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# Standing Committee on Justice and Human Rights

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EVIDENCE

**Wednesday, May 8, 2013**

—  
**Chair**

**Mr. Mike Wallace**



## Standing Committee on Justice and Human Rights

Wednesday, May 8, 2013

• (1605)

[English]

**The Chair (Mr. Mike Wallace (Burlington, CPC)):** I call this meeting to order. Ladies and gentlemen, thank you for joining us for our Standing Committee on Justice and Human Rights, meeting number 73.

We have half an hour until the bell. So hopefully we can move forward.

There are a couple of things to deal with, from an operational perspective. I heard from some of my colleagues on the committee that they wish that, if other members of Parliament are here to talk to a private member's bill, they are able to participate in the debate. Also they wish, if the members in question are not members of a recognized party in the House and have not been subbed in as that, that the committee have the right to vote on whether those individuals be able to sit at the table and ask questions of the officials as we're going through clause-by-clause. I said that would be fine.

Yes.

**Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC):** I agree with what you're saying, but it's not our wish. It's what the procedure provides for.

**The Chair:** I have double-checked on that.

**Mr. Robert Goguen:** Me too.

**The Chair:** I even checked with the clerk. I'm not going to get into a debate on it. My position is that we will put it to a vote. In this case the member is not here but may show up, because of timing. My request is to ask the members whether the mover of this motion, Madame Mourani, is able to sit at the table during the discussion of clause-by-clause.

I'll take a vote on that.

**Ms. Isabelle Morin (Notre-Dame-de-Grâce—Lachine, NDP):** Can we have a recorded vote?

**The Chair:** Sure.

All those in favour of that?

**An hon. member:** [Inaudible—Editor]

**The Chair:** Here's the question. The question was to sit or to intervene. My position is this. If there are amendments to their bill and they have questions to ask, either of the officials or of the mover of the amendment, I think it's fair that they can ask a question. I

would not allow a filibuster. I'm not recognizing them as members of the committee, in the sense that they don't get a vote and they don't get to.... They can ask their question and get their answer. If they don't like the answer.... I won't recognize them in the speaking order, in terms of filibustering.

I think it's only appropriate with a private member's bill that they have that opportunity. It's so rare that an individual, an independent member gets a private member's bill to come this far, but it does happen. It is happening. I think it's the first time since I've been here, in seven years.

Inadvertently, I guess, I did that without the committee's support. I'd like that decision to be made by the committee from here on in, and I can be consistent with that.

Go ahead, Mr. Albas.

**Mr. Dan Albas (Okanagan—Coquihalla, CPC):** I have a point of order, Mr. Chair. First of all, I'd just like clarification. You were making a motion?

**The Chair:** No. I'll ask somebody.

**Mr. Dan Albas:** Further to that, it's a hypothetical situation. If individuals aren't here to present themselves to join in with the committee, for whatever reason, I don't think we should be wasting another iota on this. You've made your position very clear. There's no need for a vote because the situation doesn't warrant it.

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

**Ms. Françoise Boivin (Gatineau, NDP):** That's a good point, but I still want to talk about it, on a point of order.

**The Chair:** Let me go to the next point, which I think I did make an error on. Or, at least the rules allow for, if the time that is allocated on our orders of the day.... We were in the middle of a clause, so I wanted to finish up that clause before we quit.

What I will do from now on is, at the time allotted in the orders of the day, I will ask the committee members whether they would like to continue or not. It's only a majority vote for that; it's not a unanimous procedure. I will make sure I do that from here on in. I apologize for that confusion, but I wanted to finish clause 3. I should have asked the committee, and I will do that from here on in.

Is there any other comment on this, before we go to—

• (1610)

**Ms. Françoise Boivin:** What I understand is that, if ever the situation arises, you will ask or somebody will ask, we will vote, and that's it.

**Voices:** Yes.

**Ms. Françoise Boivin:** Excellent. Thank you very much.

**The Chair:** Okay. Thank you.

We are now on to clause-by-clause.

**Mr. Robert Goguen:** I have a motion, Mr. Speaker. It has been discussed with Madam Boivin, I believe, and the Liberal Party, perhaps not Mrs. Sgro.

We voted previously on clause 1. I seek unanimous consent to reopen the discussion on clause 1. Actually, Madam Boivin picked up on this during earlier discussions, and it has to do with the Bedford case, which is before the Supreme Court of Canada.

You'll recall that we voted in favour of clause 1. This bill would impose a mandatory consecutive sentence in cases where a person has been convicted under section 212 of the Criminal Code, the procuring provision, and any other offence arising out of the same events or series of events. You'll also recall that we addressed clause 1 in the context of Liberal amendment 1, but we did not discuss the substance of the clause.

As I say, there's the issue of the Bedford case before the Supreme Court of Canada. I know you're aware of this, and it's expected to be heard by the Supreme Court of Canada in June. The court will be considering the constitutionality of several of the Criminal Code's provisions regarding prostitution, including one of the procuring provisions, the procuring offence under paragraph 212(1)(j), living off the avails of prostitution, which this squarely deals with in clause 1.

In my view, this committee should carefully consider this matter and seek further input from the Department of Justice on the matter. For this reason, I would move a unanimous consent to reopen the discussion on clause 1 of Bill C-452 for further consideration by the committee. It may be appropriate to consult the expert here on this, Mr. Chair, if we do get the unanimous consent.

**The Chair:** The motion you're moving, Mr. Goguen, is a motion that needs unanimous consent to rescind the approval of clause—

**Mr. Robert Goguen:** Correct, to reopen the discussion.

**The Chair:** To reopen that.

**Ms. Françoise Boivin:** Do we need to debate that? Just discuss it? It's not debatable?

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

I'm receiving a motion to rescind what we've done and we need unanimous consent for clause 1. All those in favour?

**Some hon. members:** Agreed.

**The Chair:** Clause 1 is back on the floor. I will give you the floor.

(On clause 1)

**Mr. Robert Goguen:** I will ask the expert, Mr. Taylor, to comment and explain the rationale.

**Mr. Matthew Taylor (Counsel, Criminal Law Policy Section, Department of Justice):** Thank you. I think the rationale is fairly self-evident. We have ongoing litigation, as you've alluded to, before the Supreme Court of Canada. I guess one of the facts of passing

legislation that would amend the Criminal Code in a way that would touch upon a provision that is currently the subject of constitutional litigation would be that if the legislation were found unconstitutional, the provisions that Parliament had chosen to amend would no longer have any force or effect.

It's obvious what the implications might be. The discretion ultimately rests with Parliament, though, in terms of what it chooses to do.

**The Chair:** Mr. Seeback.

**Mr. Kyle Seeback (Brampton West, CPC):** I understand that. So if it's ruled unconstitutional by the Supreme Court, then we have a section of this bill, an amendment to the Criminal Code, that's unconstitutional.

But what happens if the Supreme Court rules that it's constitutional and we've taken this out? Is there an ability to put it back in? I don't see how there is. It would have to be another private member's bill, or something like that. Is that my understanding?

**Mr. Matthew Taylor:** I think you're right. If you choose to take it out and it's found to be constitutional, then the opposite holds true. If you haven't passed legislation, then obviously this type of provision wouldn't exist in the Criminal Code. At some point, were the government or a private member interested in seeking amendments to the Criminal Code to allow for that kind of reform, then that would be a decision they would have to take.

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

Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** Here's how I see things. When I mentioned the decision in the Bedford case, I simply wanted to argue that our whole debate on section 1 may have been pointless, since we don't know what position the Supreme Court will adopt. The amendment proposed in Bill C-452 does not affect the correction the trial judge asked parliamentarians to make. It was not related to types of sentences, but to the offence itself. I think that's more or less applicable.

However, I am always somewhat reluctant to amend a provision that has already been submitted to the courts. We may want to err on the side of caution and wait for the Supreme Court's ruling. I have no problem with that approach. However, I fully support the proposed amendment to section 212 of the Criminal Code concerning sentence types, provided that it is considered constitutional.

It's simply a matter of delaying the process. Mr. Seeback is right. If the Supreme Court concludes that those provisions are entirely constitutional, the issue will come before us again and we will have to consider it once more. Perhaps someone else could propose an amendment. Even the government could do that, since it really seemed to support this bill.

•(1615)

**The Chair:** Thank you.

Mr. Goguen, go ahead.

[English]

**Mr. Robert Goguen:** In essence, this may or may not be problematic, but it would be totally disrespectful to substitute our decision with the Supreme Court of Canada, with this being in play.

As Madame Boivin quite rightly said, it doesn't shut the door forever, we can come back to it. We'll be respectful of the Supreme Court of Canada, and deal with the issue as need be, depending on how they decide the Bedford decision.

**The Chair:** Thank you.

Mr. Albas.

**Mr. Dan Albas:** Thank you, Mr. Chair.

I'm going to agree with the parliamentary secretary. I think it's undesirable to proceed at this time, in this particular set of circumstances.

Thank you.

**The Chair:** Madame Sgro.

**Hon. Judy Sgro (York West, Lib.):** Mr. Taylor, would it not prejudice the decision if this had royal assent prior to the Supreme Court making a decision?

**Mr. Matthew Taylor:** I don't know if it's fair to say that it would prejudice the decision. The interplay between Parliament and the Supreme Court, I think, is well known. You as parliamentarians have the ability to enact legislation as you see fit. I would suggest that were you to pass an amendment of this nature, the parties would notice that, if it had occurred prior to the case being heard by the Supreme Court.

I don't think it would go unnoticed.

**Hon. Judy Sgro:** It would influence it, yes.

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

Is there any other discussion on clause 1, now that it's back on the table?

**Mr. Robert Goguen:** The motion would be to strike it, then.

**The Chair:** Yes, if you vote against it, you strike it.

(Clause 1 negated)

(Clause 4 agreed to)

(On clause 5)

**The Chair:** Clause 5 has a government amendment, G-4.

I'll turn it over to the parliamentary secretary, if he would like to introduce his amendment.

**Mr. Robert Goguen:** Thank you, Chair.

We propose that clause 5 be amended.

This clause proposes to modify the provisions that impose a reverse onus for forfeiture of proceeds of crime for certain designated offences, to apply also to procuring and trafficking offences. The Criminal Code currently provides for forfeiture of proceeds of crime as part of sentencing, upon application by the crown, after conviction for a designated offence.

Where an offender has been convicted of certain serious offences, the offender is required to prove that their property is not proceeds of crime. This means that a reverse onus is imposed on the offender. Our proposed amendments would make the reverse onus for forfeiture of proceeds of crime apply only to trafficking in person offences.

One of the procuring offences, paragraph 212(1)(j), living on the avails of prostitution, is currently subject to the charter challenge, Bedford versus the Attorney General of Canada, which is currently before the Supreme Court of Canada. It's expected to be heard in June 2013, and the amendments to any of the provisions impugned by this case should await the Supreme Court's decision on the constitutionality.

**The Chair:** Thank you.

Madame Boivin.

[Translation]

**Ms. Françoise Boivin:** I was glad to see that the government had considered the decision in the Bedford case regarding clause 5. However, I was surprised to see that it had not done the same with regard to clause 1, but I guess that's okay.

[English]

**The Chair:** Madam Sgro.

**Hon. Judy Sgro:** Thank you very much.

Thank you for your indulgences. I'm filling in for Professor Cotler on an issue that I think is really important to all of our people, especially when, particularly, you say that.

The concerns that we have regarding the amendment are that it apparently changes what's caught by the "proceeds of crime" provision. The current wording in Bill C-452 adds "procuring or trafficking in persons".

As much as we support the government's amendment, to the extent that it removes the phrase "procurement", it certainly is a procurement offence in section 212 of the Criminal Code, which is before the Supreme Court—we all know that. We do not want to prejudice any of the parties or the court, in the determination of the case. Indeed, of particular concern is that the procurement offence contains the "living off of the avails" provision, to which applying proceeds of crime might prove problematic and undesirable, in relation to prostitutes who take measures for their safety and protection.

The concern we have with the rest of the government's proposed change is that specifying human trafficking offences, instead of using the phrase "trafficking in persons" might be far too narrow in the event, for example, if someone is charged with numerous offences related to trafficking, but perhaps the trafficking charge itself does not hold.

We certainly understand that from a legislative drafting perspective, clarity in the code is desirable, and we would not want to have extended discussions of what is, and is not, trafficking, relative to the proceeds of crime upon sentencing. With that said, we do have concerns that someone who has engaged in or assisted in human trafficking, but is not charged with that specific offence, would not be subject to the proceeds of crime provision.

• (1620)

**The Chair:** Thank you.

Is there anything further to the amendment?

(Amendment agreed to)

(Clause 5 as amended agreed to)

**Hon. Judy Sgro:** Mr. Chair, I believe Ms. Mourani, as the mover of the bill, would like to speak to it.

**The Chair:** As I indicated to the committee, out of respect to the committee, you need to move that the individual gets an opportunity to ask questions, and then I'll take it to a vote.

**Hon. Judy Sgro:** I move a motion that Ms. Mourani be allowed to speak to the committee.

(Motion negatived)

(On clause 6—*Coming into force*)

**The Chair:** There is government amendment, G-5.

**Mr. Robert Goguen:** This has to do with the coming into force, Mr. Chair.

We propose that clause 6 be amended. This clause proposes that the bill comes into force 30 days after it receives royal assent. Our proposed amendments would specify that the bill would come into force on a day or days “to be fixed by order of the Governor in Council”. This would ensure the provinces will have had the time to prepare for the bill's enactment, since the provinces enforce the Criminal Code.

**The Chair:** Okay.

Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** This is a problem for me because, during the study of Bill C-452, we all agreed in saying that the offences in question were serious. I have seen government bills take up to a year or a year and a half to be passed. The argument related to provinces is not the problem here; this is a classic case of procrastination.

Sometimes, deciding when a piece of legislation should be implemented has to do with politics. This is absolutely not a problem for the provinces, which know very well what we look at when we study bills related to criminal law. Quebec's minister of justice is fully up to speed, and that is the case for all other bills. The same goes for all other provincial ministers of justice.

I understand the Supreme Court's argument. I absolutely don't want to have any problems—for instance, a case where one of the two parties appearing before the Supreme Court may use what we are doing to argue that this is a message from the government.

That being said, the message was clear. This piece of legislation will come into force 30 days after it receives royal assent. We know exactly when that will be. In short, either we are serious or we are not.

[*English*]

**The Chair:** Okay.

Mr. Albas.

**Mr. Dan Albas:** Thank you, Mr. Chair, and I know Madame Boivin served with me on the scrutiny of regulations committee for a period of time, and at that committee this issue has come up from time to time. I think it's perfectly reasonable that we as a body decide to delegate that parliamentary authority to the government so the government can choose a date that they can put out.

Again, this particular bill will go through a whole rigmarole, I'm sure, at the Senate. So I think it's reasonable that we delegate that authority because there has been—and I'm sure Madame Boivin can attest to this—cases where that was not clear as to the date. That has caused challenges and raised the ire of the scrutiny of regulations committee. So I would just simply suggest that passing this onto the government to choose a pertinent date will probably lead to better law, not just in the implementation but also for that particular committee.

Thank you.

• (1625)

**The Chair:** Monsieur Goguen.

[*Translation*]

**Mr. Robert Goguen:** I want Ms. Boivin and the members of the committee to know that we are taking this bill very seriously. Frankly, if we were to impose this on the provinces without consulting them, we would be taking the matter lightly. The province of Quebec may well be ready tomorrow, but we cannot be sure that all the other provinces are as well. That's why we are asking for some indulgence and proposing the amendment. We want to be able to work with the provinces. As we know, the application of justice comes under their jurisdiction.

[*English*]

**The Chair:** Is there anything further to this amendment?

Madam Sgro.

**Hon. Judy Sgro:** Thank you very much.

Again, all of the committee recognizes that it's an important issue and it's something that clearly needs some attention from all of us as parliamentarians. So I'd like to amend it as follows:

This Act comes into force on a day to be fixed by order of the Governor in Council, but not later than twelve months after it receives royal assent.

The idea of just leaving it out there in no man's land...it could easily stay there for quite a while. I think it's far too important to just leave it there and it's a way of showing our respect and concern that we have as parliamentarians on that issue. So once it receives royal assent, then it comes into force within twelve months. That seems to me to be reasonable because by that time we're going to hear from the Supreme Court and the issue will be dealt with in a different way altogether.

**The Chair:** Okay. Give me 35 seconds so the legislative clerk can see if the subamendment is in order.

The subamendment is in order, so we'll allow it to stand. Is there any further discussion on the subamendment?

Mr. Albas, and then Madam Boivin.

**Mr. Dan Albas:** Mr. Chair, I just want to point out that I certainly appreciate where members across are coming from; however, you made it apparent to all the parties that if they did have amendments to have them in by a certain time. You've been generous, fair, and even-handed in that response as far as amendments are concerned.

I just find that these last-minute amendment processes, especially if we don't have this in writing, make it very difficult when we are talking about things that are going to affect people's lives, particularly when we're talking about the Criminal Code of Canada.

**The Chair:** I'll agree with you. It's nice to have them in advance, Mr. Albas, but the rules by which we operate around here allow you to move amendments on the fly as long as they're current and in order with whatever is being discussed.

**Mr. Dan Albas:** But you agree with me that you're even-handed?

**Voices:** Oh, oh!

**The Chair:** Based on your discussion with me earlier, I'm not sure that you believe I'm even-handed.

Madam Boivin.

[*Translation*]

**Ms. Françoise Boivin:** Thank you, Mr. Chair.

I like my colleague Judy Sgro's subamendment. I will digress for a moment, while I have the floor. It's too bad we cannot hear from the person behind the bill. It is specified that this act comes into force 30 days after the day on which it receives royal assent. I assume that this did not come out of nowhere. Verifications were probably made, but we will not necessarily know that.

As things currently stand, I don't see how the government or the Conservative Party members could object to a 12-month time frame. That's plenty of time. I even think it's a bit much.

As my colleague Mr. Albas said, the bill will be examined by the Senate and analyzed to death—including the amendments adopted in committee. While the bill goes through those steps before coming back to the House and being passed, the Department of Justice officials will already be able to start working on it. I think we have the ability to do things right. When the government wants to proceed quickly, it can impose an extremely fast pace. It would be very unfortunate if this matter failed to move forward, since we did have a nice unanimity.

We should be careful when examining regulations. You know that the Standing Joint Committee on the Scrutiny of Regulations sometimes has to examine very extensive regulations, and that can take time. One of the problems is that it always takes too long and that overly lengthy time frames are set.

We should probably be consistent with our own actions, given the nature of the offences and the upcoming change—the onus reversal. That change will not so much affect the administration of justice as it will affect lawyers and judges who will have to enforce the law. One need not have taken a big law course to be able to make the necessary adjustments.

• (1630)

**The Chair:** Thank you.

[*English*]

Speaking to the subamendment, we have Monsieur Goguen.

**Mr. Robert Goguen:** I appreciate the intent of what Madam Sgro is trying to do, but we will stick with what we've proposed, if only so we can ensure that we do not trample on the provincial jurisdictions, and there are a number of them.

**The Chair:** Merci.

Are there further comments on the subamendment? Seeing none, I'll call for a vote on the subamendment.

(Subamendment negatived)

**The Chair:** We're back to the main amendment, amendment G-5 from the government. Is there any further discussion on the main amendment? Seeing none, I'll call for a vote on the amendment.

(Amendment agreed to)

**The Chair:** Now we're on clause 6. Is there any further discussion of clause 6 as amended? Seeing none, I'll call for a vote.

(Clause 6 as amended agreed to)

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

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

**An hon. member:** Forthwith.

**The Chair:** That might be tomorrow. Maybe. We'll see.

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:** Just before we go, the bells are not ringing yet, which is great, because I have two items. One is a budget that is front of you to—

**An hon. member:** I so move.

**The Chair:** The budget's been moved. Is there debate on this item? All those in favour?

(Motion agreed to)

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

That deals with the budget and with this bill that is going back to the House.

Here's my suggestion. On the Wednesday we get back we were going to have a discussion, but if you don't mind, why don't we have an agenda and procedure committee meeting on the Wednesday we get back? Then we'll settle what we're going to do from there on in, until the close of the House for the summer.

**Mr. Robert Goguen:** It's important that we don't rush and that we do it right.

**The Chair:** Is it okay with everybody if we do that on the Wednesday?

**Ms. Françoise Boivin:** The bells are ringing. At five o'clock we vote. It takes about five minutes.... Can't we take 15 minutes so that on the Wednesday we can start with something? Otherwise, we're doing absolutely nothing.

**The Chair:** We would have a subcommittee meeting on Wednesday. It was just a suggestion.

**Ms. Françoise Boivin:** Don't you think we can just...?

**The Chair:** We can decide right this minute. There have been discussions amongst the parties that, on the Wednesday we get back, the officials would come to talk to us about section—

**Ms. Françoise Boivin:** Okay. That takes five minutes just to officialize, and then—

**Mr. Robert Goguen:** Why don't we do it right now?

**Ms. Françoise Boivin:** Yes.

**The Chair:** All those in favour that on Wednesday that would be the agenda item?

**Ms. Françoise Boivin:** Marvellous.

**The Chair:** It would be for the officials to come and give us an overview of the issues in the Criminal Code dealing with the section that has changed with regard to official languages.

**Mr. Robert Goguen:** We'll set the parameters and what we have to ask the provinces—

**Ms. Françoise Boivin:** Voila.

**Mr. Robert Goguen:** —so that the ball will be in the provinces' court and we'll move forward.

**The Chair:** That's what we'll do on the Wednesday, then. Okay?

**Ms. Françoise Boivin:** Excellent. That's perfect. Thank you.

**Mr. Robert Goguen:** See? We don't delay things.

**Ms. Françoise Boivin:** That's excellent.

**The Chair:** Mr. Seeback, do you have your hand up for anything?

**Mr. Kyle Seeback:** No. I was voting in favour.

**Voices:** Oh, oh!

**The Chair:** Okay. That's what we're going to do on the Wednesday we get back.

Thank you very much. Enjoy your voting for the rest of the afternoon.

The meeting is adjourned.

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