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Chair

Mr. Anthony Housefather

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• (0855)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good morning, everyone, and welcome to the meeting of the justice committee that everybody is waiting for today. Our discussion is on Bill C-84, an act to amend the Criminal Code with regard to bestiality and animal fighting.

I'd like to welcome the student group here today—it's great to have you. I think all the committee members are excited to have so many people in the room on our clause-by-clause on the bill. Clause-by-clause means that we're going through amendments to a bill. This is a bill that was proposed by the government, and different committee members have heard from witnesses and will now be proposing amendments.

It's a pleasure to have Mr. Davies and Mr. Erskine-Smith join the members of the committee this morning.

It's also a pleasure to be joined by witnesses from the Department of Justice: Madame Carole Morency, director general and senior general counsel; and Ms. Paula Clarke, counsel, criminal law policy section. Welcome, both. You will be helping us if we have questions on any of the amendments.

We'll now get to the list of amendments.

(On clause 1)

The Chair: The amendment we have to clause 1, LIB-1, is essentially the identical point as PV-2, NDP-2 and CPC-1, just put in a different part of the code. It has exactly the same effect, to apply rules to a conviction in the bestiality section that people can't own animals.... Those rules were in different sections and didn't apply to this offence. Each of these amendments—PV-2, NDP-2 and CPC-1—would become moot if LIB-1 was adopted, because it achieves the same thing.

Mr. Erskine-Smith, this is your amendment. You have the floor.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): It's pretty straightforward. Others have proposed similar amendments. It's to get at what witnesses brought forward, and I think there was unanimity on this subject. I'll leave it there. I think it speaks for itself.

The Chair: Mr. Davies.

Mr. Don Davies (Vancouver Kingsway, NDP): Thank you.

The NDP supports this motion, obviously. We have an identical motion.

I had a question about drafting. In proposed paragraph 160(5)(b), the wording says to compel the “accused” person to pay for the care of the animal they allegedly injured, and we're wondering if that's the proper terminology. By definition, the person would have been convicted. You wouldn't compel an accused person to pay; you would compel the person convicted of the offence.

As a matter of drafting, I think that would be a concern I'd raise with my colleagues, to see if we should change that.

The Chair: That's perhaps for the department officials.

Madame Morency or Ms. Clarke, could you comment on that? I think that language is already in the Criminal Code in a different section. Could you explain why it's “accused” and not “the person convicted”?

Ms. Paula Clarke (Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): The language used in the motion is identical to the language that's already used in section 447.1. The term “accused” is used simply because it's used in other areas in the Criminal Code. I believe the term “convicted individual” is not used in the code.

As well, if you look at the chapeau in subsection 447.1(1), it says, “The court may, in addition to any other sentence that it may impose”, so that would lead the court to conclude that there has to be a conviction.

The Chair: I understand.

Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: Obviously, this is drafted by legislative drafters, and I know there was some conversation about redundancy in “animal” versus “bird”. I wonder if you could comment as to whether it makes sense to just say “as an animal” and delete “or a bird”.

Ms. Paula Clarke: Yes, we would support removing the phrase “or a bird”. In section 160, the definition of bestiality does not include “or a bird”, so that would be consistent with the terminology in the section.

Mr. Nathaniel Erskine-Smith: I hadn't caught it in the first instance, but I think it makes some sense to amend it by striking “or a bird” after “as an animal”, in both 160(5)(a) and 160(5)(b). In proposed paragraph (b), I think it occurs twice, but in each instance striking that makes sense, given section 160.

The Chair: So in proposed paragraph 160(5)(b), you're proposing to strike "or a bird" in lines 3 and 4.

Mr. Nathaniel Erskine-Smith: In lines 3 and 4, and then again in the second-to-last line there.

The Chair: And in proposed paragraph (a), it would be in the third line.

Mr. Nathaniel Erskine-Smith: It's the third line, yes. I think it makes sense.

The Chair: Mr. Davies.

Mr. Don Davies: I think we are talking about two issues here. I'll go back to the point I was making earlier.

I don't think it's a huge issue, but I'm looking at other sections of the Criminal Code, in particular sections 740 and 741, under "Restitution". They use the term "offender": "An offender who fails to pay all of the amount" and "the court is considering ordering the offender to pay a fine".

We all know what it's meant to mean, but I'm wondering if this section shouldn't say "compel the offender to pay for the cost". Maybe that's a better term than "accused". I still think "accused" is not the proper term to be used here.

The Chair: Ms. Morency.

Ms. Carole Morency (Director General and Senior General Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): I would agree.

In terms of the basis or the rationale, the model used for it is the one that exists now in section 447.1, and there it does use "the accused", but the point is correct. Today, if everything were to be completely modernized and updated, normally the language would be "the offender", because this is part of the sentence that is imposed on the person who is convicted.

The point that my colleague made was that what is missing from LIB-1 right now is the language that appears in 447.1, in the chapeau, which is "in addition to any other sentence that it may impose under". That's important, I would suggest, for the committee to consider, because it is a clear signal to the court that this is part of a sentence that should be imposed. There is that other distinction the committee may want to consider.

• (0900)

The Chair: Are you proposing we start this sentence by saying, identically to 447.1, "The court may, in addition to any other sentence that it may impose under subsection 445(2)"?

Ms. Carole Morency: It would end with.... It would be, "in addition to any other sentence that it may impose", then comma, and then you have (a) and (b), with the changes that have been noted about the deletion of "or a bird".

One of the other distinctions would be.... Perhaps the legislative drafters would comment that normally you would put sentencing provisions together in a provision. Here, you have the definition that Bill C-84 is proposing as subsection 160(4), and LIB-1 would propose to put the additional penalty provision after the definition. In the end, I guess it's all there, but it's probably a drafting thing.

The Chair: Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: Just for clarity, because I'm more comfortable with respect to ordering payment that it be the offender.... Is that the only paragraph, or are you also suggesting that the prohibition "from owning, having the custody or control of or residing in the same premises" would be about "offender" versus "accused"? I can understand there why it might actually be "the accused" in some instances.

Mr. Don Davies: I had caught it specifically in proposed paragraph (b).

Mr. Nathaniel Erskine-Smith: Yes, that makes more sense.

Mr. Don Davies: That's the only one, but I see what you mean. It depends on whether you're thinking that there could be an order made pending conviction.

Mr. Nathaniel Erskine-Smith: Exactly.

Mr. Don Davies: I think it's broader in (a), so it should be "accused" there, but (b) should definitely be "offender".

Mr. Nathaniel Erskine-Smith: That makes sense to me as well.

The Chair: I am wondering about the inconsistency between this clause and the existing section of the Criminal Code. I assume that if I'm incredibly lenient, we could then propose another amendment to amend that section of the Criminal Code as well, but given the fact that the court would have to impose a sentence in order to get there, is there any possibility that someone who has not been convicted would be touched by the word "accused" in (b)? The court must be imposing a sentence in order to get there.

I agree that the word "offender" is better, but I'm just wondering about having the same paragraphs in two sections of the Criminal Code with inconsistent wording.

Mr. Davies.

Mr. Don Davies: I'm not sure where the inconsistent references you're referring to are. Could you help me with that?

The Chair: This is a cut and paste from paragraphs 447.1(1)(a) and 447.1(1)(b), which are under "Order of prohibition or restitution".

Mr. Don Davies: Are you're saying, Mr. Chair, that some of the section still uses the term "accused"?

The Chair: Yes.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): It's for the current section 447.1.

The Chair: Yes, exactly. It's (a) and (b).

I don't want there to be a question of interpretation as to whether we meant something different by this section—

I'm sorry. Go ahead, Ms. Morency.

Ms. Carole Morency: Thank you.

Just as a general approach, certainly modelling the other provision that's there now would help with the consistency so that you are ensuring that, to the extent the existing provision has been interpreted and applied, courts will be looking to implement it in a consistent manner, and you will avoid some of the potential that may come from different language and any unintended consequences.

The other thing I would note.... I would remind the committee that section 2 of the Criminal Code does define “offender”; “accused” does not have a definition, but we know what it means. “Offender” means:

a person who has been determined by a court to be guilty of an offence, whether on acceptance of a plea of guilty or on a finding of guilt

On balance, then, if the department were asked whether there is a preference, generally we would tend to go with using the existing model, just to ensure that you more likely have consistent application of a similar provision.

● (0905)

The Chair: Mr. Barrett.

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): To Mr. Erskine-Smith's point, is your intention, for people who have been accused, that an order be placed while they are awaiting trial? Would that typically be handled through release conditions by a judge while they're awaiting trial? Was that the intention, to compare the sentencing with awaiting sentence?

Mr. Nathaniel Erskine-Smith: Honestly, the intention was just to take what we heard and to take the wording that existed in the code and apply it to this section.

Mr. Davies, I think, raised a good point. My point in drawing the distinction between proposed paragraphs (a) and (b) is that I can imagine a court wanting to make an interim order to prevent an accused—pending conviction and pending trial—from owning an animal if there is a serious offence and a prima facie basis for doing so.

There's no great intention, other than that it made sense to copy and paste, but copying and pasting appears to be more complicated than that.

The Chair: Just so we know where we are right now.... Mr. Erskine-Smith, in addition to the language you're currently proposing, I assume you have deemed these friendly amendments and you are accepting them. In proposed subsection 160(5), instead of “The court may”, we're now saying “The court may, in addition to any other sentence it may impose”. As well, in all the places where it says “animal or a bird”, you're striking the words “or a bird”.

The conversation has been about whether or not we should replace the word “accused” with the word “offender” in proposed paragraphs 160(5)(a) and/or 160(5)(b), presumably (b) being more important than (a), I understand. The department has weighed in, saying that we create an inconsistency with the existing wording in section 447.1, which has already been interpreted. I don't know that anybody has ever heard of a problem with the interpretation that's been given to that section.

Therefore, may I make a suggestion, colleagues? I get the point, and I agree with Mr. Davies. However, given that this wording is in another part of the code, I don't know that it's wise to have two contradictory words, because then somebody is going to say there's a reason we did that.

Maybe we can just move, with that amendment, to debate. Is everybody in agreement with that amendment?

Some hon. members: Agreed.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): I'm not in agreement with using the word “offender” instead of “accused”.

The Chair: We're using “accused”.

Mr. Virani.

Mr. Arif Virani (Parkdale—High Park, Lib.): I have two points.

First, maybe Ms. Morency could comment on whether the current provisions under the code with respect to bail conditions prior to conviction being entered are flexible enough to allow for precisely what Mr. Erskine-Smith has been referencing, a prohibition in the interim from having possession of an animal.

Second, if we're looking at marrying the current 447.1 with Mr. Erskine-Smith's current amendment, there's also the issue of ordering. I think that was also raised by Ms. Morency.

The Chair: The department mentioned that the ordering leads to the same conclusion.

I don't think you're gravely concerned about the ordering, if I have that right.

Ms. Carole Morency: That would be an issue for our colleagues, the legislative drafters, in terms of what the usual approach is. Ultimately, if the committee is concerned with the core elements that it wants to ensure are there, I think you can address it that way.

The Chair: Okay.

Mr. Nathaniel Erskine-Smith: I have no strong views on ordering, as far as it goes. I defer to the drafters and their preferences.

The Chair: You worked with a legislative drafter on this.

Mr. Nathaniel Erskine-Smith: Yes. I certainly didn't draft this myself. As long as he gets what we're trying to drive at, that's the goal here. I defer to the drafters on that.

The Chair: Yes.

Ms. Morency.

Ms. Carole Morency: The way Bill C-84 reads now, as introduced, the definition of bestiality was added as proposed subsection 160(4), after the offence provisions. If they are following the usual order, the Criminal Code would say, “This is an offence, and here's the penalty. In addition to that penalty, here would be the prohibition order or restitution.” The definition would normally come at the end of the sequencing of the subsections.

● (0910)

Mr. Nathaniel Erskine-Smith: So, in terms of ordering, it's as simple as taking the definition of bestiality and placing it in proposed subsection 160(7), and bumping everything else up.

Is that right? That sounds fine to me.

The Chair: What are you proposing within the scope of your amendment?

Mr. Nathaniel Erskine-Smith: It would just be an ordering issue.

I understand that the definition of bestiality would become proposed subsection 160(7), and everything else would.... “The court may, in addition to any other sentence that it may impose” would now become proposed subsection 160(4), with 160(4)(a) and 160(4)(b). Then, the breach of order—“Every one who contravenes an order”—which is currently 160(6), would become 160(5), and 160(7)—“Sections 740 to 741.2 apply”—would become 160(6). Then the definition of bestiality would become proposed subsection 160(7).

That is what I understand. That sounds fine to me.

The Chair: Okay.

You referenced 160(5)(a) and 160(5)(b)—

Mr. Nathaniel Erskine-Smith: They are now 160(4)(a) and 160(4)(b).

The Chair: Okay.

Mr. Nathaniel Erskine-Smith: Everything in my amendment just becomes.... We have 160(4)(a) and 160(4)(b). Then six becomes five; seven becomes six; and the definition of bestiality becomes proposed subsection 160(7).

The Chair: Yes, I understand.

Again, the first line would be 160(4), and then 160(4)(a) and 160(4)(b). Then we have five and six, as application, and then the definition of bestiality would move down to seven.

Does everybody get that, colleagues? Is everybody okay with that?

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

(Clause 1 as amended agreed to)

(Clause 2 agreed to)

(On clause 3)

The Chair: On clause 3, we have three identical amendments: PV-1, NDP-1 and LIB-2. The three are identical. The two that aren't carried would just disappear.

Ms. May submitted it first. She's not here. The next submission was NDP-1.

Mr. Davies.

Mr. Don Davies: Thank you, Mr. Chair.

Briefly, the way I understand the current section of the Criminal Code.... Subsection 447(3) reads:

A peace officer who finds cocks in a cockpit or on premises where a cockpit is located shall seize them and take them before a justice who shall order them to be destroyed.

As it's presently worded, it's mandatory that the seized birds be destroyed. The proposed amendment would leave it to the discretion of the authorities to determine whether there is any ability to rehabilitate the animals, or birds, on a case-by-case basis.

The Chair: Are there any comments on that one? I think this is probably agreeable to everybody because we previously discussed this at committee.

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

(Clause 3 as amended agreed to)

The Chair: The next amendments were PV-2, NDP-2 and CPC-1. Those are deemed not receivable, because of the carrying of LIB-1, which was identical in terms of effects.

Now we move to CPC-2.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair.

This amendment would simply amend subsection 490.011(1), which defines a designated offence in order to require an individual who is defined as a designated offender to register in the sex offender registry.

Currently, it provides that an individual who is convicted of compelling the commission of bestiality under subsection 160(2) would have to register, as well as an individual convicted under subsection 160(3)—namely, bestiality in the presence of or by a child.

This amendment would close the loophole so that anyone convicted of a bestiality offence would be required to register. It closes what I believe is a loophole, which is supported by the testimony of the sergeant from the Ottawa Police Service.

● (0915)

The Chair: Would it be bestiality simpliciter that would be covered by this?

Mr. Michael Cooper: Yes, that's right.

The Chair: Okay.

Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Can I just ask the officials for their take on this?

Maybe I'll preface it this way: I'm a little concerned that if we're making it bestiality simpliciter, and the effect of that is a requirement to be on the sex offender registry, there could be circumstances in which there is no risk to an individual—as there would be in other instances, where perhaps a child is involved or something like that, which completely makes sense.

I'm wondering if I'm reading that correctly and what the department's take on that amendment will be.

Ms. Carole Morency: As the committee may know, the Sex Offender Information Registration Act was enacted in 2004. When it was first enacted, they only had the Criminal Code subsection 160(3) offence, bestiality involving a child, as a designated offence. In 2011, the act was amended, and the Criminal Code subsection 160(2) offence, compelling another person to commit, was added.

I'll go back one more step. When the SOIRA was first enacted, it was to create a tool for law enforcement to better track and monitor persons who were at a higher risk of reoffending, through the listing of designated sexual offences. Non-sexual offences are designated, but the Crown would have to show that the offence was committed to facilitate the commission of a sexual offence. It's always linked back to a sexual offence as a core criterion.

My understanding is that the simpliciter offence has not been added, either upon original enactment or when the act was amended, primarily because at the time there was less evidence to show that persons who engaged in simpliciter offences were at risk of reoffending to commit a sexual offence against a person.

I think the committee has received evidence from a number of witnesses to indicate some of the concerns that they've addressed in terms of linkages to other issues, but at its core, when it's listed for the purpose of the Sex Offender Information Registration Act, the intention is to try to prevent somebody who's at a risk of committing a sexual offence against another person. That's usually the criterion.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon: I'm wondering if Ms. Morency could tell us what the consequences of being included in the sex offender registry are to an individual's civil liberties.

Ms. Carole Morency: For sure, the consequences of being required to register are significant. I'm not a leading expert in the area, but generally, the offender is required to register upon conviction, to provide their address and name. If they plan to leave the country, for example, there are all sorts of requirements for what they have to provide. It is very much a tool that impacts the individual. Over time, there have been some challenges to the scope of that, but it's been upheld because of the linkage to the objective, and it's tied to persons that the evidence shows are at a greater risk of reoffending.

The simpliciter offence is, in the way it has been treated to his point, a bit different from the other two offences for bestiality.

The Chair: Thank you very much.

We have Mr. MacKenzie, then Mr. Davies, and then we're going to take a brief pause.

Mr. MacKenzie.

Mr. Dave MacKenzie (Oxford, CPC): I would support this amendment.

One of the things I think you will find in history is that the people who are convicted of bestiality offences typically are looking for opportunities. It may be, as gross as it seems, with dogs or horses or cattle, but it also spills over into the opportunity.

They tend to look for easy victims, children and so on, so putting them on the sex offender registry means that when it comes time to conduct investigations, that's where you have to look to see what you have in your community. It's not to be penalizing innocent folks or anything of that nature, but it is to make the community a safer place.

I think that's the evidence we heard.

• (0920)

The Chair: Mr. Davies.

Mr. Don Davies: I have a question, and then I would like to speak briefly to the motion.

Ms. Morency, if a person is listed on the sex offender registry, is that something that can be checked by community organizations at all, or is this purely an internal tool for the police?

Ms. Carole Morency: It's accessible only by law enforcement.

There are provisions in the code to permit an individual—if there's a change in circumstances—to apply to have the registration buried. There is a clear process that's in place to provide the checks and balances.

Mr. Don Davies: I largely agree with what Mr. MacKenzie said, that the sex offender registry, by definition, has people on it who have committed a sex offence, and a person who has committed bestiality has committed a sex offence.

Frankly, there are a number of parallels, even without looking at hard empirical evidence. If someone will take advantage of a vulnerable creature in secret and violate that creature in a sexual way—I think it's just a matter of common sense—it tells me something about the nature of that person. I would think that in this case we would want to err on the side of giving our police every tool they can have.

I realize that an animal is not necessarily the same as a child, but there are similarities. I mean, they're both vulnerable. There's a vulnerability to that: an adult taking advantage of something not capable of giving real consent.

Finally, I understand, as was pointed out by Ms. Morency, that there was evidence heard at committee that violence or mistreatment of animals can be an indicator of further violence towards children or a partner. I think we know that. There has been a link made in terms of domestic violence. Often it starts with people who are mistreating animals.

In this case, I would support the amendment.

Mr. Colin Fraser: Mr. Chair, I thank all my colleagues for their contributions, and Ms. Morency for her input.

I'm in favour of the amendment as well.

The Chair: Mr. Virani.

Mr. Arif Virani: Can I clarify something, Ms. Morency?

In the context of the registry, we hear a lot about vulnerable sector checks—for instance, people who want to work in a day care, a school, or as a camp counsellor at an overnight camp for children.

Is this the kind of registry that is checked to ascertain whether that person is appropriate for that kind of job, dealing with children?

Ms. Carole Morency: With those types of checks, before a volunteer can be accepted by the organization to volunteer, the person will have to present themselves to the municipal police force and submit a request to have a check done. The police organization itself does the check, and they will check the SOIRA and other sources. They'll go through them to see if there's a conviction that's been registered against a person with that name at that point in time.

The Chair: Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: I have just one last question.

You mentioned “evidence” and that when there were previous attempts to update the sex offender registry, maybe there wasn't enough evidence to add this to it.

However, we heard evidence—specifically from the Canadian Veterinary Medical Association and Humane Canada—on the strong link of sexual abuse of animals leading to sexual abuse of children. The evidence we heard as a committee in the course of this study would suggest that it does make sense and it's consistent to add this.

Ms. Carole Morency: While I wasn't privy to the evidence that was available at the time it was originally enacted, it's certainly my review of the transcripts.... I wasn't able to access all of the studies that were provided to the committee. I always think that is a great idea if the committee is able to make those types of things available.

However, certainly on the transcript, the committee had a number of witnesses who spoke about the linkages between people abusing animals, in whatever form, and going on to commit other forms of violence against persons, whether sexual or other violence.

• (0925)

Mr. Nathaniel Erskine-Smith: Thanks very much. I appreciate that.

The Chair: Okay, I don't think there is any more discussion on CPC-2.

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

The Chair: I guess my legislative adviser is smarter than I am. As I understand, he says we don't have to adopt clause 4 because by adopting the amendment we would create clause 4. I always think

that we then still have to do clause 4, but we don't, so clause 4 carries because the amendment carried.

Shall the title of the bill carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: You're all good with it.

Colleagues, I'm just going to ask you to stay behind for a brief two-minute meeting. I'll ask everyone else to leave. I'm sorry. I just want to report on the agenda and to have a discussion about what we're going to do on Tuesday next week.

Thank you so much for coming. We'll have another meeting at 10:45 that I think you'll find very interesting.

The meeting is suspended until we clear the room.

[*Proceedings continue in camera*]

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