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# Standing Committee on Justice and Human Rights

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EVIDENCE

**Tuesday, October 26, 2010**

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**Chair**

**Mr. Ed Fast**



## Standing Committee on Justice and Human Rights

Tuesday, October 26, 2010

• (1530)

[English]

**The Chair (Mr. Ed Fast (Abbotsford, CPC)):** I call to order meeting number 31 of the Standing Committee on Justice and Human Rights. Today is Tuesday, October 26, 2010.

You have before you the agenda for today to review Bill S-9, an act to amend the Criminal Code for auto theft and trafficking in property obtained by crime.

To assist us with our review we have a number of witnesses. First of all, we have, representing the Canada Border Services Agency, Ms. Caroline Xavier. We also have the Department of Justice, represented by Robert Borland, counsel. Welcome.

Then we have Statistics Canada. Some of you have been here before, so welcome back. We have Julie McAuley, director; Mia Dauvergne, senior analyst; and also Craig Grimes, chief and advisor. Welcome to all of you.

You know the routine. You have ten minutes to present, if you wish, and then we'll open the floor to questions.

Why don't we start with Statistics Canada.

**Ms. Julie McAuley (Director, Canadian Centre for Justice Statistics, Statistics Canada):** Thank you very much, and thank you for the opportunity to present to the committee regarding Bill S-9.

Statistics Canada does not take a position on the proposed amendments in the bill. The presentation we have prepared contains our most recent data on motor vehicle thefts. All data sources used are clearly indicated on the slides, as are any pertinent data sources.

We have included supplemental information at the end of the presentation for the consideration of the committee and have distributed a copy of a *Juristat* article on motor vehicle theft that was released in December 2008 using 2007 data. That is the most recent *Juristat* article on this subject.

My colleagues Ms. Mia Dauvergne and Mr. Craig Grimes will help answer any questions.

Please turn to the first slide in the deck.

Police-reported motor vehicle thefts in Canada have generally been declining since 1996. The rate of motor vehicle theft declined 15% between 2008 and 2009, continuing a downward trend that began in 2003.

Police-reported motor vehicle thefts are incidents in which a land-based motorized vehicle is taken or attempted to be taken without the

owner's authorization. It includes incidents in which the perpetrator has the intent to steal a vehicle but is unsuccessful.

In 2009 police reported about 108,000 motor vehicle thefts, averaging about 300 stolen vehicles per day. This figure includes both completed and attempted incidents. This is down slightly from 2008, when police reported about 125,000 motor vehicle thefts.

A little over one-third of motor vehicle thefts in 2009 involved cars, and another one-third were of trucks.

Motor vehicle theft is one of the most common types of police-reported crime in Canada. In 2009 such thefts accounted for 5% of all Criminal Code offences and 6% of all non-violent offences.

The next slide shows that the highest rates of motor vehicle theft tend to be in the western provinces and northern Canada. In 2009, for the first time in 13 years, Manitoba did not have the highest reported motor vehicle theft rate in the country; Nunavut had the highest rate, with 593 motor vehicle thefts per 100,000 population. Vehicle theft rates in Manitoba have declined in four of the past five years, including a 39% drop in 2008 and a 28% drop in 2009.

The next slide indicates that in general the same geographical pattern is seen for Canada's census metropolitan areas. In 2009, while the highest rate of motor vehicle theft was in Brantford, Ontario, generally motor vehicle theft rates are higher in western Canada's CMAs.

Winnipeg's rate has been among the highest in Canada for the past 17 years. However, the rate of motor vehicle thefts in Winnipeg decreased from 956 per 100,000 population in 2008 to 629 per 100,000 population in 2009. This has driven the decrease in Manitoba's overall motor vehicle theft rate. In 2009, Winnipeg accounted for 74% of Manitoba's motor vehicle thefts, down slightly from 2008, when it accounted for 81%.

Motor vehicle theft is one of the least likely crimes to be solved by police. Of all vehicle thefts in 2009, 11% resulted in an accused person being identified, compared with 33% of all other non-violent offences.

Slide 5 shows that, similar to other non-violent offences, police-reported theft is a crime often associated with youth. In 2009, police-reported motor vehicle theft rates were highest among 15-to-18-year-olds. Youth 12 to 17 years old accounted for approximately three in ten persons accused of motor vehicle theft in 2009, slightly higher than the proportion of youth accused of other non-violent offences.

About 82% of all persons accused of motor vehicle theft in 2009 were male; this compares with 75% of those accused of other non-violent offences.

Drawing from analysis done in 2007, the next slide looks at police-reported motor vehicle thefts and organized crime. We do not yet have a reliable, direct way of measuring organized crime involvement, but vehicle recovery status has been used as a proxy measure.

● (1535)

As you can see, about four in ten stolen vehicles were not recovered by police, suggesting that these may have been related to organized crime. In 2007 vehicle recovery rates were lowest in the province of Quebec and among the highest in Winnipeg.

In the next slide, we turn to the question of court outcomes for charges of motor vehicle theft. It is not possible to identify motor vehicle theft using court administrative records alone, as motor vehicle thefts are currently recorded together with other thefts under section 334 of the Criminal Code. However, we can link court records, which contain criminal court outcomes, with police records, which contain offence characteristics, in order to identify this subset of theft in Canada.

The question of whether or not motor vehicle theft is treated differently from thefts in general by the courts is often asked, and we recently linked these administrative files to answer this question for another project. An unrepresentative sample of court records did show differences in the way in which theft in general and motor vehicle theft were treated by the courts. Incarceration was used more frequently for guilty charges of motor vehicle theft, and there were significant differences in the length of custody imposed by the courts for motor vehicle theft compared to other theft.

The Criminal Code under section 335 describes taking a motor vehicle without consent as an offence resembling theft. In slide 8 we see that several thousand of these theft-like charges are completed in Canadian criminal courts each year. The number of these charges against youth has been declining since the introduction of the Youth Criminal Justice Act, while the number of these charges against adults has changed very little since 2000-01. The proportion of guilty findings for adults and youth tends to be higher for this charge than for charges generally, but almost identical to the proportion found guilty for theft in general.

Next we turn our attention to data available from criminal courts on the possession of property obtained by crime. Because trafficking in such property is a new offence proposed under Bill S-9, it is not possible to provide data on the extent to which these cases also include trafficking of that property. However, it is possible to provide data on the number of cases that contain the underlying offence of possession of property obtained by crime. Since 2000-01, approximately 10% of all criminal court cases, or roughly 40,000

cases each year, contained at least one charge for property obtained by crime. In 2008-09, the proportion of these cases completed in youth criminal courts was higher than in adult criminal courts.

In summary, motor vehicle theft continues to be a high-volume offence in Canada, but Canada's police-reported motor vehicle theft rate has generally been declining since 1996. Motor vehicle theft rates are particularly high in the west. Vehicle recovery rates can serve as a proxy for organized crime involvement, and we have seen that the recovery rates vary across the country. Stolen vehicles are recovered less often in Quebec than elsewhere in Canada, while in Winnipeg the recovery rate was among the highest.

Thank you. That ends my presentation.

● (1540)

**The Chair:** Thank you.

We move now to Caroline Xavier, representing the Canada Border Services Agency.

**Ms. Caroline Xavier (Director General, Corporate Secretariat Directorate, Canada Border Services Agency):** Thank you.

I'd like to thank the committee for the opportunity to appear before you today to discuss CBSA's role in relation to Bill S-9.

[*Translation*]

Before I talk about the bill, I would like to take a moment to talk about CBSA's role in managing the border as well as the services we provide.

The CBSA is mandated to provide integrated border services that support national security and public safety priorities and facilitate the free flow of legitimate persons and goods, while meeting all requirements under program legislation.

This responsibility extends to enforcing immigration and refugee policy and to border inspection of food, plants and animals. It also aims to provide information and enforcement support that enable us to fulfill our legislative obligations in security and safety matters.

Overall, CBSA administers some 90 acts and regulations that govern the eligibility of people and acceptability of goods entering or leaving Canada.

[English]

The CBSA uses a risk-based intelligence approach to border management, whereby the agency focuses its efforts on the people and goods that are considered high risk, while facilitating the border clearance of low-risk travellers and goods.

The risk-based approach allows the agency to ensure that the costs and delays imposed by the clearance processes on legitimate people and shipments crossing the border are minimized, while at the same time identifying and interdicting diverse security threats as early as possible in the travel and supply chain continuum. Ultimately, this approach allows the agency to allocate its resources in the most effective manner possible by assessing risk as far away from the border as possible.

In June 2009 amendments to the Customs Act were made to strengthen the CBSA's ability to interdict contraband and other illegal items in customs-controlled areas, such as airport tarmacs and seaport docks. The primary purpose of these amendments was to give the CBSA greater scope and flexibility in its management of risk.

The key amendments allowed the CBSA to fully implement what we call the advance commercial information program, also known as eManifest, and to put in place changes at customs-controlled areas. Ultimately, this allows the agency to bring greater security within the trade supply chain through the receipt of advance commercial information via the eManifest initiative.

[Translation]

As mentioned, the CBSA enforces the Customs Act and other federal statutes and regulations. However, none of these acts or regulations includes a provision to specifically address the export of stolen vehicles and, in particular, suspected stolen vehicles.

[English]

Under current legislation, the CBSA may receive and act upon intelligence information, but the information must relate to the administration and/or enforcement of the Customs Act. The CBSA may only conduct an administrative check of outbound cargo to ensure its compliance with the Customs Act, the reporting of goods regulation, or any other act of Parliament the agency administers and enforces.

Currently, if a CBSA officer happens to discover what they suspect is a stolen vehicle during the course of an export examination, the officer does not have the legal authority to investigate whether or not the vehicle has been reported as stolen. Rather, the officer only has the authority to inform the local police jurisdiction of his or her suspicion. The police will then run checks on the vehicle through various databases to determine whether it's stolen.

Included in the Criminal Code amendments being considered by this committee is a provision that prohibits the importation and exportation of property obtained by crime, such as stolen vehicles. This prohibition will enhance the CBSA's ability to manage the border by triggering existing authorities in the Customs Act, which will allow the agency to undertake examinations to determine whether vehicles have been reported as stolen.

Under the proposed legislation, an officer who suspects that a vehicle has been stolen will also have the authority to run database checks to determine whether the vehicle has been stolen. In doing so, the CBSA will refer vehicles to the police that the agency believes to be stolen rather than just suspected of being stolen.

Therefore, the proposed amendments to the Criminal Code would provide the CBSA officers the lawful authority to assist police by examining and using various law enforcement databases for the purpose of detaining stolen vehicles. Such detained vehicles will then be turned over to the enforcement partners for further investigation, thus enhancing our information sharing capabilities with our law enforcement partners.

Bill S-9 will empower the CBSA to examine vehicles, determine theft through database checks, and detain stolen vehicles until the police can investigate the offence and take possession of them as part of their ongoing enforcement activities. Essentially, this bill will put the CBSA in a better position to work in a more effective manner with its national and international law enforcement partners to deter the cross-border trafficking of stolen goods.

Bill S-9 will also create specific offences: the offence of auto theft; the offence of tampering with a vehicle identification number; and the offences of trafficking in property obtained by crime and possession of property obtained by crime for the purpose of trafficking.

● (1545)

[Translation]

This bill will have a direct and positive impact on the CBSA in that it will allow the agency to play a more direct and meaningful role in preventing the exportation of stolen goods.

[English]

Currently the CBSA has a strategic export control program as part of our Customs Act authorities. Bill S-9 will provide CBSA further authority to assist our law enforcement partners by actively targeting those shipments that are reported for export before they reach the port, for the purpose of detecting stolen goods—in particular, vehicles.

These authorities will allow us to look at the export information we are receiving in advance so that we may work with our law enforcement partners to determine whether or not there could be an infraction or prohibited goods, such as a stolen vehicle.

Within its current legislative framework the CBSA works diligently on its own enforcement priorities that support police efforts to identify and investigate suspected stolen vehicles destined for export. The CBSA will continue to utilize a risk-management approach to do advance analysis, using intelligence from our law enforcement partners and our tools to focus our attention on suspicious containers.

In 2008 the CBSA participated in a six-month export vehicle verification probe led by the RCMP. During this probe, the CBSA used established export verification techniques, tools, and resources to look for indications of suspected contraventions of the Customs Act, the reporting of exported goods regulations, or any other act administered or enforced by the CBSA.

During the probe, the CBSA officers assisted the RCMP and examined 281 containers at the ports of Montreal and Halifax and intercepted 258 stolen vehicles. The results of the probe provided law enforcement agencies with a glimpse of the current situation regarding stolen vehicles.

[Translation]

With the passage of Bill S-9, the CBSA will have the legislative authority it needs to take a more effective role in law enforcement efforts to intercept stolen vehicles.

[English]

As part of our ongoing enforcement activities, the CBSA will be able to use the authorities provided by this bill to do our job more effectively within the parameters of our available resources.

Thank you for inviting me to contribute our perspective for your consideration of this legislative proposal.

[Translation]

I am now ready to answer questions. Thank you.

[English]

**The Chair:** Thank you very much.

Mr. Borland, do you have an introductory statement, or are you just here as a resource?

**Mr. Robert Borland (Counsel, Canada Border Services Agency):** I'm just here to support Caroline.

**The Chair:** Thank you very much.

We'll move to questions from our members.

First we'll move to Mr. Lee. You have seven minutes.

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

Thank you to the witnesses for attending today.

Turning to StatsCan first, this is a general kind of approach, but in all of the statistical data you referred to there appeared to be, happily, a downward trend in auto thefts, depending on when you start counting.

Was there any upward trend visible in any of the data you've gone through? I didn't hear any, but could you indicate whether there were any upward trends we should take note of here?

• (1550)

**Ms. Julie McAuley:** Do you mean in terms of the time series of auto theft?

**Mr. Derek Lee:** Yes, since 1993 or 1997—whenever you—

**Ms. Julie McAuley:** The second slide, which looks at the police-reported motor vehicle thefts in Canada, covers the time period from 1977 through to 2009, during which you can see that there has been fluctuation. If you look at that graph, you can see that there was a

period, starting about 1982, through to 1995 or 1996, when we saw an increase. But essentially the trend has been decreasing since 1996.

**Mr. Derek Lee:** I see. Then you might have an individual year when there's an uptick, but the trend line is down?

**Ms. Julie McAuley:** Exactly. In the supplementary information that we gave you there is a series of data tables, and the exact numbers are included in those tables.

**Mr. Derek Lee:** Thank you very much.

Now turning to CBSA, when you were describing CBSA's roles, I heard you mention the immigration role and the food inspection role, but I didn't hear the tax collector role. Do you still collect taxes, customs due?

**Ms. Caroline Xavier:** We collect duties on importation of goods, yes.

**Mr. Derek Lee:** You still have that role? And you didn't include it. It's okay that you didn't, but I didn't hear it in your description.

**Ms. Caroline Xavier:** It's implied in terms of our management of the border. I didn't explicitly state it, but it's part of our mandate.

**Mr. Derek Lee:** You also mentioned your intelligence-gathering role. I know that you do that, and Canadians are happy that you prepare with intelligence. But is your intelligence-gathering role based on some statutory authority, or is it something you simply found necessary to do in your work?

**Ms. Caroline Xavier:** We don't actually gather intelligence. We use intelligence that we get from those who are better equipped to gather it. We work in partnership with our law enforcement partners, such as CSIS and the RCMP, who are the main intelligence gatherers, if you want. We use that type of intelligence to make informed decisions in order to better manage the border.

**Mr. Derek Lee:** Okay, so you don't actually go out and gather your own raw intelligence, but you make use of other partners to provide information, which you then analyze for your purposes.

**Ms. Caroline Xavier:** That's correct.

**Mr. Derek Lee:** Okay.

You also referred to "our law enforcement powers".

**Ms. Caroline Xavier:** "Law enforcement partners", sorry.

**Mr. Derek Lee:** No, you used the words—

**Ms. Caroline Xavier:** I used "powers"?

**Mr. Derek Lee:** —"our law enforcement powers", and I take it that you're referring to your powers under the Customs Act, the Food and Drugs Act—

**Ms. Caroline Xavier:** That would be correct.

**Mr. Derek Lee:** —and the existing statutes? There is no other statute?

**Ms. Caroline Xavier:** No, that would be correct.

**Mr. Derek Lee:** Now, you also referred to the term “prohibited goods”.

**Ms. Caroline Xavier:** Yes.

**Mr. Derek Lee:** Could you describe their relevance to the issue of exporting stolen automobiles before the statute would take effect? In other words, what is it about this term “prohibited goods” that's relevant to us here? What are prohibited goods, and what authority would CBSA have under the legislation to deal with or respond in some way to a prohibited good leaving the country?

**Ms. Caroline Xavier:** Did you want to comment, Mr. Borland?

**Mr. Robert Borland:** Sure.

I guess I'll start with something, and then I'll get to the prohibited goods issue.

In section 101 of the Customs Act it mentions three specific terms, “prohibits, controls or regulates”. So one would be prohibited, one would be controlled, and the other term is “regulated”. When it comes to a particular item, such as a restricted or prohibited firearm, that would be prohibited from import unless the persons importing the item met certain criteria. You may have certain types of drugs—

**Mr. Derek Lee:** Okay, just to be really focused, I'm talking about exports. What is a prohibited good in relation to exports?

**Mr. Robert Borland:** The CBSA's detention powers actually work on both inbound and outbound or exported goods. It's the same provision that authorizes the CBSA to detain items that are either coming in or going out to determine their compliance with the legislation. There are a variety of items that would be considered, at a minimum, to be controlled upon export, such as dual-use goods, or goods that could be used for a legitimate civilian purpose in one context but also could be used for a military purpose in another. Those items would be controlled and their exportation would require a specific permit and that certain conditions be met. Items such as heroin or cocaine would be items that are not only illegal to import into Canada but also illegal to export, because they are considered to be controlled items or prohibited items.

What essentially we're doing with this legislation, and particularly with section 355.3, is to follow the lead of countries such as New Zealand, which explicitly make it prohibited to import and export stolen property, particularly stolen vehicles. So with this legislation, the importation or exportation of these types of items would be prohibited and the CBSA officers would have the legal authority to stop the items as they come in to determine whether or not they actually are prohibited items—i.e., are stolen—and if that's the case, they would contact the local police force or the RCMP, who would then deal with these particular items as evidence of an offence.

• (1555)

**Mr. Derek Lee:** I'm still a little confused about outgoing goods. I understand how everything incoming would be subject to inspection and whatever, but for outgoing goods, there's no outgoing tax. There's no tax if it's not a food or a drug. It's not subject to any of the statutes you operate under for food and drugs, immigration, and customs.

Could you please nail down for me the jurisdiction that you would have to interfere with something in Canada being removed, either on

a ship or by a truck or on a car on a road? Where would your authority come from?

**Mr. Robert Borland:** The outbound search powers do come from the Customs Act. Under section 101, which I mentioned earlier, CBSA officers have the authority to detain items that are leaving the country. But there are also search or examination powers under the Customs Act. These examination powers concern both goods that are coming into and leaving Canada. So there are powers under the Customs Act in—

**Mr. Derek Lee:** Does this relate to all goods?

**The Chair:** Hold on. We're out of time, Mr. Lee.

Just a very brief response.

**Mr. Robert Borland:** The examination powers would apply to all goods. However, there are certain conditions that must be met on export.

**The Chair:** Thank you very much.

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

[*Translation*]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** Ms. McAuley, I have a lot of respect for Statistics Canada. But before legislation is amended, I really like to know how it is applied. I find that the studies you conduct are very useful, but when I get them and have to read them while you are talking, it is quite difficult for me to form ideas.

In the future, would it be possible for you to send us these statistics a few days ahead of time so that we can then ask you meaningful questions? I say this because I feel that these are very important matters.

Michel de Montaigne said that laws should be touched only with a quivering hand. When we touch them, I prefer that we do so, not because of partisan politics, but to solve a genuine problem. I think that the statistical aspect is one we must consider.

That said, it is relatively simple in this case. I have looked at the statistics that you have given us and I would like to know if I would be wrong to say that most motor vehicle thefts are committed by minors.

[*English*]

**Ms. Julie McAuley:** As you can see on slide 5, every year we can look at the number or the age of the persons who are accused of police-reported motor vehicle theft, and we can do this over time. Consistently we have seen that the graph is skewed to people who are in the younger age groups, and we collect the data starting for persons age 12 onward. And we can provide the committee, if you would like, with a time series of this information so you will be able to look at any variability in those trends.

[*Translation*]

**Mr. Serge Ménard:** I do not think that minimum sentences are the issue for minors because they have to be dealt with in juvenile court. Most of the people who commit those crimes would therefore not be subject to minimum sentences under adult legislation.

•(1600)

[English]

**Ms. Julie McAuley:** In terms of youth who are accused, in 2009 it was approximately three of ten persons would be of the age 12 to 17. So they would be tried under the Youth Criminal Justice Act.

[Translation]

**Mr. Serge Ménard:** That may not be the case, but I am old enough to have been practicing law when car theft was punishable by a minimum prison term. I know that things have changed.

I was particularly surprised by section 335 or its equivalent. I was under the impression that taking a motor vehicle without the owner's permission and depriving the owner of his property, as in the case of joy-riding, was still theft. What justifies section 335? It creates the specific crime of motor vehicle theft. When I was a young lawyer, I was told that it was a charge used in order to avoid a minimum sentence. I don't remember what that sentence was.

You seem to be younger than me. Do you remember when the minimum sentence for car theft was abolished?

[English]

**Mr. Craig Grimes (Chief and Advisor, Courts Program, Canadian Centre for Justice Statistics, Statistics Canada):** I'm not aware of a minimum for auto theft. It's not something I've researched. I know that for auto theft, in looking at the court data, the only options are sections 334 or 335, and the annotations in the code suggest that either section would be appropriate, depending on the circumstances. So those become policing issues.

[Translation]

**Mr. Serge Ménard:** Has there been an increase in car theft in Canada since the minimum sentence was abolished?

You could have checked that. You would have to look at 1985, because that was the year when it was removed.

[English]

**Ms. Julie McAuley:** We would be happy to go back and confirm that for you and provide that information to the clerk for distribution.

[Translation]

**Mr. Serge Ménard:** Actually, there was an increase. But it would be useful to check it.

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Is there any time left?

**Mr. Serge Ménard:** I would like to hand over the rest of my time to my colleague.

[English]

**The Chair:** One and a half minutes.

[Translation]

**Mr. Marc Lemay:** Ms. Xavier, your testimony interests me a great deal and perhaps I will have the chance to come back to it in the second round.

At the moment, according to what you say, you have no way of getting access to a car that may have been stolen, correct?

**Ms. Caroline Xavier:** We could get access to a vehicle if, by chance, when we are looking at an export declaration, we see that the declaration is inaccurate in some administrative way.

If the declaration says that a car is in the container and we find a car in the container with a serial number that corresponds to the number on the declaration, everything is legal.

**Mr. Marc Lemay:** Fine, but what would this bill do for you most?

**Ms. Caroline Xavier:** Do you mean if we suspect theft?

If I am told that the container has oranges in it, not a car, and when I examine it, I find a car, then I am suspicious. Then I have to call the local police or the RCMP and tell them that I think I have found a stolen vehicle. At that point, I have to ask for an investigation.

That is all I can do. But the bill lets me at least consult police databases to check if the vehicle really has been stolen. At that moment, I do not have the power to do that.

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

•(1605)

[English]

**The Chair:** Merci.

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

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair, and thank you, witnesses, for being here.

Ms. McAuley, if I can, I'll start with you. In terms of these stats that you gave us today, does this include pickups and small trucks, as well as passenger automobiles?

**Ms. Julie McAuley:** Yes, it does.

**Mr. Joe Comartin:** Does it include heavy equipment, construction equipment, front-end loaders and that kind of thing?

**Ms. Julie McAuley:** We look at land-based motor vehicle theft, which includes cars, trucks, vans, sport utility vehicles, motorcycles, buses, snowmobiles, things like that.

**Mr. Joe Comartin:** No front-end loaders, no forklifts, none of that kind of equipment?

**Ms. Mia Dauvergne (Senior Analyst, Policing Services Program, Canadian Centre for Justice Statistics, Statistics Canada):** Yes, they are included.

**Mr. Joe Comartin:** They are included. Okay.

You haven't separated them out in any way?

**Ms. Julie McAuley:** We can separate them out and supply that to the committee, if you would like.

**Mr. Joe Comartin:** Would you do that? Heavy equipment that's used in the construction trade is what I'm looking for. In particular, what I'm looking for, Ms. McAuley, is to see.... My understanding is this is the one area where there in fact has been a substantial increase in thefts, so I would want to see this over maybe the last five years. If you could, would you just pass that on to the clerk of the committee?



**Ms. Mia Dauvergne:** I'm not sure we can splice out specifically the heavy equipment, but we would be able to separate out the trucks and the cars and the smaller vehicles—

**Mr. Joe Comartin:** Recreational vehicles?

**Ms. Mia Dauvergne:** Right. What we can do is give you all the categories that we're able to drill down to, but it may not specifically be heavy equipment.

**Mr. Joe Comartin:** How do you categorize the heavy equipment?

**Ms. Mia Dauvergne:** We would have a catch-all category of other types of vehicles, because it would be so small.

**Mr. Joe Comartin:** Can you tell us what the other vehicles are in that category?

**Ms. Mia Dauvergne:** We can certainly give you examples.

**Mr. Joe Comartin:** Ms. Xavier, the reason I asked to have your agency come today was to tell us whether you have done an analysis of how much additional work you're going to be authorized to do through these amendments. I'm looking for an analysis of how many additional staff you will be hiring to take on this responsibility and what that's going to cost CBSA.

**Ms. Caroline Xavier:** There is no expectation at this point to proceed to hire new resources or FTs to do this work.

That said, part of the reason we need this legislation is that we are so limited in what we can do, specifically with regard to stolen vehicles, to really understand the magnitude of the situation. What we will do upon receipt of this law is proceed to do more analysis with regard to the types of exports going on. We will specifically focus on stolen vehicles. Just as we did with the probe, we will be able to do more coordinated efforts with our law enforcement partners, and perhaps look in more depth at the types of situations that exist across the country. At that point we would also look at realigning our resources based on our dual mandate.

As you know, our priority is to focus on importation, on what's coming into the country. That said, we have a dual mandate of looking at export and the facilitation of trade. Based on risk analysis and on intelligence information, we would realign our resources, as required, for what we do on a daily basis, because now we'll have this law and we'll really be able to apply it more effectively.

**Mr. Joe Comartin:** That worries me.

I come from Windsor. I don't want you taking staff out of the Windsor office and moving them to Montreal and Halifax, where we already know there is a good deal of exporting of stolen vehicles. Are you saying that, in fact, is a possibility?

**Ms. Caroline Xavier:** I'm not saying they would necessarily be coming from Windsor. For example, when we did the probe, during a six-month period we did a focused effort of having our existing staff focus in the port of Halifax and Montreal with our law enforcement partner. We might do another stint of that nature, but it didn't mean that we took people away from Windsor. We just ensured that those already doing the work in Montreal were giving a more focused attention to certain containers, based on the information we were provided.

Once we have this law, we will be able to do that even more effectively, because we'll work consistently with our law enforce-

ment partners and perhaps have these types of stints. At this point I'm not saying that we would automatically be taking an individual from Windsor and realigning that person to Montreal or something like that. First of all, realigning people of that nature is an expensive proposition. It would mean potentially that on that day, if we have intelligence-based information, we might just say that the people doing imports might be focused a little bit more on exports. They would not necessarily be coming from another port of entry per se.

● (1610)

**Mr. Joe Comartin:** From what you said today in reading your prepared statement, I just can't imagine your doing this additional work and not requiring additional staff, and not just in the major ports, but even in the smaller ports. I'm having some difficulty accepting that as the reality. I just can't believe you're going to be doing that. I'll leave that as a statement. You don't have to respond to it.

In terms of the present situation, though, am I correct in understanding that you have not been allocated any additional funds to take on these additional responsibilities?

**Ms. Caroline Xavier:** That's correct.

**Mr. Joe Comartin:** The intent at this point is to try to do it from within existing staff.

**Ms. Caroline Xavier:** That's correct.

**Mr. Joe Comartin:** Those are all the questions.

**The Chair:** Thank you, Mr. Comartin.

We'll move to Mr. Norlock for seven minutes.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** Thank you very much, Mr. Chair, and thank you to the witnesses for being here today.

My questions will primarily be to the CBSA officials. To an extent I'm taking a line of questioning that Mr. Comartin was on.

With regard to the special program through which 258 stolen vehicles were recovered, I gather from your statement that you used existing people, but just had them more concentrated. Maybe you didn't say, but if I remember correctly, were there not other law enforcement officials working in that program with you?

**Ms. Caroline Xavier:** That's correct. We had the RCMP, along with some local jurisdictions.

**Mr. Rick Norlock:** Would the reason for that be because you didn't have the benefit of this legislation? They had access to the databases that one would require in order to ascertain whether vehicles were stolen or not.

**Ms. Caroline Xavier:** That's correct.

**Mr. Rick Norlock:** If you could just go along with me here, when we were doing another study—from that study came of course these recommendations that we look at this act and prepare additions to the act—one of the witnesses basically said that containers were being loaded, and CBSA officials, because you didn't have the statutory powers to look into the containers.... Because we know you don't look into every container, right?

**Ms. Caroline Xavier:** That's right. Not on the export, that's correct.

**Mr. Rick Norlock:** Not on the export.

You look into containers that your investigative and historical.... From a policing background, I used to call them my alarm bells. So your trained officials smell something fishy going on, so they'll look in a container. Would that be correct?

**Ms. Caroline Xavier:** I'll use the CBSA language—

**Mr. Rick Norlock:** Use the terminology you like.

**Ms. Caroline Xavier:** That would be appropriate.

Basically what happens is when a person provides us with the export declaration, we look at that declaration to determine whether it looks kosher, as you say, whether it looks right, whether what is being exported and the destination it is destined for seem right. Then we will do a random check of the container. So at that point in time, when we're looking at this documentation, should the requirement occur that we would want to do an examination, we would be checking the container to see that it matches the declaration we've received.

**Mr. Rick Norlock:** Thank you.

I always go into these questions with the assumption that somebody at home is looking at and listening to this, and of course in the Ottawa bubble we assume that everyone knows what we mean, but they don't. I think it would surprise Canadians that a country like New Zealand, or any country, would have to make a law that says it's against the law to export stolen goods. Yet you're saying that actually you need that kind of legislation in order to do your job.

**Ms. Caroline Xavier:** That's correct.

**Mr. Rick Norlock:** When you were being asked what kind of material would be exported that you might be looking at, I can think of a couple right off the top of my head. You'd be looking at, for instance, tapes or CDs going out of the country. You would be alerted to perhaps the exportation of child pornography. You would also be looking at certain material that might be nuclear in nature that would be against the law unless there were proper documentation—

• (1615)

**Ms. Caroline Xavier:** Permits.

**Mr. Rick Norlock:** —permits, in order to do so. That's for the benefit of the folks at home.

Going back to the special program, the 258 vehicles stolen, I guess it wouldn't be a stretch of the imagination to say that with this legislation, if adopted and passed as it is to give you those powers, we could start to add zeros to the end of that 258 because now your CBSA folks would have the legislative tools necessary in order for them to begin to put an end to the export of these vehicles, which—

and you can correct me if I'm wrong—actually forms a great part of organized crime in this country.

Would that be a reasonable statement that you would be able to make or we would be able to make to the Canadian people?

**Ms. Caroline Xavier:** It would be reasonable to state that definitely with the authorities, we'll be able to be more effective with our law enforcement partners. How that will materialize in terms of numbers and volume is the question mark. The bonus is that because our law enforcement partners know that we'll have the ability to do this verification check against their database, for example, they know that when they get this call from us with regard to a suspected stolen vehicle, it will be on credible grounds because we'll have done the preliminary analysis. It will not be for nothing that they're coming to the border, for example, to seize that good.

**Mr. Rick Norlock:** Thank you.

The other thing is the intelligence gathering. A lot of people think that it's a clandestine thing, intelligence is scary. In policing we used to call different intelligence white intelligence: white intelligence is intelligence that's available to anybody, whether it's a newspaper or posted on a wall. When you say you don't gather intelligence, would I be stretching it to say that if you or your officials saw something that—I'll use your terminology now—wasn't kosher, and you thought it might be of interest to a police agency or others, there is an in-house system to get that information passed on? Or do you leave it up to the person who wants to make that phone call?

**Ms. Caroline Xavier:** I think that's a fair comment.

What I meant about “gathering intelligence” was just to make sure that it was clear that we're not mandated to be in the intelligence-gathering business. I guess that's the clarity I wanted to provide.

You're right that as part of our business on a daily basis, all the information we're looking at, whether it's advanced commercial information coming in or some other, is a form of intelligence. So you're right. When doing our business on a regular basis, observing things, gathering some form of information and intelligence, if in the exercise of looking at an export container we were to come across something that would be deemed intelligence information, we would proceed to share it with our local enforcement partners or the RCMP, depending who would be the appropriate partner to make contact with on that particular case. So yes, that would be part of what we would do.

**Mr. Rick Norlock:** For the benefit of the people at home, you also would receive information from other sources, not only local police, not only national police, but do you have information sharing with your American counterparts because we share that border, especially in the Windsor area?

**Ms. Caroline Xavier:** There are definitely information-sharing parameters in place with the various partners you've mentioned; yes, that is correct.

**Mr. Rick Norlock:** Thank you.

**The Chair:** Thank you.

Do we want to do another round?

Monsieur Lemay?

[*Translation*]

**Mr. Marc Lemay:** Mr. Chair, I told you that I wanted to ask a question.

Ms. Xavier, I am very interested in what you are saying. The bill is going to be passed, I can tell you that. When it comes into effect, what is going to change in your life every day? A little earlier, you said that you would take a look if the declaration was...Are you going to wait for containers to be checked? If not, are you going to be proactive and make sure that the act is enforced?

• (1620)

**Ms. Caroline Xavier:** We are going to keep doing what we currently do and we are going to be proactive. But the new provisions will let us check police databases. If we find a car in a container, we are going to be able to check whether it has been stolen. At the moment, we cannot do that. When we call the local police, we will be able to confirm that we have found a container with a stolen car in it. That will at least give them some evidence to start with and they will be able to begin their investigation.

**Mr. Marc Lemay:** You said that, in 2008, you did a pilot project under an agreement with the RCMP. That is quite extraordinary. You looked at only 281 containers, but there are millions of them. It means that a number of stolen vehicles have already gone overseas.

**Ms. Caroline Xavier:** That is difficult to say, because we do not know.

**Mr. Marc Lemay:** Take the ones in Abbotsford. There were a lot of them, including Mr. Fast's Mercedes.

**Ms. Caroline Xavier:** I feel that that is part of the problem. We do not know how serious the problem is. We have to become more effective in order to find out.

**Mr. Marc Lemay:** The reason for passing this bill is that there is an immediate need. We know that vehicles are sent overseas.

What about parts? That will be my last question.

**Ms. Caroline Xavier:** Yes, that will be covered in the act, a vehicle or vehicle parts.

**Mr. Marc Lemay:** Great. Thank you.

[*English*]

**The Chair:** Thank you.

For the record, I have never owned a Mercedes or a BMW, although I'm envious of those who do.

Mr. Lee, are you done?

Mr. Woodworth.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Thank you.

I have a quick question, if I may. I was interested in Monsieur Ménard's recalling that the minimum penalty in relation to auto theft may have been removed in 1985. So I wanted to ask the Statistics Canada witness, if she could direct her attention to table 1, which appears to state police-reported motor vehicle thefts in Canada from

1977 to 2009, whether I am correctly apprehending and understanding that in 1985 the rate of police-reported motor vehicle thefts in Canada jumped from about 299 per 100,000 population to about 318 per 100,000 population. Am I reading that correctly?

**Ms. Julie McAuley:** Yes, you are reading that correctly.

**Mr. Stephen Woodworth:** And it seems to me that in 2009 the rate remains even higher than it was in 1985, at 320 per 100,000 population. Am I reading that correctly?

**Ms. Julie McAuley:** Yes, you are.

**Mr. Stephen Woodworth:** Thank you very much.

That's my question.

**The Chair:** Thank you. I want to thank all of our witnesses for appearing here. Your testimony is helpful as we move to clause-by-clause.

We'll take a two-minute break. We'll suspend for two minutes to allow justice department officials to take their places. The meeting is suspended.

• \_\_\_\_\_ (Pause) \_\_\_\_\_  
•

• (1625)

**The Chair:** I reconvene the meeting.

We're moving to clause-by-clause consideration of Bill S-9, an act to amend the Criminal Code for auto theft and trafficking in property obtained by crime.

Monsieur Petit.

[*Translation*]

**Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC):** A point of order, Mr. Chair.

Before we begin the clause-by-clause study, I would like to say that Mr. Ménard's proposal should be given serious consideration. From now on, when we have a government witness like Statistics Canada, we must have the document.

I am as irritated as Mr. Ménard. I would like the document and the accompanying text to be in our hands at least two or three days ahead of time. It is not like the witness is coming from Edmonton, this is a witness from the government. That means it is not someone that we have called, it is someone who works for the government.

Could you make a note that it is important that, if we want to do our job properly, we have to have documents like this in advance from now on, especially statistical documents. This one is 25 or 30 pages long. Let's have them ahead of time!

[*English*]

**The Chair:** Could I ask the clerk to pass that on to Statistics Canada: if it's possible, to get the written material to us ahead of time rather than right at the meeting? It would be helpful. It helps us in asking questions as well.

Ms. Jennings.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** I'm finding myself in the curious position of agreeing with Maître Petit.

**Voices:** Oh, oh!

**Hon. Marlene Jennings:** I know—heart attack. Is there a defibrillator here?

[*Translation*]

I agree more with Mr. Ménard, but I feel that Mr. Petit's point of view is very important, especially when we move to clause-by-clause study after hearing from the witnesses.

It would be different if we had more days and we were hearing from other witnesses at different sessions. But if we got the document on the same day as the witnesses made their presentations, we would at least have the time to get organized if we had questions to ask.

But here, we are going right from the testimony of the witnesses to clause-by-clause study. So, in cases like that, we must insist that witnesses provide us with documents before the day on which they appear.

• (1630)

[*English*]

**The Chair:** We've passed it on to the witnesses so they know for next time.

We have two items. First of all, we want to welcome our two witnesses, our justice department officials. They are Carole Morency and Paula Clarke. Welcome back.

Second, you should have in your possession three amendments. As we move along, we'll do those in order. Does anyone not have the three amendments? There are two Bloc amendments and one Liberal amendment.

All right, we'll move to clause-by-clause consideration.

Pursuant to Standing Order 75(1), consideration of clause 1 is postponed.

(Clause 2 agreed to)

(On clause 3)

**The Chair:** Moving to clause 3, there are two proposed amendments. They are both Bloc amendments. I would ask Monsieur Ménard to introduce the first one.

Go ahead, Monsieur Ménard.

[*Translation*]

**Mr. Serge Ménard:** Actually, the two amendments are intended to remove the minimum sentence of six months for motor vehicle theft. It applies from line 8 to line 12. That is the intent. If we remove the minimum sentence, we will no longer need the second paragraph, and that is actually the intent of the second amendment.

For once, I find it relatively lenient. It targeted a specific goal with moderation.

It is true that, generally speaking, I do not find minimum sentences to have sufficient effect on crime rates to make them into a habit. Recently, the Conservative government has consistently given us the impression that they really are making it a habit.

Personally, I am really afraid of this trend. It is an American trend and it gives the United States one of the highest incarceration rate in the world: over 760 inmates per 100,000 Americans. In Canada, we have between 103 and 116, according to last year's statistics. Canada is comparable to western Europe, Australia, New Zealand, and so on.

That is why I have a horror of using minimum sentences systematically. But I will say that I am in favour of some minimum sentences.

My position is not rigidly ideological. I agree with keeping them for murder, because it is one of the most serious crimes. Murder is voluntary homicide, so the criminal intent is really reprehensible.

For minor violations, I agree with minimum sentences for repeat offences. Drunk driving, for example, is a crime committed by people who are generally not criminals. Criminologists know that, in those cases, minimum sentences can have a positive effect, especially when they are kept for repeat offences. In cases like these, I acknowledge that we are dealing with repeat offences. That is why it seems to me, as a general principle, that those who want to impose a minimum sentence must bear the burden of proving that there is a real need for a minimum sentence in order to get a positive outcome and that there is no other way to do so.

Now, the statistics clearly show that the rate of motor vehicle theft has increased. With the minimum sentence disappearing in 1985—I rely on my colleague Mr. Petit for that, but I have not checked it myself—the increase was not that great, and, even then, it was followed by a drop. I feel that the statistics showing the drop prove once again that prevention measures often have a much better effect on the crime rate. The subsequent drop corresponds to the difficulty in stealing motor vehicles.

Because young people are committing a lot of motor vehicle thefts, we see very clearly... It is called joyriding. They are fascinated by cars. I went through that. Rest assured that I never stole a car, but I remember how fascinated people are by cars when they are young. It is a young person's crime. But you still need a certain amount of skill to get a car started without the keys.

• (1635)

With time, we have developed...then we got results. We often get better results through prevention. So there have also been campaigns to remind people to lock their car doors. You have seen that the crime rate keeps going down.

In spite of those changes, I do not see that the government has proved to our satisfaction that a minimum penalty is necessary. That is why I would stick to my general policy of being against minimum sentences as a principle, unless I can be shown convincingly that this minimum sentence will have a major, tangible major effect on the kind of crime we want to target.

That is why I share my party's view, one that we have consistently expressed in previous years when dealing with bills on this issue. I am not hiding the fact that these amendments that we are proposing are exactly the same as the ones that Réal Ménard proposed to similar provisions in previous bills on the same subject. I have the numbers of those bills somewhere.

[English]

**The Chair:** Merci.

I have on the list Mr. Dechert, Mr. Woodworth, Ms. Jennings, and Mr. Lemay.

We will begin with Mr. Dechert.

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

First of all, Mr. Chair, I'm a little confused by Mr. Ménard's position at this point in raising this objection and putting forward this amendment. I was in the House on October 6 when this bill was debated. I listened very intently to what he had to say. With respect to the mandatory minimum sentence he said the following:

We've seen this in the United States, where there are many minimum sentences. Moreover, this is one of the problems with minimum sentences. In this case, there is no such problem. I feel that a six-month sentence for a third offence is reasonable. It can certainly act as a deterrent. As honourable members can see, the Bloc's objections are not ideological, but are based on rational knowledge, experience, and criminology.

All I can say is that I agreed with Mr. Ménard then; I thought he made a good point. I think many people in the House of Commons who heard that did.

Secondly, we heard from a number of witnesses, when we were traveling in Winnipeg and other cities during our study of organized crime, about the large number of auto thefts that are committed by a small number of repeat offenders. During the debate in the House, we heard about some of the tragic cases that have come out of some of these auto thefts in which innocent people have been killed by the stolen cars driven by repeat offenders.

For example, there is a very famous case, which Mr. Ménard will remember, that we heard about in Winnipeg, in which a young woman was jogging. She was struck and killed by a stolen car driven by a repeat offender who in fact was out with the intent of seeing how many joggers he could hit. It is a very famous case there. In the case that I believe in part the Nunn commission was responding to, my recollection of the facts—and Mr. Murphy can perhaps correct me, if I'm incorrect about it—is that a young repeat offender who was driving a stolen car killed a victim with that stolen car.

There is a lot of evidence to suggest that many of the worst crimes committed with stolen vehicles are committed by repeat offenders. A mandatory minimum penalty will not only send them a message that this is not tolerable behaviour; they will have to think a long time, while they're in that jail sentence of six months, thinking about what they have done and the danger they cause to the public.

And obviously, while they're in incarceration they can't be committing another auto theft and putting the public in danger, as the individual did in the case that led to the Nunn commission.

Thirdly, I would point out that under this legislation the prosecutor has a discretion to decide whether to proceed by way of summary conviction or indictment. If he proceeds by way of summary conviction, there is no mandatory minimum; the mandatory minimum only applies when he chooses to proceed by way of indictment. Obviously the prosecutor will look at each case, and when he has a serious repeat offender who he thinks poses a threat to the public, that's when he will proceed by way of indictment, which would result in the mandatory minimum penalty.

For all those reasons, Mr. Chair, it's my view that a mandatory minimum penalty of six months after the third offence of this sort is very reasonable and actually quite limited. For those reasons, I would ask all the members of this committee to vote against this amendment and support the bill as drafted.

• (1640)

**The Chair:** Thank you.

We'll move to Mr. Woodworth.

**Mr. Stephen Woodworth:** Thank you very much, Mr. Chair.

I can't quite understand how it is that although we hear all the time that crime statistics are going down, when we actually see evidence that they're going up, the response is "Oh, well, they fluctuate up and down. It doesn't matter." I don't see how we can ignore the evidence we've heard today that apparently around the time the mandatory minimum was removed, there was a jump in motor vehicle thefts reported to the police, and I notice that it almost doubled in the ten years following that. While we've wrestled it down again, probably with great devotion of police resources, it has still never returned to where it was in the mid-1980s. We just can't ignore that evidence.

Second, this is a commercial offence at the point that you're getting to the third conviction. We are not talking about young offenders. We're talking about adults, and the evidence we've heard is that the number of adult charges for taking a motor vehicle without consent has gone up since the year 2001. It was previously below 2,000 and now it's over 2,000. As well, the evidence we have heard is that for adults, the total number of charges for property obtained by crime has gone up since 2001. It was 28,444 in 2009 and it is now 30,183, so we're not talking about young offenders here; we're talking about adults.

Nor are we talking about committing joyriding, as Monsieur Ménard mentioned. Nothing in this statute removes the offence of joyriding. If someone is charged with joyriding, that person is not going to be subject to a minimum penalty. If they are convicted of theft of a motor vehicle—it is entirely different from joyriding—three times, at that point they will be subject, at the prosecution's discretion, to a mandatory minimum penalty.

For those reasons I hope we won't take an ideological approach, and that in this particular case, because of the evidence before us that he was good enough to draw to our attention, perhaps Monsieur Ménard can see his way clear to agreeing with the mandatory minimum.

Thank you.

•(1645)

**The Chair:** Go ahead, Ms. Jennings.

[*Translation*]

**Hon. Marlene Jennings:** Thank you, Mr. Chair.

I very much appreciate the comments that our colleague Mr. Ménard is making to justify the amendments he is suggesting, but I am not going to be able to support them.

I would like to explain my reasons briefly. First, these minimum sentences would not apply to young offenders. Secondly, in my opinion—and I hope I am accurately reflecting his words—for once, the Conservative government has zeroed in on a problem with surgical precision. Third, the minimum sentence proposed by the bill is quite lenient.

And because of the fact that the government has once more gone to the trouble to establish that it has to be a third conviction for the same offence, I feel that I can support the clause in Bill S-9 as written, with no hesitation or difficulty, and I am comfortable doing so.

I am very comfortable justifying my vote for the clause as written and against the amendments that you are proposing, Mr. Ménard.

[*English*]

**The Chair:** Thank you.

We'll go to Monsieur Lemay.

[*Translation*]

**Mr. Marc Lemay:** I would like to agree with everything that has been said, but you know I have some difficulty with minimum prison terms. What concerns me about minimum sentences in this bill, and what intrigues me...The rate of motor vehicle theft has clearly gone down. But what concerns me is that it has increased in the Northwest Territories and the other territories in the north.

You know that I also sit on the Standing Committee for Aboriginal Affairs and Northern Development. Clearly, statistics can be made to say anything. Manitoba has lost its championship, of course; unfortunately, the province now ranks third. I feel that it is going to go ever lower because of the measures taken by the police forces. But the problem is growing in the north. So we have Inuit stealing skidoos because it is part of their reality. They do not steal cars; they steal snowmobiles, which are motor vehicles to them.

When I was a lawyer, I went around the north. I had clients there, and we could feel this coming. They are going to steal four-by-fours, they are going to steal skidoos, and they are going to end up in prison for a minimum of six months.

I have reservations too. I would likely share Ms. Jennings' opinion. I would vote against minimum sentences. I have always voted against them because I do not feel that they are the solution.

But now we are getting into something dangerous. If you look at the statistics on page 3, in the column called Northwest Territories, you will see that it is not just about skidoos. Ms. MacAulay brought the table to show us. What we are doing now is dangerous. That is why I would really hesitate to impose minimum sentences. At least, I

would wait a little, even if it means going back to it later. Motor vehicle theft is dropping everywhere, except in the north.

I can assure you that in Quebec, where there were 351 thefts, a lot of them were in and around Montreal. That is clear, we know that.

**An hon. member:** There are some in Trois-Rivières.

**Mr. Marc Lemay:** There are some in Trois-Rivières as well, but there are a lot in the north, in Nunavik.

Kids steal...I say "kids", but the gentleman is right, these are adults who are 18, 19, 20 or 21 years old and they are stealing snowmobiles and quads, lots of quads. That is what concerns me most: we are going to be filling up our prisons, but with Inuit and Aboriginals. For me, that is a greater concern than minimum prison terms.

•(1650)

[*English*]

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

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** I have a question on this amendment.

I adopt everything Marlene said and therefore would be supporting this mandatory minimum, but I want, in my own head, to be assured that we have a correct understanding of the hierarchy of offences in our heads.

If you look at part IX of the Criminal Code, which deals with offences against rights of property, there are things like theft, armed robbery, criminal interest rate, breaking and entering, and being in a dwelling house unlawfully. There's something here about oyster beds, which I found fascinating. Anyway.... It goes to the modernity of the code.

The way I read it, the most serious offence in this section is armed robbery. In 1995 there were mandatory minimums attached to some of those serious offences. We're now putting theft of a car at the next plateau in terms of mandatory minimums. I don't think there are any others, and we're leaving on the tree—maybe there will be other pieces of legislation coming forward—breaking and entering for the purpose of committing a crime, being in a dwelling house unlawfully, some of the other offences, and then just normal theft. It may be the right message that we see armed robbery as extremely serious, with heavy mandatory minimums. We see auto theft for the third time as something that needs to be curbed in society, and we see some of the other offences to be handled at the discretion of a judge in giving up to the maximum of whatever the case may be—six months, ten years.

Am I right that this is the only section of part IX that has a mandatory minimum?

I am happy to support this measure, but the message should be sent to the government, or the next government, that we need to look at the code and prioritize. If you looked in our communities and found that somebody has been the subject of a third home invasion, you might want to think of that as something you might want to look at as well, as long as it's measured and as long as it's proportional. In this case, this is fairly proportional, so I support it.

Thank you.

**The Chair:** Thank you.

Mr. Lee.

**Mr. Derek Lee:** Thank you.

I had one quick question because the issue of joyriding came up. I just wanted to ask the officials if an individual could be charged with both joyriding and auto theft arising out of the same facts. And depending on the answer to that, could an individual be convicted of both, arising out of the same set of facts?

**Ms. Paula Clarke (Counsel, Criminal Law Policy Section, Department of Justice):** Yes, that's correct. Joyriding is not a lesser and included offence, but actually a separate offence, and it is possible to be charged and convicted for both.

**Mr. Derek Lee:** Interesting.

I just wanted to say as well, in connection with the mandatory minimum, that if this were a “three strikes and you're out” thing, I wouldn't support it. It appears that it isn't a “three strikes and you're out” thing, because in order for a third or subsequent offence to involve a mandatory minimum, the prosecution would have to be by way of indictment. So I guess discretion is in the hands of the crown.

Have I got that right? Can the officials confirm that?

**Ms. Paula Clarke:** Yes, discretion is left with the prosecutors to decide on any given offence—but in this case in particular a third or subsequent offence—whether the facts of the case warrant proceeding by indictment, thus going after the six-month mandatory minimum penalty, or whether a summary conviction is the most appropriate course to take in a given fact situation.

•(1655)

**Mr. Derek Lee:** So in theory an individual might actually have four or five convictions, with the crown choosing on the third and the fourth not to proceed by way of indictment—

**Ms. Paula Clarke:** That's correct.

**Mr. Derek Lee:** —and then eventually say “Okay, you've got five, we're going to go by indictment, and there's a mandatory minimum attached”.

**Ms. Paula Clarke:** That's right.

**Mr. Derek Lee:** Okay, thank you.

**The Chair:** Thank you.

Are we ready to deal with the amendment?

(Amendment negated)

**The Chair:** There's also a second Bloc amendment to the same clause.

Monsieur Ménard, did you want to withdraw that, or do you want to have it voted on as well?

[*Translation*]

**Mr. Serge Ménard:** I expect the vote to be the same. In my presentation, I said that the second amendment is a consequence of the first, because it deals with the way in which we are going to calculate prior offences. But if you want to move to a vote right away...

[*English*]

**The Chair:** If you're happy to move on, I'll call the question on clause 3.

**Mr. Brian Murphy:** Are we not supposed to vote on the amendment?

**The Chair:** We already voted on the first amendment. Now, with the second one, I understood everyone was prepared to move on.

If you want to vote on the second one, I will.

**Hon. Marlene Jennings:** Call the vote on his second amendment. That's what I understood.

**The Chair:** All right, we'll call the vote on the second Bloc amendment.

(Amendment negated)

(Clause 3 agreed to on division)

(On clause 4)

**The Chair:** For clause 4, we have one amendment from the Liberals.

Mr. Lee, did you want to present that?

**Mr. Derek Lee:** Thank you, Mr. Chair.

As I read this bill and the amendments, I saw in proposed subsection 353.1(2) the definition of “vehicle identification number”. The way it's described there is:

For the purpose of this section, “vehicle identification number” means any number or other mark placed on a motor vehicle for the purpose of distinguishing it from other similar motor vehicles.

Now, putting a mark on a vehicle could include your name. You might paint your name on a vehicle, but more importantly, it appears to include a provincial motor vehicle licence plate, and I am not sure that is what was intended. Most of us think of a vehicle identification number as one of these stamped markings that show up on the engine block and on various other parts of a motor vehicle, placed there by the auto manufacturers.

What we have, then, is a section—and I'll ask officials to comment on this—that just by the bare words of the definition includes a vehicle licence plate.

Then the charging section notes:

Every person commits an offence who, without lawful excuse, wholly or partially alters, removes or obliterates a vehicle identification number on a motor vehicle.

In theory, then, the act of removing your licence plate from the motor vehicle would constitute a criminal offence. In theory, somebody who simply took the motor vehicle licence plate from the motor vehicle would be committing an offence. I'm just taking the plain wording of this definition. On the face of it, someone who had vanity plates in a garage and removed them from the vehicle would be committing an offence unless he or she had what is described here as a “lawful excuse”. In other words, the burden is on the person. The offence is there unless the person has a lawful excuse.

I don't think our criminal law should be criminalizing very normal, routine acts, or be placing the burden on the citizen to have a lawful excuse to do something that up until this point in time he or she had every right to do, which is to remove the vanity plates.

If someone who was gathering intelligence—a police officer, a CSIS agent—for whatever purposes in an operation decides to remove a licence plate or alter a licence plate, you may say they have a lawful excuse. They might or might not.

I looked for a way to fix this and I thought that maybe we should remove the motor vehicle licence plate from the definition and clearly say that it's not included, but maybe the drafters really did intend a licence plate to be part of the definition. Then I thought that what I'd really like to do is switch the burden so that the person doesn't have to have a lawful excuse; rather, someone who removes a licence plate or alters a vehicle ID number must do it with intent to impede or obstruct in the identification of a motor vehicle. That would put the citizen back on neutral ground. That is the intent of my amendment.

In my amendment I've added words. After “A person”, it would read:

who, with intent to impede the identification of a motor vehicle and without lawful excuse, wholly or partially alters, removes or obliterates the vehicle identification number on the motor vehicle

That is the purpose of it. I'd like the officials to explain to me in whatever way they could—and my colleague may want to try as well—why a motor vehicle licence plate is not included in the current definition of “vehicle identification number” as it's set out here.

• (1700)

**The Chair:** All right. We'll have our officials respond.

I have a list of Mr. Rathgeber, Mr. Norlock, Monsieur Lemay, and Mr. Woodworth. We already have a long list. I'm sure everyone wants to jump in.

**Mr. Derek Lee:** Mr. Chair, this is at this point not a debate. I'm looking for an answer from the officials.

**The Chair:** That's what I said: we'll hear from the officials

**Mr. Derek Lee:** Okay.

**The Chair:** I then listed those who have asked to speak.

Ms. Clarke.

**Ms. Paula Clarke:** With regard to the VIN, I think if you look at a plain definition of the wording used, it refers to a “number”. Normally in the course of using a VIN, it's an 18-digit number. But when you look at provincial licence plates, they have numbers and letters. So I think even with just a straight interpretation of this definition, it would exclude provincial licence plates.

**Ms. Carole Morency (Acting General Counsel, Criminal Law Policy Section, Department of Justice):** Perhaps I can add to that.

If you look at where the VIN appears on the vehicle, it appears in a number of places and it appears for the purpose of actually identifying that part of the vehicle or the vehicle as a whole. The licence plate, which is issued under a provincial regulatory and legislative framework, is used for different purposes as opposed to

identifying the different bits and pieces that go into making the vehicle.

So a literal interpretation of the definition of VIN would not include a licence plate, because a licence plate is not offered for the purpose that a VIN is.

**Mr. Derek Lee:** But a licence plate is a “number or other mark placed on a vehicle for the purpose of distinguishing it from other similar motor vehicles”. You may say it is not, but whether it's numbers or letters, it is a mark—at least it is a mark—and those numbers and marks are placed on a motor vehicle precisely for the purpose of distinguishing it from other motor vehicles, because every licence is different.

The officials seem to be very assured about this. I am not. But I'm willing to stand down here and let officials respond. Colleagues may want to ask more on it.

**The Chair:** One more response, and then we'll move on.

**Ms. Paula Clarke:** I have just one more point to make.

I'm not an expert on licence plates, but a licence plate is used to trace a given vehicle—not necessarily based on its make or model—to an owner. It's the process of identifying the person who owns the car.

The vehicle identification number is the process of saying this car, for instance, was made in this factory, it is this make and model, and it is this year. It specifies that this 2008 Chevy Uplander is different from a physically similar 2008 Chevy Uplander. They are seemingly identical—but different.

Again, the VIN is used to trace the identity of the car, whereas the licence plate is used to link the identity of the owner with the car.

• (1705)

**The Chair:** Just to confirm, licence plates can also be transferred from car to car. It's not specific to a car except for a temporary period of time.

**Ms. Paula Clarke:** That's right.

**The Chair:** Mr. Rathgeber, you're next.

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

That was my point, that the licence plate is specific to the owner, not specific to the vehicle. It is not in any way employed to distinguish a motor vehicle from a similar motor vehicle. Its purpose is to identify the registered owner.

I don't see any ambiguity with the section just drafted, and I'll be voting against Mr. Lee's proposed amendment.

**The Chair:** Mr. Norlock.

**Mr. Rick Norlock:** Thank you.



My point is very similar, except, just to assist the witnesses, the vehicle identification number also includes letters as well as numbers. It identifies not only the vehicle but also, as you stated, where it was made, the colour of it, the engine. It basically tells the people in the garage everything about that vehicle so that if you put it on another vehicle—in other words, you take it off and put it on another vehicle—it doesn't match. Sometimes the complete VINs are placed in various locations, and other times there are partial VINs, all to assist in the identification of the vehicle.

As you say, the licence plate only identifies who is the proper owner of the vehicle, not the identification of the vehicle, although the VIN number is included in the licence plate to assist police in verifying that.

**The Chair:** Mr. Lemay.

[*Translation*]

**Mr. Marc Lemay:** This is rare indeed, Mr. Chair, but I agree with everything my colleagues have said. This is a funny old meeting. I will go further. As my colleagues opposite say, it already is an offence to steal a licence plate. It is simple theft under the Criminal Code. The vehicle identification number is something completely different, I agree with them completely. That is associated with the car, whereas the licence plate is associated with the owner.

[*English*]

**The Chair:** Thank you.

We'll go to Mr. Woodworth.

**Mr. Stephen Woodworth:** Thank you.

Of course the very phrase “licence plate” references a licence, not a vehicle. I would also point out, for Mr. Lee's benefit, that while a licence plate may be temporarily attached to a vehicle, it distinguishes the vehicle from all other vehicles, not merely from similar motor vehicles, which is the point of the vehicle identification number.

I would also point out for Mr. Lee's benefit that if he were right that removal of a licence plate in this proposed bill would create an onus on the person who removed it, he would be even more aghast to see that subsection 354(2) of the Criminal Code creates an onus on the possessor to prove that the vehicle wasn't stolen. We already have a reverse onus in section 354 that says if you remove a VIN it's evidence that the vehicle was stolen. We're not departing at all from the principle of burden of proof relating to a VIN in this act any more than we were in subsection 354(2).

Lastly, I want to make a plea for simplicity and say that I would prefer not to add unnecessary words to a statute. I would ask why you would not criminalize any VIN removal without lawful excuse. If there is a lawful excuse, it's a different matter. But I think that phrase does encompass it completely.

Thank you.

• (1710)

**The Chair:** Right.

Finally, we have Mr. Murphy.

**Mr. Brian Murphy:** I have a question for the officials. I won't reiterate what's been said.

I'm sorry, Derek, I'm not going to vote for your amendment. But we're still friends.

**Mr. Derek Lee:** We were.

**Some hon. members:** Oh, oh!

**Mr. Brian Murphy:** It's a tough life here.

I have a question about section 353. That stays, and that's dealing with the automobile master key. We're inserting proposed section 353.1, which is the obliteration of the VIN as an offence.

Then we move to section 354, which is now going to be called possession and trafficking in VINs. But it's not until 354 that we... Sorry, am I wrong on any of this?

**Ms. Paula Clarke:** Possession and trafficking in VINs?

**Mr. Brian Murphy:** Sorry?

**Ms. Paula Clarke:** I'm sorry, I shouldn't have interrupted you.

**Mr. Brian Murphy:** Well, I could be wrong. But am I wrong that we don't define vehicle...? I think it's not intentional, but Derek has got us on to something.

The VIN is not defined in the section that makes it an offence to obliterate it. Is that in proposed subsection (2)?

It's the same one as in subsection (2) of having possession, which is now.... Is it the same? Why doesn't it have letters in it?

I guess what I'm saying is that section 354 stays, gets a new name, and has that definition section of VIN. In the one we're proposing, section 353.1, it has “for the purpose of” in subsection (2). Why doesn't it have, more specifically, a number or letter or a definition that's...? We all know what a VIN is, but I'm not sure that is the best wording for it.

In fact, if you took Derek literally, you could say that a VIN means any number or other mark placed on the vehicle. It's possible—I'm just thinking about defence lawyer tactics. Why don't we work on a better definition of VIN? Or do you think that's the best there is out there?

**Ms. Paula Clarke:** We used the same definition that is provided under subsection 354(3), for consistency. At the time this was drafted, this was a definition that was consistent with industry practices.

I think that if you want to look at the issues of letters as well, that would be covered under “mark”. I feel confident that—

**Mr. Brian Murphy:** You're confident. Has it ever been tried or used or anything?

**Ms. Paula Clarke:** The definition?

**Mr. Brian Murphy:** Yes.

**Ms. Paula Clarke:** Not that I've ever come across. That doesn't mean it's not out there, but I have researched case law and I haven't seen that.

**Mr. Brian Murphy:** Thank you very much.

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

Now, Mr. Lee, do you want to withdraw the amendment, or do you want to have a vote on it?

**Mr. Derek Lee:** No, I want the record to be pretty clear that we considered this. We want the whole world to know that licence plates are not intended to be included in this, so I'd prefer to have a vote, because members think it's unnecessary to have the amendment.

So let's call the vote.

**The Chair:** Okay, we'll call the question on the amendment to clause 4. This is amendment LIB-1.

(Amendment negatived)

(Clauses 4 to 13 inclusive agreed to)

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

We have somebody here. We're going to have a discussion on it at this time, all right?

Ms. Jennings.

**Hon. Marlene Jennings:** I'm mindful of the reminder you gave to all members of the committee at our last clause-by-clause consideration of Bill C-22, I believe it was, at which the majority members on the committee defeated the short title because the amendment amending the short title was deemed inadmissible.

I do have a concern about this short title. I do not believe the English version of the short title accurately and appropriately expresses the French version of the short title.

• (1715)

[*Translation*]

In French, the short title is *Loi visant à contrer le vol d'automobiles et le crime contre les biens*. But,

[*English*]

in English, the short title says this act may be cited as the Tackling Auto Theft and Property Crime Act. I do not believe that in any way accurately translates or represents this bill, whereas the French short title does.

So I'm asking if the government is at all open to perhaps modifying the English clause so that it more accurately represents the French short title, which in fact does represent accurately the bill itself, whereas I do not believe the English short title does.

Is there any openness to try to find an English short title that more accurately represents the actual body of the bill, the objective of the bill, in the way that the French title does? Because the French title does it very well.

**Mr. Bob Dechert:** We have no instructions on that. In fact, Ms. Jennings, if there had been an amendment earlier we could have had direction on it.

**The Chair:** I'm advised that any change that would simply ensure the English and French titles are the same would be a technical amendment, which would be acceptable.

**Hon. Marlene Jennings:** Okay. In that case, I would propose the following amendment regarding the short title, clause 1: that clause 1

read, "This Act may be cited as the Addressing Auto Theft and Property Crime Act."

That's for the English version only.

**Mr. Marc Lemay:** Repeat that slowly, Madam.

**Hon. Marlene Jennings:** Okay: "This Act may be cited as the Addressing Auto Theft and Property Crime Act."

One word would change. We would change the word "Tackling" to "Addressing".

**The Chair:** You've made that amendment as a motion?

**Hon. Marlene Jennings:** Yes, I propose that amendment.

**The Chair:** Monsieur Ménard.

[*Translation*]

**Mr. Serge Ménard:** Luckily, I have with me the *Merriam-Webster English Dictionary*. Under "tackle", they mention football, but they also define it as "to attach or secure with" and as "to seize, take hold of or grapple, especially with the intention of stopping or subduing, (b) to seize and throw down or stop". That is for football. It seems to me that that is what we want to do.

[*English*]

**The Chair:** Mr. Woodworth.

**Mr. Stephen Woodworth:** I've done a quick search, and I'm looking at it differently in the translation.

[*Translation*]

"Loi visant à contrer"

[*English*]

seems to be law aimed at countering. That's the way I read it in French.

[*Translation*]

"Loi visant à contrer le vol d'automobiles et le crime contre les biens"

[*English*]

is law aimed at countering automobile theft and property crimes. So if you want to use "countering" instead of "tackling", I guess you can go with that French translation. I don't recall what word Madam Jennings used...addressing.

**Hon. Marlene Jennings:** If you want to do a friendly amendment...countering.

**Mr. Stephen Woodworth:** I'm just saying that "addressing" doesn't seem to be quite the same.

**The Chair:** Right now we have a motion on the table. Is that a friendly amendment being suggested to the amendment?

**Mr. Stephen Woodworth:** I'm not making it a friendly amendment. Just to be clear, my point is that "addressing" doesn't seem to fit the bill.

**Hon. Marlene Jennings:** Then I would amend my amendment by removing "tackling" and inserting "countering".

**The Chair:** I believe you can only do that with the consent of the members.

**Hon. Marlene Jennings:** I know I won't get consent.

• (1720)

**The Chair:** Do we have consent to change that?

**Some hon. members:** No.

**Hon. Marlene Jennings:** Then may I ask that the vote be called on my amendment?

**The Chair:** Does anybody else wish to speak to her amendment?

(Amendment negatived)

**The Chair:** Mr. Murphy.

**Mr. Brian Murphy:** The purpose of this is to make the two versions coincide, and in my imperfect Acadian roots way of looking at this,

[*Translation*]

“Loi visant à contrer”

[*English*]

means “aimed against”. So I would move that the word “tackling” be replaced by the words “aimed against”, so that the short title would be: “This Act may be cited as”.... Oh, no. A law aimed against is what I meant, so I'm going to have to add “A law aimed against auto theft and property crime”.

“Law aimed against” seems accurate to me. With all due respect, “addressing” was a little weak, and “tackling” is a little too strong. It gives the impression that this is all done.

This is a good bill. This has new elements in it and is aimed at being against the theft of automobiles. I don't think it's a big problem.

**The Chair:** Okay, we have that on the table. Is there any discussion?

Monsieur Ménard.

[*Translation*]

**Mr. Serge Ménard:** I think we are getting tied up in shades of meaning. I think that we are a long way from the problems that you have noticed in other acts, rightly, and that you have pointed out.

Personally, I would put my trust in the translators from the Department of Justice, who I feel are the best in the world at translating from English to French. When I look at the definition in the *Merriam-Webster* and the one that Mr. Woodworth found in some other English dictionary, it looks like a correct translation of “Loi visant à contrer le vol d'automobiles” to me.

[*English*]

**The Chair:** All right. Is there anybody else?

(Amendment negatived)

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

**Some hon. members:** Agreed.

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

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

**Some hon. members:** Agreed.

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

**Some hon. members:** No.

**Some hon. members:** Agreed.

**The Chair:** The bill carries. Thank you.

Mr. Comartin.

**Mr. Joe Comartin:** Mr. Chair, can we do that on division?

**The Chair:** All right. The bill carries on division.

Shall the chair report the bill to the House?

**Some hon. members:** Agreed.

**The Chair:** Thank you.

If you could spare me one minute, I just wanted to talk about the next meeting. Right now scheduled for the next meeting is Bill S-215, which is suicide bombing. We will have the sponsor of the bill and we will have a justice department official available. Then we move to clause-by-clause. My guess is it will only take an hour.

Do you want me to schedule in anything else? I expect by Thursday we're also going to have a consultation report. As soon as we receive it we'll distribute it to you.

There are a couple more bills: there is Bill C-16 and there's also Bill S-6, faint hope. Do you want to get started with faint hope in the second hour of the next meeting?

Mr. Comartin.

**Mr. Joe Comartin:** Don't we have a private member's bill as well?

**The Chair:** Yes, we do. We had the organized crime study as well.

What's your wish?

**Hon. Marlene Jennings:** I personally would prefer that if we've only got that one hour—because we figure that we're going to deal with the suicide bombing within the first hour—we return to organized crime and give that one hour, rather than split up new bills that are coming before us. I'd prefer the new bills when we've got the two solid consecutive hours to deal with it.

That's just my personal preference, but I'm in the hands of the committee if the majority—

• (1725)

**The Chair:** Do we have consensus to do that at the next meeting?

Mr. Comartin.

**Mr. Joe Comartin:** I'm okay with that, but I would like to.... Are we going to have a meeting of the steering committee?

**The Chair:** Yes, we're trying to arrange it. That's the second item.

We sought some dates from you, the three critics from the government side. The problem is Mr. Murphy and Mr. Ménard are not available tomorrow but they are available on Monday. Mr. Comartin, yours is the converse: you are available tomorrow but not available on Monday. So we're going to have to find another time—

**Mr. Joe Comartin:** I'm not available on Monday. What time on Monday?

**The Chair:** I wouldn't know. This would have come from—

**An hon. member:** Are we on the public record now?

**The Chair:** Yes, we are.

**Mr. Derek Lee:** We could terminate and continue these discussions without having to get them translated—

**The Chair:** We could do that in camera, but then they'd have to switch everything over. We're just winding up the meeting here.

So if you want to leave it up to me to try to find some other times when we could have a steering meeting.... But we have tried, and so far we haven't found a date that suits everybody.

**Mr. Joe Comartin:** I'm available on Monday.

**The Chair:** Are you? Okay, then we'll schedule it for Monday.

**An hon. member:** Monsieur Ménard's not there.

**The Chair:** Sorry, Monsieur Ménard....

Mr. Comartin is not available on Monday—that's what it says here.

[*Translation*]

**Mr. Daniel Petit:** Mr. Chair, I think that Ms. Jennings' suggestion should be looked at by the steering committee, because we can deal with a matter in an hour. With matters that are a little more substantial, we need two hours. So you have to consider that possibility in your discussions, so that we can study as many bills as possible.

This is just a suggestion because I am not a member of the steering committee.

[*English*]

**The Chair:** Monsieur Petit, I think we have consensus: we're going to move to the organized crime study after we deal with Bill S-215. So I think we've got agreement on that.

In terms of the steering committee, we'll try to find a date that works. If you're saying you're available on Monday.... Monsieur Ménard's office appears now to have said no, so that was just wrong information I had here.

Monsieur Ménard, you are not available on Monday, correct?

**Mr. Serge Ménard:** Tuesday to Friday.

**The Chair:** All right, we'll try to find another date.

The meeting is adjourned.

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