Rights. Today is Tuesday, March 23, 2010.

I would just like to note that today's meeting with the minister is being televised by both CTV and the CBC.

You have before you the agenda for today. First we have Minister Nicholson with us to discuss his departmental expenditure plans and perhaps give us an idea of the legislation we can expect to see at this committee.

At the end of today's meeting we'll leave a little time for an in camera meeting to discuss committee business, including committee travel on our organized crime study.

Also, Mr. Comartin, you have your motion, which you may wish to introduce at the end of our meeting.

Once again, to anyone who has a BlackBerry or other kinds of devices or telephones, make sure you switch them to vibrate or turn them off completely. If you're going to take calls, please take them outside of this room.

Welcome back, Minister. With you, of course, is Mr. Sims, who is the deputy minister as well as the Deputy Attorney General. Welcome to you as well.

Minister, you have 10 minutes to present, and then we'll open the floor to questions.

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

I'm pleased to be before the committee again.

Since this is my first public opportunity to appear before the committee, I want to bring to your attention some changes. I'm proud to say joining *mon collègue* Daniel Petit is a new parliamentary secretary, Bob Dechert, and I extend to him my best wishes and congratulations. I had the role myself for about four years. It was a great experience for me. Certainly, I am hopeful the experience will be as worthwhile and as valuable to you as it was to me. So I'm pleased to have both of you.

And to you, Mr. Chair, continuing your responsibilities as chair of the justice committee, I again wish you all the best.

I'm delighted to be joined here by John Sims, the deputy minister and the Deputy Attorney General of Canada. Mr. Sims will be

retiring. I will miss him. His advice and support to me over these three-plus years have been invaluable. He's an outstanding public servant and a credit to the profession, the department, and the public service of this country. I want to publicly wish him all the best, as I will indicate to him privately. Again, I'm very pleased to have him join me today.

Mr. Chairman, since we were first elected our government has taken action to tackle crime and to protect Canadians. The employees of the Department of Justice have helped us fulfill that commitment through their invaluable advice and tremendous efforts. I greatly appreciate their support and reliability as our government continues to move forward with its crime and justice agenda.

With the help of the department, our government was able to act decisively to crack down on crime and ensure the safety and security of our neighbourhoods and communities. We have brought in legislation to establish mandatory prison sentences for serious gun crimes, to toughen sentencing for dangerous criminals, and to raise the age of protection from adult sexual predators from 14 to 16 years of age. We have targeted identity theft, and we've ensured that criminals serve sentences that reflect the severity of their crimes.

One of the most recent successes in our agenda is the elimination of the two-for-one credit for time spent in jail while awaiting trial, a practice that disproportionately reduced prison sentences for some violent offenders. Limiting the amount of credit granted for time served in custody prior to conviction and sentencing gives Canadians greater confidence that justice is being served and brings truth to sentencing. We remain unwavering in our commitment to fighting crime and to protecting Canadians so that our communities are safe places for people to live, raise their families, and do business. As the recent Speech from the Throne stated, the law must protect everyone, and those who commit crimes must be held to account. Canadians want a justice system that delivers justice.

One of our initiatives is to seek to strengthen the way the youth justice system deals with violent and repeat young offenders. Currently, the system lacks the tools to keep violent and repeat young offenders in custody while awaiting trial, even if they pose a danger to themselves and to society. Whether caused by young offenders or adult offenders, the impact on victims of violent and repeat criminal behaviour is profound. We believe the law must uphold the rights of victims and ensure the safety of our communities. If our justice system fails to do so in any way, we must take action.

Last week, I introduced legislation known as Sébastien's Law to make the protection of society a primary goal of our youth criminal justice system. It will also give Canadians greater confidence that violent and repeat young offenders will be held accountable. It will simplify the rules to keep these offenders off the streets and would require the courts to consider publishing the name of a violent young offender in individual circumstances when necessary to protect the public.

We also take extremely seriously the many instances of child sexual exploitation facilitated by the Internet. The creation and distribution of child pornography are appalling crimes in which children are brutally victimized over and over again. The worldwide web provides new and easier means for offenders to make, view, and distribute child pornography. This has significantly increased not only the availability and volume of child pornography, but also the level of violence perpetrated against children.

• (1115)

Our government has recently proposed a mandatory reporting regime across Canada that will require suppliers of Internet services to report certain information about Internet child pornography, and we intend to do so again in this session. This will strengthen our ability to protect our children from sexual predators and help police rescue these young victims and prosecute the criminals responsible.

Our government has also shown its concern for the victims of multiple murderers and for their families. We firmly believe that the families of murder victims should not be made to feel that the lives of their loved ones do not count. This is why I tabled bills last session that will permit judges to impose consecutive sentences of parole ineligibility for multiple murderers. While there can only be one life sentence for an offender who commits more than one murder, the parole ineligibility period, which is 25 years in the case of a first degree murderer, could be imposed consecutively for each subsequent murder.

In addition we continue to seek the elimination of the faint hope clause of the Criminal Code. By saying no to early parole for murderers, our government hopes to spare families the pain of attending repeated parole eligibility hearings and having to relive these unspeakable losses over and over again.

Both of these pieces of legislation would acknowledge the value of every life taken by this most serious of crimes. This legislation would ensure that the criminals responsible serve a sentence that more adequately reflects the gravity of their crimes, and it would better protect Canadians.

Mr. Chairman, our government remains dedicated to further strengthening of our justice system, particularly when it comes to drug producers and traffickers. We intend to reintroduce legislation to amend the Controlled Drugs and Substances Act to impose mandatory sentences on drug producers and traffickers, specifically targeting the criminal enterprise of gangs and other violent criminal organizations, because drugs are the currency of organized crime and gangs. Having this legislation passed would better protect communities and send a clear message: if you produce and traffic in marijuana, if you run grow ops in residential neighbourhoods, if you threaten the safety of Canada's communities, you will serve jail time. Canadians should not be asked to tolerate criminal activity that

attempts to flourish at the expense of law-abiding Canadians and those vulnerable to the lure of drugs.

Mr. Chairman, in recent years I've spoken to victims of various fraud schemes and white-collar crime, and they clearly attested to the gravity of these crimes. Fraud can have a devastating impact on the lives of its victims, not only as it affects their financial security but also through feelings of humiliation for having been deceived into voluntarily handing over their life savings. These schemes can be every bit as devastating as a physical assault.

The determination of these victims to call for action on fraud in the face of their emotional turmoil reaffirmed the need to act quickly and effectively against this type of crime. That is why we intend to reintroduce legislation that cracks down on white-collar crime and fraud and increases justice for victims. We will amend the Criminal Code to provide tougher sentences for the criminals responsible. It will require judges to consider requiring offenders to make restitution to victims in all fraud cases and allow judges to take into account impact statements from communities as well as individual victims when sentencing an offender. Through these provisions, the voices of victims of crime will be heard and their concerns will be taken seriously in the courts.

• (1120)

Mr. Chairman, for the Department of Justice to continue supporting the government, it needs to meet its obligations to its employees with regard to compensation. It is therefore requesting \$47.5 million in the supplementary estimates to pay retroactive salary increases for its lawyers, an increase mandated through a recent arbitral award.

To conclude, Mr. Chair, I'd like to express my appreciation and thanks to you and your committee for the important work you do. I will do my utmost to ensure that the funds received by the Department of Justice will be spent wisely to bring results and to respond to the needs of Canadians for an improved justice system and safer communities.

Thank you. I look forward to answering any questions you may have.

The Chair: Thank you, Minister. I'm sure there will be some questions.

We'll begin with Mr. Dosanjh. You have seven minutes.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you, and thank you, Minister.

Obviously, Mr. Iacobucci and his retainer are important issues for your department, and I'm going to be asking some questions about him. Has Mr. Iacobucci started his review?

Hon. Rob Nicholson: He's organizing that and looking into the matter right now, Mr. Dosanjh.

Hon. Ujjal Dosanjh: When is he expected to commence the review of documents?

Hon. Rob Nicholson: He's beginning that process. He's received documents and is already looking at them.

Hon. Ujjal Dosanjh: He has received documents. All of the documents?

Hon. Rob Nicholson: No.

Hon. Ujjal Dosanjh: How many? What portion of the documents has he received?

Hon. Rob Nicholson: Again, the process is just beginning, Mr. Dosanjh. As you know, with respect to the House order, it's all relevant documents. That is a large undertaking, but I am confident he'll be done as expeditiously as possible.

Hon. Ujjal Dosanjh: I'm assuming that obviously you retained the Torys—

Hon. Rob Nicholson: I retained the what?

Hon. Ujjal Dosanjh: The Torys, the firm of Mr. Iacobucci, and he is being retained as a lawyer for your department. Am I correct?

Hon. Rob Nicholson: He has been retained to provide advice on this specific subject.

Hon. Ujjal Dosanjh: Obviously, but is he being retained as a lawyer for your department?

Hon. Rob Nicholson: He's being retained because he's an eminent Canadian. He's a lawyer and a former justice.

Hon. Ujjal Dosanjh: Will he be able to ask for and receive any documents he considers relevant?

Hon. Rob Nicholson: Yes.

Hon. Ujjal Dosanjh: You may be aware that Mr. MacKay appeared before the defence committee and indicated that he regularly received the reports around the activities of special forces JTF-2, and read some, and they were reporting to the CDS. Would Mr. Iacobucci be allowed to receive those documents?

Hon. Rob Nicholson: Again, you're asking me about something specific. All relevant documents, in the opinion of Mr. Iacobucci, he'll be able to review.

Hon. Ujjal Dosanjh: How would he know which documents are relevant if you're only—

Hon. Rob Nicholson: He's a very bright individual, Mr. Dosanjh, and he'll look into this very carefully.

Hon. Ujjal Dosanjh: No, but the question I have, sir—

Hon. Rob Nicholson: Mr. Sims will elaborate on that.

Mr. John Sims (Deputy Minister of Justice and Deputy Attorney General of Canada, Department of Justice): If I may, in the first instance, it's up to public servants in the affected departments to search for the documents that are relevant as relating to the heads of categories in the mandate, and then at the end of this production of documents to him, he is expecting a certificate from public servants attesting to the fact that we have found all relevant documents, to the best of our ability, to deliver to him.

Hon. Ujjal Dosanjh: Relevant in terms of the limited mandate that he has and the terms of reference. The terms of reference refer to the documents that may have been asked for in the motion.

There are documents that are relevant and would appear to continue to become relevant in view of what the committee might be

hearing. As those areas become relevant, would those documents...? For instance, the JTF-2 documents—we now have reports that there are some allegations, particularly with respect to the U.S. forces, and our forces work with them... There may have been some extrajudicial killings, and that's why McChrystal has restructured the reporting. Would those documents relevant to that particular area be placed before Mr. Iacobucci?

● (1125)

Hon. Rob Nicholson: Again, Mr. Dosanjh, I indicated all relevant documents. He'll be guided by the mandate, as you say. You said "limited mandate". It actually is expansive in the sense that it now goes back to 2001, which is of course the beginning of our involvement in Afghanistan.

Hon. Ujjal Dosanjh: It goes to 2001, with respect to certain kinds of documents.

Hon. Rob Nicholson: If you have allegations from other years or something, please make them. I understand your concern with respect to these Taliban prisoners. But, again, whatever you're suggesting, let us hear it.

Hon. Ujjal Dosanjh: I'm not making allegations. I'm simply saying to you that the terms of reference are limited, you would agree, to certain heads that were in the motion, sir.

I am saying to you that the relevance of documents is much broader. It covers a much broader area than just the motion. Would other documents that we may point out or that others may point out to Mr. Iacobucci be—

Hon. Rob Nicholson: In his reference, it's "all relevant documents", including those between 2001 and 2005.

Hon. Ujjal Dosanjh: Let me ask you a further question with respect to solicitor-client privilege.

He would be reviewing the documents and providing his opinion to you. Would you be claiming solicitor-client privilege vis-à-vis any part or all of the opinion?

Hon. Rob Nicholson: I think I'll wait for Mr. Iacobucci's report, Mr. Dosanjh, and I think you should as well.

Hon. Ujjal Dosanjh: No. Why would you wait?

Hon. Rob Nicholson: This is undertaken—

Hon. Ujjal Dosanjh: Sir, I have a question for you.

Hon. Rob Nicholson: Again, you're asking me a hypothetical question.

Hon. Ujjal Dosanjh: No, I'm not asking you a hypothetical question.

Hon. Rob Nicholson: You did. You asked if I would do something if somebody—

Hon. Ujjal Dosanjh: I am absolutely not asking you a hypothetical question. You have hired him as an advisor, you say, and I say as just a lawyer. Would you be claiming any solicitor-client privilege at all with respect to Mr. Iacobucci's review?

Hon. Rob Nicholson: Again, you said he's just a lawyer. He's hired under section 127 of the Public Service Employment Act, Mr. Dosanjh. His mandate is clear under the terms of reference, and, again, I refer those to you. I wait for his advice, and, again, I look forward to that.

Hon. Ujjal Dosanjh: But you haven't answered the question. Would the government be claiming solicitor-client privilege with respect to any portion of his opinion, or would it release the complete opinion to the public without claiming solicitor-client privilege?

Hon. Rob Nicholson: Again, it's a report, and, again, we'll deal with that when we get it. I've indicated very clearly in the House, and with respect to the terms of reference, what we'll do.

Hon. Ujjal Dosanjh: So you have every intention of claiming solicitor-client privilege—

Hon. Rob Nicholson: I didn't say that.

Hon. Ujjal Dosanjh: —if you deem it appropriate.

Hon. Rob Nicholson: I didn't say that.

You're asking me a hypothetical question. I'll wait to see Justice Iacobucci's report.

Hon. Ujjal Dosanjh: But you haven't said otherwise either, sir.

It's not hypothetical, sir. You've hired him as a special advisor, you say.

Hon. Rob Nicholson: You've asked what I will do in the future. I indicated to you that we look forward, and we'll accept the advice of Mr. Justice Iacobucci.

Hon. Ujjal Dosanjh: Do you believe that in this relationship you, as government, have with Mr. Iacobucci, solicitor-client privilege will apply?

Hon. Rob Nicholson: We've been very clear on that. He is to present a report on this to us. He is going to make his findings public. We will let people know that. Again I ask you to be patient, Mr. Dosanjh, and have a look at what he has to say.

The Chair: Mr. Dosanjh, you're at the end of your time.

We'll move on to Monsieur Ménard for seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you for appearing before the committee, Mr. Minister.

I know you may have been somewhat forced into it, but I can see that you still came here voluntarily. I think this is a good opportunity to compare some of our differing opinions, but I am nevertheless convinced that your opinions are sincere. I want to ask you for explanations on certain topics, and you will have the opportunity to explain those opinions to us.

First of all, we have been noticing for some time now, especially in Quebec, that we will be called upon to have very long trials with juries.

Already in 2005, we had to prosecute the 321 individuals arrested during Opération Printemps 2001—basically, they were Hells Angels and their accomplices. The trial lasted a number of months. In another recent case involving fraud charges against companies associated with Norbourg, the head of the company pleaded guilty, but his five associates had a trial with jury that lasted four months.

Other charges are currently being brought in fraud cases that are expected to be very lengthy.

Does the Department of Justice have any plans to shorten the length of these prolonged trials while obviously still respecting the law as we know it?

● (1130)

[*English*]

Hon. Rob Nicholson: Thank you very much, Monsieur Ménard, for your question. You raise a very important Justice initiative. Many of these things, as you know by the LeSage and Code report, involve the administration that's within provincial jurisdiction. That being said, there is assistance that can and should be applied at the federal level. That being said, it's not easy.

I remember having Bill C-13, which was a collection of changes, none of them in and of themselves particularly newsworthy in terms of grabbing the headlines, but nonetheless these were initiatives that had been worked over by the Department of Justice and of course had input from provincial attorneys general. What was of interest to me was this. I remember about a year ago being informed by departmental officials that it was the fourth attempt to get that bill through in ten years. It's very difficult to get these things through. Part of the reason is that they can be derailed if one group, one place, doesn't like one provision. Do you know what I mean? It's because we're putting together a lot of different issues. That being said, I am very much committed, as I was to that particular bill, to get that bill through, because I think it helps clear up some of the issues with respect to the issues that prolong trials.

We of course have had the benefit of the LeSage and Code report, and I had input from provincial attorneys general. There has been a considerable amount of work done at the federal and provincial levels. One of the reports that I want to see is the Air India report. This will deal specifically with issues surrounding trials of this nature. As you know, that is coming to a conclusion, in the sense that we're hopefully going to be soon getting that report. Again, I want to see what recommendations are there with respect to prosecution of terrorist cases and what changes need to be made by existing legislation. I share with you the concern with respect to the prosecution and the handling of cases of that nature. At this point in time, I'm looking forward to the Air India report to see what further recommendations are there. With respect to my own record...and again, I appreciate your committee helping to get that bill through, but it wasn't easy. Again, it was the fourth attempt in a decade to get it through.

[*Translation*]

Mr. Serge Ménard: We really do not have much time. Perhaps we could get your department's presentation for members interested in the progress being made regarding those measures.

I will switch to a different topic. I believe that you are sincere in your targets to lower crime. This is where our opinions probably differ.

Let's say we pass the legislation you are proposing. Have crime reduction targets been set? In other words, what will the status of crime reduction be three or four years after these measures come into force? Can you estimate the reduction in adult crime and, in the case of young offenders, juvenile crime that you are targeting and hope to achieve through these measures?

•(1135)

[English]

Hon. Rob Nicholson: I guess it depends on the particular piece of legislation. In some of the legislation that we've had that you've dealt with—on identity theft, for instance—we just want the laws to catch up with what's happening, and usually it's organized crime that gets involved with this kind of activity. You find laws that are out of date by many, many decades; sometimes it's since the 1800s that these laws haven't been updated. We have to update them to make sure we're capturing all the activity. It's the same way with auto theft. Yes, it's a crime to steal a car in this, but you get these chop shops and again organized crime involved with this. We're not capturing all the activity that I think everyone would agree is criminal activity.

Now, with respect to other pieces of legislation, very often depending upon the piece of legislation, we want to send out the correct message. In the case, for instance, of the Nunn report, they focused on a young person who was picked up, charged with a crime, released, charged with a crime, released, and on and on. Well, they made an excellent point. They were saying that this individual, yes, he's a danger to society, but he's a danger to himself. That's part of what we are trying to address. Yes, we're trying to address that we want to get the message out to individuals.

On some of the cases, as I indicated in my opening remarks, we just want to reduce the victimization of people. For instance, people who have a murdered family member are concerned about getting rid of the faint hope clause. I think one of your colleagues said to me, "If you get rid of the faint hope clause, does it mean that some of these people won't commit these murders?" I said that trying to guess or predict why somebody would commit first degree murder is probably beyond the scope of many, if not most, of us, but certainly sending out the message that if you do commit that type of crime you won't get the opportunity to keep victimizing the families that you've victimized... Again, it depends upon the legislation, and there are different focuses on these.

The Chair: Thank you.

We'll move on to Mr. Comartin, for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, Mr. Minister, for being here, and Mr. Sims as well.

I think it was the last time you were before us on estimates that I had asked the question about the legal aid boycott in Ontario and whether the federal government was being assigned the cost of defences. I was told at that point—actually I think I got it as a note at the end of that meeting, and I'm not sure it went on the record—that there is \$1.6 million set aside each year for that type of court order, to provide legal counsel to the accused.

I know the boycott ended in the last few weeks, or a month or so ago. Has all of that money been used up? Did we exceed the amount?

Hon. Rob Nicholson: I'll get you that information, Mr. Comartin, as to just exactly where we are. It's interesting that when you're here on supplementary estimates it's usually never a question about the supplementary estimates, but it is of interest that \$3 million of this goes towards legal aid and the immigration and refugee section of

that. Again, the departmental officials are trying to get a complete update on that.

Mr. Joe Comartin: The \$3 million being transferred now, though, is not new money, right? It's coming out of the Citizenship and Immigration budget.

Hon. Rob Nicholson: Perhaps I'll ask the deputy minister to respond on the \$3 million for Citizenship and Immigration.

Mr. John Sims: The \$3 million, Mr. Comartin—or actually, \$6 million—has gone to the key provinces that do immigration and refugee work. The \$3 million is being spent in addition to the money that's already in that program for the provinces, which is about \$11.5 million. So it's an additional \$6 million this year: \$3 million paid by Immigration and \$3 million paid by Justice. The \$3 million that turns up in the supplementary estimates is a reimbursement by Immigration to us because we had the cash available at the moment, we needed to pay the provinces, and they are reimbursing us.

Mr. Joe Comartin: So you fronted the full \$6 million, and now you're getting \$3 million back from Citizenship and Immigration.

Mr. John Sims: That's right.

Hon. Rob Nicholson: In supplementary estimates to date.

Mr. John Sims: On the actual amount for the court-ordered counsel, I have a chart here that I'm just trying to understand. So we've spent \$2.1 million this year—in other words, more than the \$1.6 million that was budgeted.

•(1140)

Mr. Joe Comartin: Is the \$500,000 here someplace? I couldn't find any reference to it. Of course, given the figures we get...

Mr. John Sims: No, it's not. It came out of other money in the department. We had to find that money. We expected to spend \$1.6 million and had to spend \$2.1 million.

Mr. Joe Comartin: Do you anticipate going back to the \$1.6 million in the 2010-11 budget?

Mr. John Sims: I think so.

Mr. Joe Comartin: Mr. Minister, on another point, the drug bill, assuming it gets back before the House and passed again, either in its present form or in some altered form, is clearly going to result in a significant increase in the number of people who are going to spend time in incarceration. My experience has been that when you impose those additional types of penalties, you end up with a good number of additional trials where people who might have originally pled guilty will now not plead guilty and try to get off on the substantive charge, or perhaps on technicalities.

Hon. Rob Nicholson: Yes.

Mr. Joe Comartin: Has the department done any type of analysis of what the additional costs will be—I'm not looking at corrections now—just to Justice in the form of additional prosecutors who will be required if that reality takes place and if additional judges are going to be required?

Hon. Rob Nicholson: No, they have not done a formal analysis.

Mr. Joe Comartin: Assuming, again, the bill comes through, is that part of a work plan somewhere down the road, where that analysis will be done, so that if that's going to happen the funding will be available?

Hon. Rob Nicholson: Probably one of the reasons we're continuously before you on different supplementary estimates is that we watch these things very carefully and we try to make the budget, of course, fit the needs and requirements of the department. It was pointed out to me, again, that it would be within the budget of the Public Prosecution Service, which has been split off from the Department of Justice.

Mr. Joe Comartin: That would be true of the prosecutors but not if additional judicial officials are needed.

Hon. Rob Nicholson: Many of the resources are administered by the provinces. With respect to Corrections and housing of individuals, of course, that's my colleague, the Minister of Public Safety.

With respect to the Public Prosecution Service, there's no formal analysis, as I indicated, but we will forward an estimate as to what might be required in terms of resources, if that's acceptable to you.

Mr. Joe Comartin: I would appreciate that, and obviously the committee might as well. It could go to the clerk.

I have one final point. With regard to judicial appointments—I know you and I have had this exchange in the past over the need for additional appointments—have you had any requests in the past 12 months from any of your provincial counterparts for additional appointments at the Superior Court level?

Hon. Rob Nicholson: That's a very good question, Mr. Comartin. If you were to ask a provincial attorney general, I think for the most part they would always welcome new Superior Court judges—I'm not saying they say this in any irresponsible manner. That being said, there certainly is a cost to the provinces with respect to everything else that has to do with the appointments.

I can tell you that they were pleased with respect to the bill that increased the pool. You would have dealt with that bill to increase the number of Superior Court judges at this committee.

I'll give some thought as to whether I've had any formal requests over the last year; I will have a look at that again. I discuss all related issues on a regular basis with provincial attorneys general. I don't want to say no to you and then find out that in April 2009 I did get a letter. We do try to watch these things very carefully, and we try to respond to individual provincial concerns to the extent that we can.

• (1145)

Mr. Joe Comartin: Thank you.

The Chair: Thank you, Minister.

We'll move on to Mr. Dechert, seven minutes.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Good morning, Minister and Mr. Sims.

I'd like to thank you, Minister, and the government and your department for introducing important amendments to our criminal law. In my view, the safety of our families and our communities is of paramount importance, and I believe it's one of the most important things that we, as members of Parliament, are sent here to protect.

For over a year now—since the last election—I've been regularly surveying the constituents in my riding about their concerns about the youth criminal justice system in this country and their support for the proposed amendments to youth criminal justice that you've put forward recently.

I've also had many conversations with members of the Peel Regional Police force in my region. They have told me, for a number of years now, that they support changes to that system. I wonder if you could tell the committee if the bill has received support from police forces and organizations across Canada.

Hon. Rob Nicholson: I've received pretty good feedback already. The Quebec provincial police association representatives have already indicated that they like the direction that we're going.

The response has been pretty good. I mean, it's focused on violent repeat offenders and people who are endangering themselves and the public. This bill is very specific; it's targeted. As was pointed out in the Nunn report, there is a relatively small group of out-of-control, dangerous individuals, whose problems have to be addressed. As you can see from the bill, it's very targeted. It makes the point that the protection of the public has to be a priority with any aspect of the criminal justice system.

It touches on a number of different areas. I mean, even the one requiring the crown to consider adult sentences for the most serious offences... We're talking about murder, manslaughter, attempted murder. Again, we're talking about the most serious offences. We're saying to the court to direct its mind to this, that when it's appropriate, in the opinion of the court, a decision has to be made in this regard.

With respect to detaining individuals who have been charged with serious offences, we want to make it clear that in order to protect the public, and the individual, in some circumstances the detention of that individual will be necessary.

I think it's balanced, but it's specific at the same time. Again, we're targeting a relatively small group of young people who have come into conflict with the law.

Mr. Bob Dechert: Thank you.

Minister, in your opening comments this morning you mentioned the whole problem of marijuana grow ops. Again I can tell you that unfortunately many of these grow ops actually exist today in family neighbourhoods throughout Mississauga. They're bringing crime right to where people live.

The Peel police have told me that there are dozens of grow ops in operation across the city of Mississauga. They're dangerous and expensive for the police to shut down. This is a real problem in neighbourhoods where people have children and families who are put at risk by this criminal element operating in their neighbourhoods. I wonder if you could tell the committee about how the proposed amendments will address this issue.

Hon. Rob Nicholson: Well, your committee had a look at those provisions within the old Bill C-15, which specifically targets drug dealers and organized crime, people who are into the business of the grow ops for the purposes of trafficking. That's who that bill is targeted at.

You will hear others say that it's after somebody else, that it's after the poor individual who has become addicted or somebody who is experimenting with drugs. That's not what that bill was targeted at. That bill was targeted at drug dealers and it was targeted at organized crime. I've made that statement before.

They said we were going after people bringing drugs into the country. I can tell you what law enforcement agencies have told me: that the people who are in the business of importing drugs into this country are part of organized crime and they are part of the drug gangs. This is who we are dealing with in that particular piece of legislation.

Now, with respect to the grow ops, I hear from law enforcement agencies all the time. It's actually changing. Sometimes they're actually moving out of suburbs. They want to get out into the country where they can go about their business, they believe, with fewer prying eyes on what their activity is all about. But again, I have been told, and I believe it, that what comes out of these grow ops—marijuana—is the currency for bringing other very serious drugs into this country. That's the currency that is used.

So for people who are into the business of trafficking, people in the business of organized crime and people who are part of these drug gangs, we need to send a very clear message to them that they are looking at jail time. That's what they're looking at under that bill. I think it's a very reasonable approach to this, and it's a response to what we're dealing with. This is becoming a more sophisticated business all the time.

As I mentioned in answer to the question from Monsieur Ménard, for identity theft and auto theft, it's a more sophisticated business than it was 15, 20, or 30 years ago, and the laws have to keep up to date on these things. The world is changing and we have to make sure that the laws respond to the challenges.

As part of our efforts to respond to those challenges, we are doing so with that particular bill, so yes, I intend to reintroduce that bill. Even though you will hear critics say that we're after some poor guy with one plant, we're after those individuals who are into the business of trafficking. That's who we're targeting. Again, we will once again introduce that legislation.

• (1150)

Mr. Bob Dechert: Thank you, Minister.

The Chair: Thank you.

We'll move on to Mr. Murphy.

You have five minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Chair.

Thank you, Minister of Justice, for being here.

Mr. Sims, I understand that you're leaving us at the end of March. We certainly have enjoyed your service here.

To go back to cleaning up, I guess, Mr. Minister, on what my colleague asked you about Mr. Iacobucci, I think the public needs to know that he's a wonderful individual with great credentials, but he's been in private practice now for almost six years. He's with a firm called Torys. They generally run a business, so I imagine that he wants to be paid for this. I imagine there's a retainer agreement. Your answer was that he's been hired under section 127.1 of the Public Service Employment Act.

It seems to me that if you read that act, he can be none other than a deputy minister, which he's not, or a "special adviser to a minister". It's in paragraph 127.1(1)(c). If he's that—and you're nodding, so it must be true—then he is in effect a lawyer "of counsel" acting as an adviser to you. Under the terms of reference, he is to provide you with a summary report—not the Canadian public, but you, Mr. Minister. He is to provide you a summary report before it's made public.

So how is it that he's not a lawyer hired by your department to whom you give instructions and he, being a lawyer, reports to you? How is it different from that, and why are we letting the public feel that this is some sort of commission at arm's length? I think you don't need to be reminded that Justice Gomery wasn't calling the government every day when he was doing his inquiry, and it was certainly at arm's length and it certainly had consequences.

We want the good work of the good man, Mr. Iacobucci, to have meaning, so we want to be sure there's an arm's-length distance there, and frankly, Minister, there isn't. You are the client. He is the lawyer. He reports to you before he reports to the public.

Assuage my fear that his good work will not be closeted by the government if the government—and not you, Mr. Minister, personally—feels it's a little too hot, if a delay would be in order, or if some change in the advice given would be in order. Assuage my concern about that, Mr. Minister.

Hon. Rob Nicholson: He is appointed by me as a special adviser to me, and his role is, by definition, of course, to provide legal advice. He is providing that to me as Attorney General, and I've already indicated that I am prepared to accept the advice of Justice Iacobucci.

I am sure you and your colleagues wish him well in all his work. With respect to the scope of it, his mandate includes all relevant documents, and it goes back to the beginning of our involvement in Afghanistan. I hope that's of some help.

Mr. Brian Murphy: Confirm, then, that it's a regular solicitor-client relationship, and that the usual privileges apply, because you didn't have time, perhaps, to answer that directly to Mr. Dosanjh.

Hon. Rob Nicholson: He's governed by section 127 of the Public Service Employment Act, but it's legal advice that he is providing, and he is providing that to me, as Attorney General, under the terms that you have seen already.

• (1155)

Mr. Brian Murphy: Thank you.

I know something that you feel strongly about, and that we all feel strongly about, are victims' rights. There's a case in my riding, and there are cases across the country, in which victims have to follow the tragedy through parole hearings, etc. There is a victims fund administered by your department, and I know you would want to know that they don't give full indemnification to people attending parole hearings. They don't advance enough money for some of them to attend.

Is there something you could do to help, along with Mr. Sullivan, who's doing capable work as the victims' rights ombudsman, to move the victims fund administrators to better administer that fund so that more people can attend some of these hearings? There are cases in which people who didn't have a credit card would not be able to attend parole hearings.

Hon. Rob Nicholson: The government is committed to helping victims, and I'm pleased to say that more victims are now attending these hearings than ever before. This certainly has been a priority of the government, and the mandate of anyone who administers these programs is not for just victims at home; sometimes the victims find themselves overseas, so there have been changes to our provisions with respect to those individuals as well.

Obviously we want these administered in the most sensitive and appropriate manner. I'm always looking for new suggestions as to what we might be able to do, but I can tell you that we've made a lot of progress in that area, and that's one of the areas for which I have been very proud.

The Chair: Thank you.

We'll move on to Monsieur Ménard for five minutes.

[*Translation*]

Mr. Serge Ménard: Thank you.

Mr. Minister, I know that your department funds criminology research, and I commend you.

Do you look at that research?

[*English*]

Hon. Rob Nicholson: That's a very general question. We undertake a number of studies and we support research and that sort of thing.

[*Translation*]

Mr. Serge Ménard: Can you name the last criminology study you read?

[*English*]

Hon. Rob Nicholson: We'll get that for you, Monsieur Ménard, and pass it on to you.

[*Translation*]

Mr. Serge Ménard: You are asking your officials to tell me what the last criminology study you read was?

I hope you will be able to give me the answer.

[*English*]

Hon. Rob Nicholson: Yes, we'll do that for sure.

[*Translation*]

Mr. Serge Ménard: In the bill that you proposed, there is a provision that allows the names of certain violent offenders to be made public. That debate already took place when we studied Ms. McLellan's bill. We concluded that, generally speaking, it would seriously harm the rehabilitation of those individuals whose names were published and, for that reason, among others, their names should not be made public.

But there is a category of young people who would welcome that kind of publicity, such as young street gang leaders, who would like nothing more than to get some publicity. In fact, not only would they like to see their name in the paper, but they would like it if their name could appear on the front page of the *Journal de Montréal* or some other tabloid.

Do you not think that this measure, whose usefulness is much debated, could achieve a goal other than the one you are honestly working towards?

[*English*]

Hon. Rob Nicholson: There are individuals committing crimes who want to see their pictures on the front page. I can tell them that if they are convicted under the Youth Criminal Justice Act and receive adult sentences under the present provisions, they will automatically have their names released to the public. I can tell you, though, that I do get letters from people who write about individuals who have been convicted under the Youth Criminal Justice Act of very serious crimes, things such as aggravated sexual assault, and they find it very disconcerting if that individual moves next door and they have not been informed that the individual who has committed these crimes has moved in next door to them. That actually hurts the administration of justice, and I think it hurts the overall process.

That being said, though, Monsieur Ménard, I know you'll get the chance to have a look at the legislation on a very deep, close basis, and you'll see that it's within the discretion of the court if it's necessary for the protection of the public. The courts will make that decision.

• (1200)

[*Translation*]

Mr. Serge Ménard: I am aware.

You decided to name your bill after Sébastien Lacasse. The young person who was found guilty of killing Sébastien Lacasse received an adult sentence. His name was made public. I could even say his name, but I will not do that here.

What does your bill have to offer the Lacasse family, besides the fact that it bears their son's name? It seems to me that, in the young person's case, he got exactly the treatment you wanted him to get, especially since the six other people involved were all over 18 years of age and received lesser sentences than the youth who was convicted.

[English]

Hon. Rob Nicholson: In answer to your question about how the Lacasse family feel about it, they are very touched and appreciative that their son's name is commemorated. Their son was a victim and they are victims.

Going back to an earlier question, we want our focus in Justice to be more on victims, and that is certainly consistent with that. So again, in answer to your question, they are very pleased about that. It doesn't bring your son back or make you any less of a victim. But interestingly enough, the parents of that young man continue to be spokespersons for standing up for victims. So it honours them as well as their unfortunate child who was murdered.

The Chair: Monsieur Ménard, your time is up.

We'll move on to Monsieur Petit for five minutes.

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Good afternoon, Mr. Minister.

Good afternoon, Mr. Sims.

I would like to start off with a brief comment. Very often, we look at the statistics that are provided to us to help us assess bills, such as the young offenders measure we want to bring in.

I will give you an example. In Quebec, there is a fellow by the name of Vincent Lacroix who defrauded 9,200 people. The statistics will show just a single crime; the 9,200 people will not be represented. In the case of Earl Jones, 150 people were defrauded, and only one person will be mentioned. In the case of young offenders, in Quebec—which I know especially well—all of the cases are not reported. I do not want to know the name; I want to know the crime that was committed to see if progress is being made in society, and so forth. That is important; nothing is reported, and Statistics Canada cannot report on the total number.

In Quebec, between 125 and 175 people disappear every year, and 41% of those are found, while 59% are not, such as Cédrika Provencher. We do not know whether she was killed or raped; we do not know anything. There is no possibility of finding information that can help us.

I am coming to my next question. I am very proud of the bill that we are introducing. Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts, includes amendments for violent repeat offenders—in Quebec, it is for youth 16 and 17 years of age—who have committed irreparable harm, in other words, murder, attempted murder, manslaughter and serious violence.

You mentioned it a bit earlier, but how do you plan to allow the judge... This week, youth advocacy groups in Quebec said it was a good idea for the judge to know what had happened in the past. Do

you plan to establish a link with the provinces to make it possible to obtain as much information as possible so that the judge can make a proper ruling, because, ultimately, it is the judge who decides?

[English]

Hon. Rob Nicholson: I think you made a very good point, Mr. Petit.

You want judges to have before them all the information that is relevant to deal with the case. You are quite correct that there are provisions that will assist in that. I tell members of this committee to look at each of the different sections. These things make sense.

You talked about statistics. I mean, I hear it both ways. Somebody said to me that youth crime is going down and asked me why I was bringing in this legislation. Somebody then said to me that violent crime among youth is going up and asked me if that was why I brought in the legislation. I said that we're bringing in the legislation because it makes sense. We're responding in a couple of instances within the act to the recommendations, the very sensible recommendations, of Justice Nunn in the Nunn report. We're listening to what provincial attorneys general are telling us. We're listening to the public, the victims, law enforcement agencies, people who deal with this. We're listening to what they are saying.

I don't go out and say yes... I know that violent youth crime has been up. It's up 12% in the last ten years. Nobody wants it to be up. We all want it to go down, but that being said, we're not bringing in the legislation because of that; we're bringing it in because we're responding to the concerns of Canadians.

We are concerned when people tell us that there are gaps in the law, that the law is not keeping pace with what's taking place out there. Indeed, some of the laws that we brought in and passed... You dealt with it. There was identity theft. We're now capturing activity that wasn't captured at all. People say that kind of activity has gone down because there is no prosecution. I say that there wasn't any law dealing with some of these issues.

Again, ours is a very balanced, focused approach. We're trying to assist victims and law-abiding Canadians to have a fair and reasonable up-to-date justice system. That is all our mandate, and that's what we're striving to achieve.

● (1205)

The Chair: There's half a minute.

[Translation]

Mr. Daniel Petit: Mr. Minister, first, I would like to talk about something that I feel very strongly about. You are the minister who created an ombudsman for victims. That has to be recognized as a monumental achievement given how long you have been on the job. The position could have been created a long time ago, and you did it.

Do you plan to increase funding for the ombudsman? The position is very important to victims. Do you have any plans for this important role, which, in my opinion, is very significant and to your credit?

[English]

Hon. Rob Nicholson: There is long-term funding for this and for all victim-related issues. There's more money now going to the assistance of victims than there ever was before. There has been greater expansion to help those who become victims overseas, there has been better assistance to those individuals who find themselves victims in Canada, there's the creation of the office of the victims' ombudsman—these are all steps in the right direction.

Ultimately, we can't ever let victims be the forgotten person in the criminal justice system. We have to reach out to these individuals, and this is in a large part what we have done in all these areas. There's more money for victims in all aspects of this than there ever has been before. It's one of those things of which I'm very proud.

The Chair: Thank you, Minister. You gave us an hour of your time. That hour is up, so we will allow you and Mr. Sims to leave. Thank you to both of you.

In the meantime, members, the next item on our agenda is Mr. Comartin's motion, which I believe he wanted to introduce. The appropriate notice was given.

I would like to just remind members that we are not in camera yet, so debate on this will be public.

Mr. Comartin.

Mr. Joe Comartin: I just want to be sure, Mr. Chair, that it has been circulated and that people have it in front of them.

[Translation]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): The interpreters have just informed us that they did not receive a copy of the motion.

[English]

The Chair: Thank you. We'll make sure that the interpreters have a copy of the motion.

All right, Mr. Comartin, you may present it.

• (1210)

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

Mr. Chair, I'm not going to go through the preamble to this. I think everybody sitting around this table is quite aware of the situation that I'm referring to in my motion. What I do want to say as a preliminary note, though, is that I believe there is a role for the committee to play here in trying to provide some knowledge to the general community of how a situation like this can arise.

I also want to be very clear that I have really quite strong—I won't say absolute, because they're human beings and they make mistakes—faith in the quality of our prosecutors and our police in this country.

I think I've said this publicly, but I'll repeat it today. My observations over my many years of practice and again as an elected official are that I have not seen any place in the world where there is a better system of criminal justice than we have in Canada. There are certainly several countries I think I could point to and say they're on the same level as we are, that is, we have peers, but I don't think we have any superiors at all.

So my motion is not in any way intended to embarrass or undermine the integrity or credibility of the criminal justice system and in particular the role that our prosecutors and police play in that system. But, Mr. Chair, we all know how much notoriety this has gotten, and we've even seen I think two opinion polls on it now where there is a consensus in the country running in the range of 80% to 85% that if you know people, if you are connected, you get favourable treatment, and we can't let that stand.

I have sent letters to both the Minister of Justice and the Attorney General of Canada and to the Attorney General of Ontario asking them to come forward and give in detail an explanation as to what happened in this case. I've had no written response, but in both cases there have been statements in the media indicating they have given as much information as they're prepared to give, and I find that totally inadequate. I think the average Canadian finds that totally inadequate, because it really isn't any new information at all.

What I'm asking in the motion is pretty straightforward. I'm asking that we have two days of hearings on the issue and we bring before us, I would assume on separate days, the Director of Public Prosecutions... I know there have been a number of points in the media that there is no role; that's not accurate. The Director of Public Prosecutions is responsible for all drug prosecutions in this country, whether they're conducted by lawyers they've hired from private firms, which is a large part of the prosecutions, or the prosecutors within the federal service, or the prosecutors at the provincial level who are agents for the federal government and responsible to the Director of Public Prosecutions. So I want to hear from him, that's Mr. Saunders, and also to hear from the prosecutor, either directly or somebody from the Attorney General of Ontario, who could give us details as to what happened here, as well as the representative of the Ontario Provincial Police, who conducted the investigation.

Out of that investigation, then, I would want a brief report going to the House of Commons, which obviously would be public and I hope would have the effect of satisfying the public that there was nothing untoward done here, that there was not favourable treatment given to the individual, that there were valid legal reasons why the determination was made as it was made.

The Chair: Thank you, Mr. Comartin.

Before we move into debate on this, I have a ruling on the admissibility of this motion. I am going to rule it out of order. Mr. Comartin, you know that each parliamentary committee works within its individual mandate as provided by the Standing Orders of the House. The mandate of the justice committee is laid out in Standing Order 108(2), and that Standing Order states as follows:

The standing committees, except those set out in sections (3)(a), 3(f), 3(h) and (4) of this Standing Order, shall, in addition to the powers granted to them pursuant to section (1) of this Standing Order and pursuant to Standing Order 81, be empowered to study and report on all matters relating to the mandate, management and operation of the department or departments of government which are assigned to them from time to time by the House.

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

I also wanted to quote from O'Brien and Bosc. You'll find this on page 1054:

Generally, the rules governing the admissibility of motions in the House of Commons apply in the same manner to parliamentary committees. For example, a motion should not contain offensive or unparliamentary language. As in the House, the use of a preamble in a motion in committee is not recommended. A committee has the means to explain the motions it adopts in the body of the report it presents to the House, if such explanation is needed. Furthermore, motions moved in committee must not go beyond the committee's mandate or infringe upon the prerogative of the Crown relating to the appropriation of public revenues.

I note that this motion calls on the committee to conduct a study into the alleged actions of one individual in relation to one specific case. Standing Order 108(2) does not list, as part of the mandate, a study of a specific case involving a specific individual.

I also note that this committee has not been called upon to act as a second trier of fact or to be an appeal tribunal or a court of appeal.

I also note that the matter and the case Mr. Comartin refers to was disposed of by the court in Ontario, and the Ontario Attorney General has actually made a statement, which stands on its own. My suggestion is that the appropriate way of dealing with this particular case is for Mr. Comartin to refer all further inquiries to the Attorney General's office in Ontario.

Again, I note that while this committee is fully able to undertake studies into matters concerning the Criminal Code or policy matters within the Department of Justice, it does not examine or make attempts to determine facts in individual cases. If the motion were crafted in a way that was a much broader study of, say, prosecutorial discretion or, say, plea bargaining, it might be in order. In this case, I have to rule that the motion, as currently written, is inadmissible, because it exceeds the mandate of this committee.

•(1215)

Mr. Brian Murphy: A point of order.

I'd like to challenge your ruling. Clearly, it involves the federal Director of Public Prosecutions and other matters under our terms of reference. I believe it's fairly non-debatable. This would be a motion to challenge your ruling.

The Chair: All right.

Shall the ruling of the chair be sustained? It's not debatable.

I will call the question.

Mr. Joe Comartin: Could we do it individually?

The Chair: You mean a recorded vote?

Mr. Joe Comartin: Yes.

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

Shall the ruling of the chair be sustained? That is the question.

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

The Chair: The challenge is supported by a vote of this committee.

Then we will continue debating the motion.

Mr. Murphy.

•(1220)

Mr. Brian Murphy: On the motion, I, too, have concerns that this is a little too case-specific, and that in this case perhaps there are some discretionary aspects of prosecutorial behaviour that we ought not to delve too deeply into; however, Mr. Comartin's point is extremely well made. The system of justice has depended on public confidence from time immemorial, and public confidence has been eroded. People have questions about how this case, high-profile as it is, was handled.

I would like to support the motion on the basis that we would learn a lot about prosecutorial discretion if we had provincial prosecutors or, more pertinently in this case—because it may have dealt with issues of federal jurisdiction—the Director of Public Prosecutions and DOJ officials in to explain to us how prosecutorial discretion works, how it is that sometimes cases are thrown out, based on weak evidence, based on poor search and seizure techniques, and how all of this happens every day in courtrooms across this country.

So on that basis I support the motion. I don't support the motion to rehash what must have been a very trying time for one of our former colleagues. That's not the issue. The issue is about public confidence in our system and the role that discretion plays every day in our justice system vis-à-vis prosecutors, judges, and, for that matter, defence attorneys.

It's something this government hasn't felt a deep urge to get into in the four years I've been here: that element of discretion, that element of how these things are dealt with every day in the weighing of the likelihood of success with respect to a conviction or a defence. It happens every day, and it's time for this committee to hear that reality. So I'll be supporting the motion.

Mr. Bob Dechert: You just said we shouldn't study the case of Mr. Jaffer, and that's exactly what the motion says. So how can you support it based on what you said?

Mr. Brian Murphy: I guess if I wanted to bring an amendment, I would have brought it. I can support that.

Mr. Bob Dechert: So we should disregard what you said, because this motion requires this committee to study the specific case of Mr. Jaffer?

Mr. Brian Murphy: And frankly, I'll be quite interested in what the federal Director of Public Prosecutions and any provincial representatives have to say about it.

The Chair: Does anyone else have a comment?

Mr. Dosanjh, then Monsieur Ménard, and then Mr. Rathgeber.

Hon. Ujjal Dosanjh: I'm not familiar with the situation in Ontario. I understand that the Ontario prosecutors also are responsible for prosecuting federal drug offences. Am I correct, Mr. Comartin? That's a delegation of responsibility, but it's still, in essence, constitutionally a federal responsibility.

Disregarding the personal elements of this case, I would be interested in how and why the drug charges were not proceeded with. That is a federal responsibility and not strictly a provincial responsibility, although in Ontario's case it's delegated.

The Chair: Monsieur Ménard.

[Translation]

Mr. Serge Ménard: I totally agree with many of the things that were said regarding the importance of the credibility of our justice system. Indeed, incidents such as these can undermine it. But that is not the issue. In any case, it is important to understand that, over the years, this credibility may be thrown into question by some, sometimes rightly so and other times, not. That is not the issue concerning us today.

We live in a federal system where there are indeed elements that are very connected, especially in terms of criminal law. That law comes under the federal Parliament, but the administration of criminal justice is the responsibility of the provinces. It is true that certain aspects of the administration of the criminal justice system can come under federal jurisdiction, and that can change from time to time. But it is important to understand that both levels of government are sovereign in their activities.

Basically, this motion asks us to call on an Ontario government official to appear in order to explain, and I would even say defend, his position. We are members of a federal parliamentary committee. Personally, I can tell you that if I had been the justice minister and one of my employees was asked to come and justify a decision that he made before a House of Commons committee, I would not have allowed that employee to do it. I think we have a great deal of authority, but when a provincial government exercises its jurisdiction by administering the criminal justice system, the province is sovereign, even if the jurisdiction can be shared.

It is a fact that certain drug prosecution cases are handled by the federal government and others by the provincial government. As a former crown prosecutor at both levels of government, I prosecuted such cases for both. But when someone does so within their own jurisdiction, that person is sovereign in that area and does not have to be accountable to a House of Commons committee.

I respect the reasons for which this motion was moved, and I understand them. I agree with everything that the person who moved the motion said, except for one thing. In my opinion, a provincial official should not have to defend a position of theirs before a House of Commons committee.

That is why we will vote against this motion.

•(1225)

[English]

The Chair: Thank you.

We'll move on to Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

I'm certainly struggling with this motion. I have great respect for Mr. Comartin and for what he stands for, normally. But I can't help thinking, after having assessed this motion, that this motion has very little to do with policy and quite a bit to do with politics.

I'm saddened, quite frankly, Mr. Chair, that the members of this committee saw fit to overrule your ruling that this motion was out of order. The mandate of this committee is set out, and it appears to me that this proposed study doesn't fit with any of the five provisions of what this committee is mandated to do.

I said I'm torn because as much as I think all members of this committee, and certainly myself, want to see the administration of justice not brought into disrepute—and I have every confidence that if this motion is successful and if we go down this road, at the end of the day we will come to that determination—nothing untoward occurred that would bring, to use the words of the preamble, the “loss of faith in the integrity of the criminal justice system”. I'm confident that if we go down this road, my and the public's confidence in the administration of justice will be maintained.

But I do have one concern that I want to share with the members of this committee before they cast their votes, and that's the convention of *sub judice*. With this specific case, I don't know the exact date of the disposition, but I know it was in the month of March. I'm not a practising lawyer in Ontario, but if the appeal rules are anything similar to Alberta, there would be a 30-day appeal period, and I would think this committee would want to exercise caution in assessing a matter that is still before the courts of Ontario.

Those are my comments, Mr. Chair.

•(1230)

The Chair: Thank you.

We'll move on to Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

Mr. Chair, I have to say that I'm shocked and saddened that Mr. Comartin, who I understand is an esteemed counsel with the bar of Ontario, would bring forward this motion. He well knows that it is inappropriate to compel a prosecutor to reveal the facts of a case like this. He knows that, and he is doing it for partisan political reasons, and everyone in Canada knows that's the reason this motion is being debated here. Every member of the opposition knows that too. They're all trained lawyers, I believe, and they all understand that the presumption of innocence applies to everyone who stands before the criminal justice system in Canada. If I were a cynical person, I'd ask Mr. Comartin to add the words that the committee conduct two days of hearings on the “cases of Mr. Rahim Jaffer and Mr. Svend Robinson”. We could maybe examine that. Perhaps we could throw in—if I were a cynical person—a few dozen other former members of Parliament in all parties. Maybe we could do that, but I'm not asking to, because I don't think that's what we ought to be doing here.

The Attorney General of Ontario gave a very clear answer on this case. He said:

In this case, the Crown stated the basis for the withdrawal of charges in Court; namely, that there was no reasonable prospect of conviction because there were issues relating to the admissibility of evidence that was available.

That is what was put before the judge in the presence of defence counsel when the charges were withdrawn. The prosecuting crown has the duty to make such assessments and is in the best position to do so based on all the facts available. Where there is no reasonable prospect of conviction, the presumption of innocence and basic considerations to the accused limit the ability to comment on the case. As a matter of justice, it is important that this principle apply to all accused, regardless of their name or office. The chief crown prosecutor for the province has reviewed the case and is entirely confident that the crown acted properly and in keeping with the proper administration of justice.

In my view, that should be the end of this matter. Everyone is entitled to the right of presumption of innocence. It is the basic fundamental tenet of our criminal justice system. If this committee chooses to go forward with this study, in my view it's simply saying to the people of Canada that the presumption of innocence does not apply to everyone and that we will do anything we wish for partisan political gain.

As I said earlier, once the crown prosecutor has decided that there isn't sufficient evidence to convict, that's the end of the matter; it's as if the criminal charges never existed. It's the crown prosecutor's job to decide if there's a reasonable prospect of conviction. They do that every day, as you know. Every day they put to the courts—

The Chair: Order.

I'm hearing a lot of discussion here at the table. I've recognized Mr. Dechert. When he has finished we'll recognize the other people who have asked to be recognized, but we need some decorum here. Thank you.

Mr. Dechert, please proceed.

Mr. Bob Dechert: Thank you, Mr. Chair.

Every day, crime prosecutors across this country examine the evidence in the cases before them where charges are laid by police officers. It's the duty of the police officer to lay a charge where he or she thinks an offence might have occurred, and it's the duty of the prosecutor to decide whether there's a reasonable chance of conviction.

In this case, they did that job. We don't know what the reasons were, and we shouldn't know what the reasons were. If the crown of this country has determined that there is no sufficient evidence to support the charge, there is no charge and that person is presumed to be innocent, and we should not derogate from that.

For those reasons, I don't believe this committee should adopt this motion.

The Chair: Thank you.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit: Thank you, Mr. Chair.

Serge Ménard made a point that I, too, agree with. From a legal perspective, and under the constitution, criminal law applies to

Canada as a whole, but the administration of that criminal law in each province is the inalienable right of every province and territory.

I will explain what that means. Let's say that Serge Ménard is my former justice minister. He has worked on major cases, and it is indeed his department, his prosecutors who laid the charges in all organized crime cases. Let's say that, at the time, I was here in Ottawa as a member. I would think that my Quebec justice minister did not do his job—just as we have said here. I would make him appear before me and explain all of his decisions to determine whether the person was properly sentenced.

We are setting ourselves up as a court of appeal. We do not have that right; it is not allowed. There is a jurisdiction for that: the provincial criminal justice court, the superior court in some cases, the court of appeal, all the way up to the Supreme Court. But we, as lawmakers, cannot act as substitutes for judges. And that is what we are doing.

What Mr. Comartin is doing or trying to make us do is to act as substitutes for judges because he is introducing a very specific idea. He says he wants to know what happened in the case of Rahim Jaffer. Let's not mince words: it is a partisan decision. That surprises me coming from Mr. Comartin, who I usually never see take... Perhaps his party forced him into it, I am not sure. But it is strictly a partisan decision.

We would have to take the case of Rahim Jaffer, we would have to bring in all the representatives, including Ontario's attorney general, and we would have to—because that is what the motion says—ask questions about Rahim Jaffer's case, to determine whether there was interference. Initially, he said there may have been political interference in the legal system. That is what he does not want to say.

In the end, he would accuse us of political interference. So let's call it what it is. It is not true, that never happened, and Serge Ménard is indeed right: we cannot interfere with a province's administration of justice. If we did, all the provinces would revolt tomorrow, because we would be taking away one of their constitutional rights. Section 91 or 92 sets out a division of powers. With this motion, we would be requiring the province to appear before us and to be accountable to us, as if we were its older brother. That is the message we are sending.

The motion is partisan, exclusive and dangerous. We cannot accept that sort of motion.

● (1235)

[*English*]

The Chair: Mr. Dosanjh.

Hon. Ujjal Dosanjh: I think I will just let my colleague...

The Chair: All right, we'll move on to Ms. Mendes.

Go ahead.

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): Thank you, Mr. Chair.

I find it particularly ironic that right now we have all these champions of the presumption of innocence and of prosecutorial independence. Last year in the citizenship and immigration committee it was very easy to accuse one of our colleagues, a courageous colleague, about something she was never, ever formally accused of.

A hon. member: Has she been charged?

Ms. Alexandra Mendes: Precisely. She was never charged. Is it better to be charged then?

A hon. member: Is anybody suggesting we do a study?

Ms. Alexandra Mendes: No, but she came in front of a committee yesterday.

The Chair: Order, order.

Ms. Mendes has the floor.

Mrs. Alexandra Mendes: I am quite surprised, if not just angry, about all these presumptions by the champions of the separation of provincial powers. Labour law is a provincial domain, too. This was something the Ontario government was supposed to investigate. It never even happened. So why did we call our colleague in front of a committee and literally roast her in front of TV cameras when there were absolutely no grounds to accuse her?

Suddenly, to defend Mr. Rahim Jaffer, we now find all the good reasons why it shouldn't happen.

I don't know Mr. Jaffer. I have no idea what happened or did not happen, but I do believe that public confidence was eroded by the way the judgment came out. That's why I would support this motion.

• (1240)

The Chair: Mr. Calandra.

Mr. Paul Calandra (Oak Ridges—Markham, CPC): I'm not usually on this committee, but I have to respond to what Ms. Mendes said.

I too served on the immigration committee and was a member of the committee last fall when Ms. Dhalla was asked—or actually, volunteered—to appear before the committee.

Mrs. Alexandra Mendes: No, she was asked.

Mr. Paul Calandra: We were actually studying... It wasn't a study on Ms. Dhalla; it was a study on foreign workers. In particular, we heard evidence from a number of individuals, two nannies, different temporary foreign worker groups.

We came to a report that the entire committee... I'll have to go back to check this. I believe it was a unanimous report, but I'll have to go back and check. It was not specific to Ms. Dhalla.

Actually, I just happened to be reviewing the testimony from the committee the other day—I was rewatching it on YouTube—and there were a number of important things that we spoke of. Ms. Dhalla's testimony was only a small portion of the work that was done by the committee. I know she asked that we accommodate her, so that we could...

No, it's quite true. We moved around the schedule of the immigration committee so that she could appear before us.

So I have to ask Ms. Mendes, through you, Chair, to go back and reflect on the good work that the immigration committee did. Don't try to compare this particular motion of Mr. Comartin with any of the extraordinary work that the immigration committee did. She was part of that committee; she was part of the report. I don't recall how she voted. It was predominantly a report on how we change and make things better for temporary foreign workers, for nannies. It was a really good report.

You say it wasn't unanimous; I think it was. But I think it's completely wrong to be trying to bring the two in and bring in Ms. Dhalla as an example of partisanship in a committee.

I think what Mr. Dechert and Mr. Petit have said makes a heck of a lot more sense than what I'm hearing so far on the opposite side.

The Chair: Mr. Dechert.

Mr. Bob Dechert: I have a point of verification in response to Ms. Mendes.

I wasn't on the immigration committee, but as I understand it, Ms. Dhalla was there to personally respond about her own actions. This motion is not asking Mr. Jaffer to appear before the committee to explain his own actions. It's asking the crown prosecutor to reveal the confidential facts of a case in which the crown prosecutor, in their professional opinion, decided there was not sufficient evidence to secure a conviction. It's completely different.

Thank you.

The Chair: Ms. Mendes.

Mrs. Alexandra Mendes: Just to clarify, the report was not unanimous, precisely because section 9 of that report mentioned very specifically Ms. Dhalla. Secondly, she didn't volunteer to appear in front of the committee; she was asked to appear in front of the committee.

But I will submit all of this to the committee, if you'd like to have it.

An hon. member: I'll leave it at this last point.

Mrs. Alexandra Mendes: Yes, exactly.

The Chair: Ms. Mendes, are you finished?

Mrs. Alexandra Mendes: I was just making the point about the politicization of all this. It's not about Ms. Dhalla or about Mr. Jaffer; it's the facts that we are...

Yes, it is.

The Chair: Let Ms. Mendes finish.

Mrs. Alexandra Mendes: Why are we talking about people specifically? We are talking about the fact—

Mr. Bob Dechert: It's because it's written in the motion.

Mrs. Alexandra Mendes: Okay, I'm done.

The Chair: Thank you.

We're going on to Monsieur Lemay.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Chair, first, I would like to apologize for being late. I was at a meeting attended by officials from the department of international trade. It involved a file dealing with the export of lumber, which is a very important issue in my riding. I will apologize to the minister personally when I see him.

That said, I wanted to take part in the debate on this motion. I was a defence lawyer for 30 years. When a crown prosecutor decided not to lay charges, we would rarely meet with him to ask him to explain his decision. Mr. Chair, with all due respect to my colleagues who do not share my opinion, I think that the legal system needs to remain independent from the political system. And we are underscoring the importance of that independence by opposing this motion.

The way I see it, it would be very dangerous to accept this motion as it would throw into question the judicial discretion of a sworn officer of the court. And that is what is going on here. Before examining a case, crown prosecutors take an oath to protect and defend the public within the context of that case. That is a crown prosecutor's job.

As my colleague, Mr. Ménard, so eloquently articulated, it is clear to us that accepting this motion would go against the important principle of the division of powers between the judicial branch and the political one.

Here, we make decisions on amendments to the Criminal Code, we learn about the effects those amendments will have, and we seek out the opinions of those who will have to deal with the Criminal Code as amended. However, I think that if we allow ourselves to call prosecutors as witnesses in order to ask them why they interpreted certain sections in such and such a way and did not lay charges, we would be interfering. We would become the judge and the defendant.

Mr. Chair, with all due respect for opposing opinions, I think that we should vote on this motion and reject it. I understand what my colleague, Mr. Comartin, is trying to do, but I do not think this is the place for that kind of debate.

• (1245)

[English]

The Chair: Thank you.

We have two more members who want to speak on this. We have Mr. Murphy and then Mr. Comartin, if he wishes to wind it up.

Mr. Murphy.

Mr. Brian Murphy: I just briefly want to say that I'm pretty persuaded by Monsieur Ménard. I'm going to change my vote on this and vote against the motion.

I think it's very important for us to remember, and we may revisit this sooner than you think, that there has been a loss of faith in the criminal justice system over this specific case. There's a perception out there. It would behoove us to perhaps at least hear from federal prosecutors, either their association or the director or the Minister of Justice—the person responsible for how these things are done. We might have a better understanding of how things happen. We might,

in fact, change the code or the policies about laying out the reasons for which charges are withdrawn.

I have met many accused people who have had charges withdrawn who would like that option, because when charges are withdrawn and you're an innocent person, you'd like to have the declaration on record saying that they were withdrawn because there was no evidence, or that the fault... I think it would be in everybody's interest.

So I put that marker down. I've changed my vote. I'm very persuaded by Monsieur Ménard and other speakers.

Thank you.

The Chair: Mr. Comartin.

Mr. Joe Comartin: Let me say first of all, particularly to the Conservatives, and this is not partisan on my part—Mr. Dechert, listen to me—if you had followed the position I took on the Cadman affair, when a similar motion was brought forward, and supported by both the Liberals and the Bloc at that time, I took the opposite position because that was going to put this committee in a position to conduct a criminal investigation. That was the only way you could describe that. And I stood by that position, I supported your chair at the time and the position he took. If I was partisan at all on these issues, I would have taken the opposite position at that time.

With regard to the comments about Svend Robinson, I think that's quite frankly below you. If you understood that case, the charge against him was the charge that he pleaded guilty to. There was no suggestion in the country that he was treated favourably at all.

Let me finish with the point that Mr. Lemay made in his comments, and the ones Mr. Ménard made as well.

I understand the implications here of crossing that line, in terms of the sovereignty, the autonomy, of the provinces in the administration of justice. I think I've set out sufficient reasons to say it doesn't exclusively apply here and that we should take that risk because of the notoriety of the case and the undermining of credibility and the integrity of the system in the public's mind, but I want to make this final point.

Mr. Lemay points out—and, again, I don't think, Mr. Dechert, you caught this—this isn't an issue of presumption of innocence, and there are rare cases when prosecutors, sometimes the attorneys general on their behalf, do come forward in circumstances like this and give explanations. This is not completely unheard of. It's rare, I admit that, but this is one of the circumstances where that rarity should be applied, and we should do it.

Thank you.

• (1250)

The Chair: I'll call the question on the motion.

(Motion negated)

The Chair: We'll just take a brief moment to recess so that we can go in camera.

[Proceedings continue in camera]

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