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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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•(1140)

[English]

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

This is meeting number 14 of the Standing Committee on Justice and Human Rights. For the record, today is Thursday, April 22, 2010.

You have before you the agenda for today. We're continuing our review of Bill C-475, an act to amend the Controlled Drugs and Substances Act for methamphetamine and ecstasy.

We have with us Paul Saint-Denis, senior counsel, criminal law policy section of the Department of Justice. Thank you for appearing before us today.

You don't have a presentation, I understand. There were a number of questions that members of the committee wanted to ask about the bill before we go to clause-by-clause.

Members of the committee, we'll go around and ask for questions. We'll start on the Liberal side.

Ms. Mendes, do you have any questions you wanted to ask Mr. Saint-Denis?

[Translation]

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

Can we give Mr. Petit's two amendments to Mr. Saint-Denis? Do you not have them in front of you, Mr. Saint-Denis?

Mr. Paul Saint-Denis (Senior Counsel, Criminal Law Policy Section, Department of Justice): No.

Mrs. Alexandra Mendes: I would like to have your opinion on the first amendment. The bill provides for the penalty to be 10 years less a day. The amendment proposes to make it 10 years exactly. We are talking about one day, but also about a principle.

What would the legal implications of this amendment be?

Mr. Paul Saint-Denis: The amendment, the effect of which is to bring the penalty in the bill to ten years exactly, would make the penalty similar to those found elsewhere in the Criminal Code or other federal legislation. If passed, the penalty of ten years less a day would be the only one of its kind. If I understand correctly, the idea is simply to bring the penalty into line with others.

Mrs. Alexandra Mendes: Do you mean in line with others, or does the judge have an obligation to impose a penalty of ten years exactly?

Mr. Paul Saint-Denis: No. From what I have seen, the amendment keeps the offence as a major one, but establishes a penalty of 10 years rather than 10 years less a day.

Mrs. Alexandra Mendes: Okay. You are telling us that other penalties are always...

Mr. Paul Saint-Denis: Generally, in the code, or in other legislation, including the Controlled Drugs and Substances Act, the penalty is a fixed period, a round number, such as 5, 7, 10 or 14 years, for example.

Mrs. Alexandra Mendes: So this does not change the nature of the act.

Thank you, I have no other questions.

[English]

The Chair: Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): You say it's unprecedented, but there are many penalties for offences in Canada that are two years less a day. Having an act that has a number of years less a day is not unusual in Canada.

Mr. Paul Saint-Denis: The practice of "less a day" itself is not unusual. In fact, the Controlled Drugs and Substances Act has an offence of five years less a day. It's an indictable offence; it's five years less a day.

What is unusual—in fact, it would be precedent-setting—is a ten-year less a day term. The motion would, for all intents and purposes, eliminate that precedent-setting type of penalty.

Hon. Larry Bagnell: That would probably be a good precedent, actually.

Did the Department of Justice come up with this amendment?

Mr. Paul Saint-Denis: As I understand it, the motion is put forward by the parliamentary secretary to the Minister of Justice, and certainly the idea was discussed in the Department of Justice.

Hon. Larry Bagnell: Thank you.

The Chair: We'll move on to Monsieur Ménard.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): If I am not mistaken, Mr. Saint-Denis, some of our acts stipulate a fixed term less a day. Generally, this is because that one day makes a difference in the way the act or the penalty are applied. Is that not so?

Mr. Paul Saint-Denis: Yes. Take the example of a penalty of five years less a day. There is an impact on the access to a trial by jury.

Mr. Serge Ménard: Indeed there is.

Mr. Paul Saint-Denis: But, to my knowledge, with a penalty of 10 years less a day, no impact of that kind is intended. Perhaps the author of the bill had some reason to stipulate ten years less a day. But I have not found one myself.

• (1145)

Mr. Serge Ménard: In bills that have been introduced and that will be introduced, the ten-year barrier is very significant for suspended sentences and conditional sentences. For example, you have surely noticed that the idea of five years less a day has started to come into our legislation since the Charter, which enshrined the principle of...

Before the Charter, since there was no principle that required a trial to be held before a jury when the maximum penalty was five years, there was no reason to stipulate five years less a day. Future bills might specify that there can be no suspended sentences if the penalty is ten years or that there can be no conditional sentences if the penalty is ten years. In that case, the ten-year limit takes on a significance that it did not have before.

Mr. Paul Saint-Denis: I thought that might be the case. If the committee chooses to take that approach, the committee may certainly do so. Up to now, there is no precedent for a penalty of ten years less a day. Given that there are bills containing aspects that may have an impact on a maximum sentence of ten years, there is perhaps a reason to want to consider different sentences.

Mr. Serge Ménard: So you agree with me that every precedent is unprecedented.

Mr. Paul Saint-Denis: I do.

Some hon. members: Ah, ah!

[English]

The Chair: Thank you.

Ms. Leslie.

Ms. Megan Leslie (Halifax, NDP): Thank you, Mr. Chair.

I have one question for you. Hopefully you can answer it.

Do you see this amendment capturing any situation that isn't already covered by the organized crime provisions, or is it just the provision in and of itself that it's illegal to produce? Do you see this as actually having an impact?

Mr. Paul Saint-Denis: In terms of the production, I don't think so; nothing comes to mind. In terms of the impact on organized crime, I don't think it has an impact either.

Ms. Megan Leslie: Do you mean no impact positive or negative?

Mr. Paul Saint-Denis: Hopefully it will have a positive effect in the sense that it will act as a deterrent, but in terms of the relationship between this offence and other offences, I don't think there is any.

Ms. Megan Leslie: Those are all my questions. Thanks.

The Chair: Thank you.

Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Can you propose any reason why the sentence for the offence proposed in this bill should be 10 years less a day rather than the more standard and customary 10 years? It seems to me that if the goal we're working toward is a 10-year type of sentence, I can't think of a reason why we would want to distinguish this offence from any other 10-year offence by adding this "less a day".

Is there anything you can tell me that would suggest a reason for it?

Mr. Paul Saint-Denis: Mr. Ménard pointed out a possibility, which is that if a conditional sentence applies to offences that are 10 years, then perhaps that would have an impact on that, but otherwise not. As I indicated earlier, generally our sentences are a maximum of round numbers, and it's usually 5, 7, 10, 14.

• (1150)

Mr. Stephen Woodworth: Even if what Monsieur Ménard said was correct, I guess my question is, since we're aiming for a 10-year sentence here, why should this 10-year offence be any different from any other 10-year offence when it comes to conditional sentencing or any other sentencing provision? Is there anything unique to this particular proposed offence that would suggest it should be treated differently?

Mr. Paul Saint-Denis: I have nothing, but really what you're asking me is a question that lies within the policy domain that this committee has complete control over. It's not something that I can really—

Mr. Stephen Woodworth: As long as you had no technical reason why this offence should be treated differently...

Mr. Paul Saint-Denis: No.

Mr. Stephen Woodworth: Thank you.

The Chair: Thank you.

Is there anyone else on the government side?

Are there any other questions before we move to clause-by-clause?

Mr. Bagnell, you had another one?

Hon. Larry Bagnell: Yes, I just wanted to clarify a bit what other people have asked.

First of all, is there any reference to anything in the Criminal Code that applies to all offences right now that have 10 years or more? Is there anything in the Criminal Code related to sentencing conditions, or anything in the Criminal Code that makes a reference to any crime where the maximum penalty is 10 years or more?

Mr. Paul Saint-Denis: I believe not. I have to admit that I'm not exactly clear on the status of some of the bills that have been tabled or will be tabled, and what some of these bills propose for 10-year penalties. So there may be something coming that would have an impact, but at the moment I don't believe there is.

Hon. Larry Bagnell: So there's nothing in the existing law, and because you're not familiar with proposed things, you don't know if, for instance, Mr. Ménard's example would be—

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

Hon. Larry Bagnell: —cognizant with bills coming down the pipe in your department.

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

Hon. Larry Bagnell: Thank you.

The Chair: Thank you.

Monsieur Lemay.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): No, that is fine.

[English]

The Chair: No further questions? All right.

I think we're ready to go to clause-by-clause consideration.

(On clause 1)

The Chair: The government has an amendment, which hasn't actually formally been moved.

Mr. Woodworth.

Mr. Stephen Woodworth: I move that clause 1 of Bill C-475 be amended by replacing line 15 on page 1 with the following, in English: "than ten years." *En français:*

[Translation]

"a term of not more than ten years".

[English]

The Chair: You have before you the proposed amendment. Is there any discussion, any debate?

(Amendment negated)

The Chair: We'll move to the main clause.

Mr. Bob Dechert (Mississauga—Erindale, CPC): I'm sorry, there is a second amendment.

The Chair: But it's to clause 3. We're on clause 1.

(Clauses 1 and 2 agreed to)

The Chair: There's a government amendment, new clause 3, G-2.

Mr. Dechert.

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

I move that Bill C-475 be amended by adding after line 7 on page 2 the following new clause:

COMING INTO FORCE

3. Section 1 comes into force 90 days after the day on which this Act receives royal assent.

The Chair: Thank you.

(Amendment agreed to)

The Chair: We move on then to the title. Shall the title pass?

Some hon. members: Agreed.

The Chair: Shall the bill as amended pass?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Thank you.

We actually need a reprint. Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you very much. We have completed clause-by-clause.

Members, as you may have noticed, we did send out an e-mail saying that if we had extra time—which we do—perhaps we could spend a little more time on the organized crime study. I've had some discussion with the analysts and have asked if there is anything missing that we should have dealt with. They advised that there are a couple of things they wanted to bring to our attention.

Perhaps, Robin, you could just highlight some of the areas for which we might still want to bring in some witnesses.

• (1155)

Mr. Robin MacKay (Committee Researcher): One aspect of the report that we haven't really heard about is the international side of organized crime, and I have put in the suggested witnesses. For example, we could hear from CSIS. They have a transnational criminal activity unit that deals with transnational crime, as the name implies. That might be a good start.

A second aspect we heard some testimony about was firearms. The guns seem to come from the United States, according to the testimony we heard. It might benefit the committee to hear from someone like the Department of Homeland Security in the United States on how they work with Canadian officials to try to combat the trade in illegal firearms.

Third, I had suggested a couple of European witnesses, namely the Serious Organised Crime Agency of the United Kingdom and the Swedish National Council for Crime Prevention. There is no magic to those two suggestions; it's just that I've read their reports, which seem to be quite comprehensive. They deal with many of the issues that have been raised here in Canada, such as dealing with guns, illegal gambling, and drug offences.

Interestingly, Sweden also talks about obstruction of justice as an organized crime element. We heard a little bit about that with the witness protection program from the RCMP, which is trying to combat threats made to potential witnesses in organized crime prosecutions.

The only other aspect that I had raised was legal aid. We've heard a little bit from Mr. LeSage about mega-trials, which are very lengthy and very expensive. Legal aid is often called upon to fund the defence of those accused in mega-trials. They seem to be buckling under the strain. So we might want to hear from Legal Aid Ontario or legal aid in Quebec—it doesn't really matter, necessarily—who have had experience with mega-trials, on how they fund the defence in those cases.

The Chair: Thank you.

Ms. Leslie.

Ms. Megan Leslie: Thank you.

Mr. MacKay, I just have one question. Can you repeat the name of the U.K. organization?

Mr. Robin MacKay: It's called the Serious Organised Crime Agency. SOCA is the acronym. They produce a report called "The United Kingdom Threat Assessment of Organised Crime." They do that every year.

They break it into five main headings that they deal with: "Criminals and their Businesses", "Firearms", "Drugs", "Organised Immigration Crime", and "Fraud."

The Chair: Presumably we could actually have them up here by teleconference on relatively short notice.

The only two bills that I know of, which would typically be referred to this committee, are the amendments to the Youth Criminal Justice Act. I believe today the minister tabled some legislation on conditional sentences. We haven't debated that in the House yet, so we may have some room.

Again, I'm in your hands. We could probably do this on relatively short notice and by teleconference.

Mrs. Alexandra Mendes: Would we do the teleconferencing on Tuesday and legal aid on Thursday, or something like that?

•(1200)

The Chair: What's your wish?

The suggestions that have been made include CSIS, the United Kingdom Serious Organised Crime Agency, the Swedish National Council for Crime Prevention, Homeland Security, and Legal Aid. Those are five potential witnesses.

Is there general agreement to try to schedule them over the next two meetings?

Some hon. members: Agreed.

The Chair: All right. I'll have the clerk get in touch with those agencies and we'll go from there.

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: We all understand that we need more than one witness from each country, Sweden and England, and that we want to hear them speak about different aspects of organized crime, like firearms, drugs, money laundering.

[*English*]

The Chair: Are you suggesting we have more than one organization from each of those countries?

[*Translation*]

Mr. Serge Ménard: Yes. But do we have to think about doing the same here as we would do if we spent the government's money to go to Europe to see them? I know that the Standing Committee on Public Safety and National Security went. I was there, we went to Europe to study how prisoners with mental illnesses were treated. For our study, we have been to several Canadian cities to study various aspects of organized crime here, but it seems that other

countries face the same problems and have developed ways of fighting them that could provide us with guidance. If we do not go, I think that we have to think about calling several witnesses from each country by videoconference and having a discussion with them to find out who could provide as broad a perspective as we would get if we went to see them.

[*English*]

The Chair: Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you, Mr. Chair.

I think having five witnesses over two days is sufficient. Perhaps later if there's more time we can go down that route. But if too many people are called upon to give evidence and chucked into one day, other than their statements, we don't get enough time for in-depth questioning.

The U.K. group sounds like they cover about five specific areas, all of which we have explored, so we should have them for sure. With CSIS and Homeland Security, we share the longest border in the world, so there's an intricate relationship there. We can hear from Legal Aid, but I think their message will be that they don't have enough money; they need more money. I could almost say what they're going to say. I think we know that. I'm not downplaying the seriousness or legitimacy of it, but I think we want to get into the meat of the matter—the mechanics of the matter.

So I think over those two days we should have the three groups I just mentioned—the U.K. group for sure. I would almost say that two hours will be insufficient to listen to them. Then there's CSIS and Homeland Security. I would like to hear from the U.K. group for the full two hours because of the five areas. I imagine the analyst would not have brought them to our attention unless he felt they were very worthy of our attention.

The Chair: Thank you.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: I would like to make a quick comment to my colleague, Mr. Norlock. Let us talk about legal aid, because I have worked with people who work there for a long time.

I would like to hear about their situation. I do not want to them to tell me that they do not have enough money, but I do want them to tell me how they have reacted and how they have handled major trials. They are actually very, very involved in very long and complex trials. I would like to know how they have been able to do it. I would like to hear how they would answer that question, because those very long trials have a considerable impact on the administration of legal aid funding, not only in Quebec, but all across Canada.

•(1205)

[*English*]

The Chair: Does anybody else wish to comment?

Ms. Mendes.

Mrs. Alexandra Mendes: It just seems to me that we need three meetings instead of two, because we have a lot of material to cover. There is a lot of interest, I think, from all of us.

I appreciate what Mr. Norlock was saying, but I do believe legal aid is an aspect we should look into, and not necessarily the funding of legal aid but how they articulate their participation in these mega-processes.

Is it possible to think of a third meeting eventually, before we break for the summer?

The Chair: As we've done along the way, we've added—

Mrs. Alexandra Mendes: We're flexible.

The Chair: Yes, we're flexible.

I think we've actually achieved a lot on this organized crime study, and along the way we've added witnesses. We've extended the study already, and if we need another day, I'm certainly open to considering that.

Mrs. Alexandra Mendes: Should we prioritize, then, just to give ourselves an idea of who should come first and then we'll see—

The Chair: Well, the original proposal was that we were going to invite these five groups to appear. Monsieur Ménard had suggested that we actually look at each issue and invite additional witnesses on top of these.

I'm hearing over on this side that it's not what the government would like to see, because we do have some government legislation coming down the pipe. If we still have holes available in our schedule, we can always talk about that, going forward.

For example, on this work that we're doing, I'd assumed a couple of days ago that we had wound this up. Now that we have some time available and I've discussed it with the analysts, they have said, "Listen, there are some holes. Let's plug those holes so that we have a really good report."

Mr. Rathgeber.

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

I agree with Mr. Lemay and Ms. Mendes on legal aid. I think it would be instructive with respect to this whole issue of disclosure.

As I understand both from the prosecutors and from the defence bar, some parameters need to be placed on this high volume of disclosure to make it reasonable. Certainly with respect to legal aid, I agree with Mr. Norlock that their resources are always going to be finite, and from their perspective, insufficient. That being the case, certainly they might be helpful or instructive in giving us some guidance as to how we can place some parameters on the whole issue of disclosure to make it reasonable and that the lawyers they're bankrolling aren't overwhelmed with disclosure that might arguably be irrelevant.

The Chair: Thank you.

Are you suggesting that we have further witnesses on disclosure?

Mr. Brent Rathgeber: No, I just agree that we should hear from legal aid.

The Chair: All right, we certainly will.

Mr. Norlock.

Mr. Rick Norlock: I won't bring it up again as long as we get at least two hours with the U.K. group, and perhaps have CSIS here in person at the same time in case there's some overlap.

We haven't heard from international groups about organized crime, which would be another perspective. I think we really will shortchange ourselves if we keep our blinders on and focus just on Canada.

As long as we use the two days that we know we have for those groups that were mentioned by the analyst and save legal aid for the end of that, and maybe a third day....

I think Ms. Mendes was correct in saying that we sure need more time. So let's put legal aid after the two days that we're going to go through with the other group. That's my preference.

The Chair: Thank you.

I'll suggest, then, that we schedule these five groups over the next two days. We'll do our best to schedule them. If there is an appetite to hear more, we'll go from there and play it by ear.

Is that okay, Mr. Ménard?

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: I agree with you, Mr. Chair.

I have been told that, next week, the schedule in the House will focus on democratic reform for the whole week. That is what we were told about 15 minutes ago. The study of Bill C-4, that clearly we want to debate, will be postponed to the following week. So we would have next week to hear witnesses, the four hours needed and possibly the following Tuesday. Unless you are telling us that something else is coming up—but, from the way you were talking earlier, there is nothing else on the agenda—it looks like those bills will not be debated next week, but the following one. So we have time to hear witnesses.

● (1210)

[*English*]

The Chair: We'll move forward on that basis, and then we'll play it by ear and see if we want additional witnesses—wherever the next five witnesses take us.

Is there any further discussion?

We're adjourned.

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