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Chair

The Honourable John McKay

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● (1105)

[*English*]

The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)): I think we can get started. I see everyone in their places with bright shining faces. Let's hope that by the end of today the faces are still bright and shining.

(On clause 2)

The Chair: Where we left off was with CPC-11 on Bill C-71. There was an informal understanding among committee members that there would be some discussions among members concerning LIB-1. I understand there have been those discussions and that a new LIB-1 has been circulated.

In order to proceed in an orderly fashion, LIB-1, as it currently exists, needs to be withdrawn. It can only be done with a unanimous vote. Do we have unanimity to withdraw the original LIB-1?

Some hon. members: Agreed.

(Amendment withdrawn)

The Chair: That amendment is withdrawn. That therefore preserves CPC-8 and CPC-9, which was the deal.

Now I'm asking Ms. Damoff to move the new LIB-1, please.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Chair, I appreciate the indulgence of all of the parties, and especially your indulgence, Chair, on getting us to try to improve what was an important amendment.

We've gone back and worked with officials, with the legislative drafter, to come up with a new version that incorporates what Ms. May had in PV-1. We have put the spirit of her amendment into this new LIB-1.

Probably one of the important changes that you'll notice is the reference to peace bond. That specific peace bond that was previously in this amendment was removed, and it is replaced by new proposed paragraph (d):

> is or was previously prohibited by an order - made in the interests of the safety and security of any person - from communicating with an identified person or from being at a specified place or within a specified distance of that place;

That has actually broadened it. By putting in a very specific peace bond, I was perhaps limiting what would be considered in the background checks. By broadening it more, we are able to include other things that should be considered, like other peace bonds, like restraining orders. I'm wondering if officials could maybe comment on that.

Then, paragraph (e) incorporates the spirit of Ms. May's amendment.

The Chair: Before I ask you to comment on the new LIB-1, am I working on the assumption, Ms. May, that PV-1 will not be moved?

● (1110)

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Mr. Chair, it gives me a chance to review the terms on which I appear before your committee in the motion you passed over my objections, which was not your fault.

The fiction is that every committee is the master of its own fortunes. However, somehow all committees pass identical motions all at the same time, saying that members in my situation have to appear if they want to put forward amendments that are substantive. I no longer have the right to do so at report stage, because I come to committee.

Part of that means I actually don't have the power to move my amendment at all; it's deemed moved. I cannot remove it either. However, I can convey to the chair that I'm extremely grateful to Pam Damoff for her efforts—we've conferred—and to Julie Dabrusin, for her efforts. If I had the power to remove my own amendment at this point, in favour of LIB-1, I would do so.

Sorry for having to complain about the onerous and anti-democratic nature of the motions that every committee has passed, but I am very grateful for the collaborative way in which this motion and amendment will move forward. I have no objection to having someone else at this table remove my amendment, but I don't have the power to do so.

The Chair: Thank you. We'll see when we come to it as to whether it will be moved or not.

With that, you want to ask questions.

Ms. Pam Damoff: I do.

I also want to clarify that apparently in the French version, the word "*déjà*" is an issue, because it limits the consideration to the past not current. The suggestion is for "*il lui a été interdit* ", as opposed to "*il lui a déjà*".

I can't move that amendment, but I think my colleague beside me might. Is that right, that it's limiting it?

Mr. Olivier Champagne (Legislative Clerk, House of Commons): I'm not going to interpret the wording. If you want to move it as amended, you can do it.

Ms. Pam Damoff: Can I include it in what I have here in LIB-1?

Mr. Olivier Champagne: Yes. You're just moving it with that modification. That's fine.

Ms. Pam Damoff: In the French version then, under (d)....

[*Translation*]

Mr. Richard Hébert (Lac-Saint-Jean, Lib.): The French version reads: d) il lui a déjà été interdit, au titre d'une ordonnance rendue pour la sécurité de toute personne, d'avoir des contacts avec une personne donnée ou de se trouver dans un lieu donné ou à une distance donnée de ce lieu;

We would like to replace the words “d'avoir des contacts” with “de communiquer”. I can pass this amendment to the chair.

Also, Mr. Chair, we have one more minor amendment. In the proposed text, paragraph (f) reads as follows: f) pour toute autre raison, il pourrait causer un préjudice à lui-même ou à autrui.

We would prefer the word “préjudice” to be replaced by the word “dommage”.

[*English*]

The Chair: Madam Damoff.

Ms. Pam Damoff: Sorry to confuse this even more, but the analysts have suggested even different wording, here.

[*Translation*]

He proposes: “il lui est ou lui a”.

[*English*]

What we want to do is capture what is in the English version, which is the past and the present.

The Chair: We're getting a little confused here, as to amendments.

There are no changes on the second amendment that Mr. Hébert moved.

For the first one, you are effectively withdrawing that amendment and replacing it with this. Is that correct?

Ms. Pam Damoff: Can I ask the officials which is better in capturing what we want to do?

The Chair: The officials generally don't read minds, but nevertheless, I have absolute faith in their ability....

● (1115)

Ms. Pam Damoff: No, these officials.

The Chair: You mean those officials; I see. I suppose that's a legitimate question.

Mr. Koops, go ahead.

Mr. Randall Koops (Director General, Policing and Firearms Policy, Department of Public Safety and Emergency Preparedness): I think I'll read it out, in the interests of ensuring the French reflects as closely as possible the intent of the English. It would be for (d),

[*Translation*]

“il lui est ou lui a été interdit”.

[*English*]

On the third line of (d), as well, instead of

[*Translation*]

“d'avoir des contacts” , it would read “de communiquer”, as the hon. member proposes.

In addition, in paragraph (f), to correspond with the Criminal Code, we should normally use the word “dommage” rather than the word “préjudice”.

[*English*]

The Chair: I take it that this is to try more effectively to align the English and the French, so that we have the same—

Mr. Randall Koops: It's to align the English and the French in the case of (d).

In the case of (f), it's to align the French with the consistency of the French vocabulary used elsewhere in that part, sir.

The Chair: Okay.

Can I ask the legislative clerks whether they have what we think we have?

Our legislative clerk wants to have a minute to make sure it does line up.

Meanwhile, I think we know the sense of the amendments. I would like to call for debate on the amendment itself at this point.

Mr. Motz.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): I'm waiting for my linguistic experts to arrive on the French-language issue. Given the clerks have to review it and this is the first time we've seen this, can we suspend for a couple of minutes to review it so we can have a more informed debate on it?

Ms. Pam Damoff: Before you consider suspending, I was hoping the officials could explain the benefit of having this wording as opposed to specifying a specific peace bond.

The Chair: We'll get their view and then suspend.

Ms. Paula Clarke (Counsel, Criminal Law Policy Section, Department of Justice): What the proposed amendment would do is capture all court orders that relate to no contact with a person or prohibiting a person from attending a specific place when it relates to a history of violence, attempted violence, threatened violence, or threatening conduct. The original motion had restricted it just to peace bonds. There are other types of court orders that could apply. There are peace bonds beyond domestic violence. For example, there are specific peace bonds that would relate to child sex offences, to terrorism offences, and criminal organization offences. There are also common law peace bonds which would be captured by the current wording. Also, there are probation peace bonds or recognizance orders that would be issued for probation as well as for bail.

The current wording would also exclude other extraneous kinds of recognizance such as recognizance during a trial to avoid contact with the witness. It would also exclude a probation order that would prohibit contact with certain individuals, for example, with youthful offenders who may be prohibited from having contact with individuals who have displayed criminal behaviour. As well, for a person who perhaps has drug or alcohol problems, their probation order may have a condition that they do not attend a certain bar; for instance, they don't go to the Legion. These are types of peace bonds or no contact orders that would be excluded in this given language.

● (1120)

Ms. Pam Damoff: Are there—

The Chair: Sorry.

Actually, I undertook to Mr. Motz to suspend while he consults.

Have you consulted sufficiently or do you want me to suspend?

Mr. Glen Motz: I'm listening now. Can we suspend for two or three minutes?

The Chair: We'll suspend for a few minutes.

● (1120)

(Pause)

● (1125)

The Chair: We're back.

Before we proceed further, the best way to handle this is to make sure we are all talking to the same consensus amendment to the amendment, given the informality of our conversations. Normally, I would expect someone other than Ms. Damoff to move the amendment to her amendment, but given the informality, I'm going to ask the legislative clerk to read it so that we are all talking about the same thing.

Mr. Olivier Champagne: At (d), instead of

[*Translation*]

"il lui a déjà été interdit".

[*English*]

it would now read

[*Translation*]

"il lui est ou lui a été interdit".

[*English*]

The other changes were two lines below. We would replace

[*Translation*]

"d'avoir des contacts" by "de communiquer".

[*English*]

Then at the second line of (f), we would replace

[*Translation*]

"préjudice" by "dommage".

[*English*]

The Chair: Is that understood by everyone? Okay.

Now that we understand what it is, and Ms. Damoff has asked questions of the officials, I am prepared to open up the debate at this point.

Mr. Motz.

Mr. Glen Motz: Thank you, Chair.

Thank you to Ms. Damoff for at least attempting to clarify some language around some of what we heard at committee from some of our witnesses.

Before I get into some of this language, I want to make sure that we're all aware of what subsection 5(2) of the Firearms Act actually says. Subsection 5(2) says:

> (2) In determining whether a person is eligible to hold a licence under subsection (1)

—which is "a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition or prohibited ammunition". It continues:

> a chief firearms officer or, on a reference under section 74, a provincial court judge shall have regard to whether the person, within the previous five years,
>
> (a) has been convicted or discharged under section 730 of the Criminal Code of
>
> (i) an offence in the commission of which violence against another person was used, threatened or attempted,
>
> (ii) an offence under this Act or Part III of the Criminal Code,

That is a gun crime. It goes on to say:

> (iii) an offence under section 264 of the Criminal Code (criminal harassment) or,
>
> (iv) an offence relating to the contravention of subsection 5(1) or (2), 6(1) or (2) or 7(1) of the Controlled Drugs and Substances Act

If I remember right, those have to do with trafficking offences and production.

It goes on to say:

> (b) has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person; or
>
> (c) has a history of behaviour that includes violence or threatened or attempted violence on the part of the person against any person.

That's pretty encompassing already. It provides a significant amount of strength to prevent an individual who has a history from even obtaining a PAL, which is what we're trying to prevent from happening here. If they already have a licence, a court order or the CFO can actually have that licence revoked and the firearm seized.

I'll look first to your change to (c). You've added "threatening conduct" as an amendment to (c). While I move through this, I can ask the officials about these one at a time.

I don't recall hearing a term like "threatening conduct" in law, criminally. Is there something that applies greater certainty to the other language that is already there, or is this redundant?

● (1130)

Ms. Paula Clarke: If I could just have a moment....

Mr. Glen Motz: Yes. Is it a defined term in the courts or in the code? I don't ever remember seeing that.

Ms. Paula Clarke: Yes. It's used in paragraph 264(2)(d), which is the criminal harassment provision.

Mr. Glen Motz: Yes, but we already have subsection 5(2) where it talks specifically about 264, not separating it out, but all of 264.

Ms. Paula Clarke: Right. I'm just saying that the term "threatening conduct" has been used in the Criminal Code and is contained within the criminal harassment provision.

Mr. Glen Motz: Okay. That's already covered in 5(2). Then that addition would be redundant because it's covered off. The CFO has to consider that anyway. To have language like that, which is already covered in all of 264 in the code under criminal harassment, would be a moot point.

Ms. Paula Clarke: It wouldn't be a moot point because in 5(2) it refers to an offence, a conviction. In 5(2) you have to be convicted of criminal harassment. In the proposed motion you just have to have a history of behaviour. It does not need to be a conviction. There could be allegations. There could be police reports. There could be other types of evidence that may be considered or may not be considered.

Mr. Glen Motz: Given what's classified here as threatening conduct is in 264 already, I don't understand how this strengthens (c) if (c) already exists in the Firearms Act.

We're talking about it includes violence, or threatened or attempted violence on the part of a person or any other person.

Ms. Paula Clarke: Threatening conduct is a broader concept. What's laid out before is attempted violence, threat of violence, violence actually used against a person. Threatening conduct can include threats against animals, threats against property, threats against other things that the victim may be interested in. It does encompass a broader range of conduct than what's set out in paragraph 264(2)(d).

If you look at criminal harassment, it is not limited to just threatening conduct. It's also limited to unwanted communications, unwanted repeated communications, besetting a person, so waiting outside of their house or following them.

Criminal harassment is a broader concept than just threatening conduct. Threatening conduct is a broader concept than just attempted violence, violence or threatened violence.

The distinction between this motion and what's contained in subsection 5(2) of the Firearms Act, is that there does not need to be a conviction for criminal harassment. It is broader and it is definitely different. It's more expansive behaviour than violence, threatened or attempted.

● (1135)

Mr. Glen Motz: Okay.

You're asking a CFO to weigh in on an extremely broad concept that actually might be misinterpreted.

Do you think this opens up more opportunity for those who unknowingly...they don't have any of this, but the fact that they hunt is threatening to an animal.

Ms. Paula Clarke: No, it has to be to any person.

Mr. Glen Motz: No, you just finished telling me that.... There are those in society who think about those who hunt, that it's cruelty of animals.

Ms. Paula Clarke: The CFO has the discretion to make a reasonable decision about what would constitute threatening conduct. It would be within the discretion of the CFO to decide if hunting an animal would be threatening conduct.

Mr. Glen Motz: Okay, that's good.

The other issue I have with this is in the new amended paragraph (d). We see that we're talking about "is or was previously prohibited by an order—made in the interests of the safety and security of any person—from communicating with an identified person or from being at a specific place or within a specific distance of that place".

I appreciate the wording here is made in the interests of security and safety of another person, which would eliminate someone getting a peace bond for shoplifting and they can't go to the mall, that sort of thing. I'm wondering whether "was previously prohibited by an order" is so incredibly broad that if someone has a complaint made against them and in the [*Technical difficulty—Editor*] bail hearing, that individual has a condition placed on their bail that would fall under this, and then they're found to be not guilty, this would prohibit them potentially from ever acquiring a PAL, or potentially they could lose a PAL down the road.

I'm wondering how that would possibly be interpreted. There are frivolous and vexatious complaints made that, yes, the CFO then has discretion to go and ask for police reports, but in the interim that individual could be flagged that he has a PAL; the CFO could come and seize his firearms, or the police could, obviously, while he's waiting. That could have significant long-term impacts on whether he gets his PAL back or his firearms back on a frivolous and vexatious complaint.

With "previously prohibited by an order", I know we're trying to capture those who have committed a violent offence, and are convicted of a violent offence, and they had an order at one point in time, and we don't want them to be a risk to public safety. We get it. We support the whole idea of preventing those who should not have a firearm, should not have access to a firearm, should not have access to a PAL, from getting one, but I'm wondering whether this is so broad that it's reaching beyond what we are interpreting or expecting this act to be like.

● (1140)

Ms. Paula Clarke: The motion, as drafted, would capture bail conditions, so you are correct there.

With regard to having your firearm seized, that would be done only on public safety grounds. You could have a firearms prohibition order issued as part of bail, and then the firearms would have to be surrendered. This information would be considered by the CFO, along with the ultimate disposition of the case.

Mr. Glen Motz: It is possible, then, for a frivolous and vexatious complaint to be made. They happen all the time, where someone is accused of committing a violent offence and it did not happen. In the interim an individual's firearms could be seized, their PAL could be suspended, and that could go on for, potentially, a couple of years until that's disposed of.

Ms. Paula Clarke: There are two issues here. One would be a no-contact order, and then I think the second issue you're alluding to would be a firearms prohibition order.

A firearms prohibition order is made by a judge considering evidence that's presented, which would reasonably make a judge believe that an identified person or the person who is the subject of a prohibition order could be at risk of harm to themselves or others. This would be a judicial determination made on the best evidence available.

The second would be the no-contact order peace bond. Again, that has to be made with judicial authorization, taking into account evidence that's put before them.

Mr. Glen Motz: In this context, does the CFO, in their considerations, have the same evidentiary burden placed on their adjudication of a PAL as what would be expected in court?

Ms. Paula Clarke: It would not be beyond a reasonable doubt. The decision would have to be reasonable, which is a different standard. If the decision made by the CFO not to grant a firearms licence were unreasonable, then that could be judicially reviewed and the CFO would then have to reconsider his or her determination.

The Chair: I'd like go to the other people who want to jump in on this, Ms. May, Mr. Calkins, and Ms. Dabrusin. If you still have questions, I'll come back to you.

Ms. May.

Ms. Elizabeth May: Yes, thank you.

Thanks particularly to Ms. Clarke, because she's covered some of the points I was going to make.

The attempt here, and my amendment, was to deal with orders. They would fall short of criminal convictions. They're not covered at all by subsection 5(2) of the Firearms Act. They would deal with such things as restraining orders, between intimate partners, to stay away from a woman who feels threatened by a former partner. That would not come to the attention of a firearms officer or a judge under subsection 5(2) of the Firearms Act, but would come to the attention of them in the way either my amendment or the new LIB-1 was put forward.

I know it was put forward as a hypothetical by Ms. Clarke that the threatening conduct might be toward an animal. Because these things can get misreported, I want to make sure everyone understands that hunting is not at all in the ambit of LIB-1. Legal hunting activities do not constitute threatening actions. The animal part would come in if an ex-husband said to his former partner, “I'm going to kill the dog.” That would be a very threatening act of violence, in fact, for people who are willing to do such violent things for the purpose of harming a specific person, in other words, their former intimate partner. That would be pretty threatening.

I will reassure Mr. Motz that this is not an amendment that would in any way, shape, or form affect legal hunting activities and the right for legal hunters to have a firearm at home. This is not the goal of this amendment.

That's all I need to say. I really do think this is a strong amendment. It's not moot. It's not redundant to existing legislation. It adds something important without being overly broad.

The Chair: Thank you, Ms. May.

Mr. Calkins.

Mr. Blaine Calkins (Red Deer—Lacombe, CPC): Chair, while I appreciate Ms. May's intervention, I'm not quite as confident as she is, although I think she does make a good point. However, I'm really concerned about who may get caught up in this, keeping in mind that subsection 5(2) is all about licensing. Anybody who is applying for a licence or is reapplying for their licence would be the people who would be caught up in this.

I have some questions, some hypotheticals. I don't know if this is particularly fair, but I want to be clear on who's going to get caught in this “has a history of behaviour that includes violence or threatened or attempted violence and threatening conduct”, which is the new benchmark that's being added here. All this language is very, very subjective. There is evidence, some bars, or some measures that are tested in law and there are others that are not, so this is a subjective call on behalf of the chief firearms officer, for the most part.

I'm wondering if, for example, a bouncer would get caught up in this. There is a charge against him, or an allegation against a bouncer who likes to go hunting part time, who obviously uses certain tools in his or her duties to remove somebody from property. What about anybody who says anything, perhaps on social media, that might be construed one way even though it was meant in another way? Police officers and soldiers, all the time, in the exercise of their duties, could get caught up in this. I'm imaging they're excluded as part of their duties from being caught up in this, but police officers and soldiers get charged for certain things while they're in theatre or while they're employed.

I'd also like some clarification on those who use firearms in the unenviable situation where they're defending themselves or their property and find themselves in a situation where they need to reapply or apply for a firearms licence, about how this proposal would affect them.

● (1145)

Ms. Paula Clarke: The use of force is a defence that can be made when violence or force needs to be used, in an appropriate fashion, to deal with violence toward a person. The standard is that the force used must be reasonable. It must be a reasonable use of force. If the use of force is unreasonable or excessive, then that person has committed an act of violence. In the example of the bouncer, if he's trying to expel a person who is drunk and belligerent and attacking him, and he uses excessive force and the person ends up in the hospital, then that would be violent conduct or threatening conduct because it's unreasonable.

Mr. Blaine Calkins: The only way a chief firearms officer can implement any of the subjective conditions in proposed paragraph 5 (2)(c) is if they've met a test in the court.

Ms. Paula Clarke: I'm not saying that.

Mr. Blaine Calkins: In southern Alberta there is a gentleman who is facing charges for the firearm for shooting who he suspected to be thieves endangering him and his family or his property. He is before the courts right now. I know we're not supposed to talk about things that are before the courts right now, but there is other evidence or examples of this in my constituency. There was a person about 10 years ago who did the same thing. He used a shotgun in defence of his family and his property, and he actually faced more charges than the people who came to steal from him in the first place.

In the process, before the determination of the court, whether they're using a section 34 or section 35 defence and whether that defence holds up or not, they're going to be in a process that's likely going to take several years to untangle throughout the judicial process. Would they get caught up in proposed paragraph 5(2)(c)?

Ms. Paula Clarke: Rob, do you want to answer questions as to the application of the CFO's discretion?

Mr. Rob O'Reilly (Director, Firearms Regulatory Services, Canadian Firearms Program, Royal Canadian Mounted Police): Certainly.

If I understand your question correctly, you're asking if paragraph (c) were to be added to subsection 5(2), would individuals who are facing charges potentially now come to the attention of the CFO, and their eligibility to hold a licence come into question or be reviewed.

I would think the answer is yes in that situation, if it came to the attention of the chief firearms officer for consideration. Obviously, with 2.1 million clients, many examples of individuals who are facing criminal charges who come to the attention of the CFO.... If there is a significant amount of evidence to suggest that the CFO has grounds to revoke that licence prior to the conclusion of the criminal charges, that may occur. But in many cases, if there are pending court cases, the CFO will often defer those decisions until such time that there is a conclusion relating to the charges, depending on severity, gravity, and risk to the public safety.

● (1150)

Mr. Blaine Calkins: The problem we have, though, is when during the process where a person whose eligibility to have firearms in their possession is in question their licence expires, given there's a grace period provided for them to continue to own their property or have their property legally, they could be denied that opportunity because the CFO is waiting for the determination.

How would that be resolved, Mr. O'Reilly? Do you know what I am suggesting?

Mr. Rob O'Reilly: Sort of.

If an individual's licence expires, that would not preclude them from making reapplication on the firearms licence, nor would their firearms licence necessarily be denied. The CFO, while the licence was valid, would have the opportunity to make a determination right then and there, or not.

If the licence in the interim were to expire while that consideration is ongoing, the individual could certainly make reapplication without prejudice. There might still be some eligibility issues before the licence is fully issued and green-lighted, so to speak, but that would not preclude them from making reapplication.

Mr. Blaine Calkins: Right, but because the CFO would likely—

Mr. Rob O'Reilly: It's hard to speculate. I know there are some circumstances that—

Mr. Blaine Calkins: I don't think there are going to be a lot of those circumstances, but there are some grey areas there.

Mr. Rob O'Reilly: I guess all I would say is that the CFO would consider all of the information in front of them and try to make the most informed decision possible.

The Chair: I'd like to be able to get the other members in, and then we can come back.

Mr. Blaine Calkins: Certainly, but please put me back on the list.

The Chair: Ms. Dabrusin was next, but she's left, so it's Mr. Motz, and Mr. Fragiskatos.

Mr. Glen Motz: Thank you, Chair.

I notice some levels of frustration from my colleagues on the other side of the aisle, because.... Well, I don't understand why, because there are two sides to this issue.

There is the issue of what our intended goal is here, and that is to ensure that we have public safety. The other side of this, very clearly, is to ensure that while we're trying to address public safety, the interpretation of this as we move forward is going to be consistent. Right now this language is too subjective to ensure that we have consistent interpretation and then application of this moving forward. That will harm the other side of the argument, and law-abiding, gun-owning Canadians will potentially be adversely affected by a wrong interpretation of us trying to get public safety right.

As I've indicated before, getting this right is paramount not only to public safety, which is the purpose of our committee, but also for those who really don't pose a threat to public safety: law-abiding gun owners who could be caught up in a situation where interpretation could be an issue. That's where and why I'm concerned about some of the language that exists here with previous orders. I think that's too broad and open to interpretation.

Perhaps I can go to new proposed paragraph 5(2)(f) just for a second. Where it says “for any other reason, poses a risk of harm” to anyone, there are some very subjective and undefined parameters that we already cover off in proposed subsection 5(2). Even if we accept the “threatening conduct” portion of new proposed paragraph 5(2)(c), and we add some of (d)—(e) has already been covered off in previous firearm legislation on intimate partner violence—the interpretation of this concerns me.

Again, no one around this table is not concerned about public safety or is trying to completely ignore that, but it's a bigger issue in terms of interpretation. We've all seen legislation with multiple levels of interpretation, depending upon who you speak with. Providing clear, clean, distinctive language that is not left to interpretation by anyone.... In Alberta the CFO could have an interpretation of this that potentially would be totally different from that of someone in Ontario. We can't have that happen. We need to ensure that we have language that doesn't let it happen.

Mr. O'Reilly, Mr. Koops, and Ms. Clarke, I would certainly ask you to weigh in on that thought in terms of how we can clean up this language. I know you had a part in making this language already, but is it possible—I think it is possible—that it's...? Well, it's going to cause issues where issues don't have to be created, in my opinion.

Maybe I'll start with you, Ms. Clarke, because you've been interacting and helping us out with this already.

● (1155)

Ms. Paula Clarke: The first point I'd like to make is this. I understand that you have the concern that some of this language could be interpreted subjectively. I would just point out that within section 264, which is the criminal harassment provision, language such as “threatening conduct” is not interpreted by the courts subjectively. There are court decisions that have made it very clear that threatening conduct is an objective standard and that even if a person perceives conduct to be threatening, it has to be reasonable. If my colleague here waved her pen in my face and I felt threatened, it is unlikely that a court would agree with that assessment.

So the law is objective. I would assume that this standard would continue to be applied by the CFO, and—

Mr. Glen Motz: You see, you're making an assumption, and an assumption is always based on the interpretation of—

Ms. Paula Clarke: Well—

Mr. Glen Motz: It's individual. That's my point. It's individual. My own experiences, my own education, and my own background determine for me how I interpret the same sentence that somebody else does—

Ms. Paula Clarke: So—

Mr. Glen Motz: —and then apply it maybe differently.

Ms. Paula Clarke: Right. I would go back to the point that the CFO is obliged under law to make a reasonable decision. If it came to his attention that there was conduct that somebody claimed to be threatening, and his determination of it was unreasonable, then that could be judicially reviewed.

At some point in the process, the interpretation of the conduct would have to be reasonable. There may be a subjective element to it, but at the end of the day when the conduct is assessed, that allegation would have to be a reasonable one.

The Chair: That's a suitable answer.

I'm going to Mr. Fragiskatos.

Mr. Blaine Calkins: No. I asked for the other officials to weigh in.

The Chair: Oh, sorry. Yes, you did.

Mr. Blaine Calkins: Mr. Koops and Mr. O'Reilly.

Mr. Rob O'Reilly: Just to be clear, what question would you like me to answer?

Mr. Glen Motz: My concern is the interpretation of this. We all know the goal. The interpretation is subjective. You work more closely with the CFOs than anybody. I'm sure in your time, because we have all seen it, you have wondered how a CFO has provided a PAL to someone in some circumstances, and under judicial review I'm sure the court stops to think. Then maybe you wonder why someone didn't receive one when they were rejected. That's subjective.

However, for the sake of public safety and consistency, my concern is that this language is broad and will provide an opportunity to adversely affect law-abiding Canadian gun owners with a broad interpretation that is not as clear, potentially, as it is, or that it is too inclusive.

The Chair: Excuse me, Mr. Motz. Ms. Clarke already answered Mr. Motz's question. It's perfectly legitimate to ask other panellists the question, but it is essentially the same question as to whether there is a subjective element in the interpretation. If you have something that is different or additional to what Ms. Clarke has already said, I'm sure the committee will be interested.

● (1200)

Mr. Glen Motz: Respectfully, Mr. Chair, my question for Ms. Clarke was on the legal aspect of it. My question for Mr. O'Reilly was on the CFO aspect of it.

The Chair: There is essentially no difference. Anyway, I'm not going to debate the point. Is there any difference here?

Mr. Glen Motz: Yes there is.

Mr. Rob O'Reilly: Not really, no. Everything Ms. Clarke had indicated I would fully concur with.

I guess the only thing I would add is that the elements being proposed today would allow the CFOs to more broadly consider all things that may be an issue to public safety. While some may interpret that it is too broad, my job sitting here, and my job being responsible for the CFOs, is to provide them with the greatest amount of tools to make an informed decision.

The Chair: Mr. Fragiskatos.

Mr. Peter Fragiskatos (London North Centre, Lib.): In fact, Chair, I will hold off for the time being.

The Chair: Mr. Calkins.

Mr. Blaine Calkins: Thank you, Chair.

I want to make one important distinction. When something is before the courts, a person or an accused has the ability to appeal; they have the ability to cross-exam the evidence that's before the court, and the person they are cross-examining that evidence in front of is an actual juror, a judge, appointed to make those kinds of decisions in law with the full support of all of that evidence.

A firearms licence application is made in front of a chief firearms officer. None of the information that's being presented or any decisions the CFO make have to be rendered publicly or to the applicant, and none of the decisions have an opportunity to be cross-examined in the judgment of the CFO by the applicant.

For the sake of clarification, Mr. O'Reilly, I think we want the same outcome. We all want this to be a matter of public safety. If we want to broaden the scope of the discretion that the CFO has in order to increase public safety, we have to, at the same time, protect individuals and give them a recourse if they are not treated fairly by the government, of which the CFO is an employee.

What redress, what opportunities, would an applicant have if they happen to get caught up...because this bill's going to pass. This legislation's going to pass. I can't stop it. I don't necessarily disagree with the intent of what this legislation is trying to do, but I have been a member of Parliament long enough to know that somebody is going to get maligned by this legislation because the law is never going to be perfect. They are going to be in my office asking me what they can do.

What can somebody who is caught up in this, who feels unjustly treated, do in order to seek redress for the fact that their firearms application for a possession and acquisition licence, or whatever, is denied on the discretion of a chief firearms officer?

Mr. Rob O'Reilly: Well, I can speak to some elements of your question.

In the case of a refusal or a revocation, the decision is communicated back to the client in the form a revocation or refusal notice. The refusal notice or the revocation notice expressly lists the part of the Firearms Act and/or the Criminal Code that the CFO believes the individual is in violation of.

It isn't simply revoked or refused. The individual is given a very full accounting of the grounds on which the CFO has made that decision. They do get the opportunity to see the information on which the CFO made the determination.

Mr. Blaine Calkins: That determination would simply list what section they've used but not necessarily the substantive information behind it.

Mr. Rob O'Reilly: I can't speak for every refusal that has been issued, but in terms of the many that I have reviewed and/or seen, the CFO tends to outline a bit of a narrative as to what behaviour or things they have seen that led them to make a determination to refuse or revoke an individual. It generally is rather prescriptive in terms of the outline.

Mr. Blaine Calkins: In the event that the applicant believes that the grounds were not appropriately applied, what recourse do they have to seek remediation?

Mr. Rob O'Reilly: With the exception of a refusal or a revocation because of a court order, the individuals do have legal recourse through a reference hearing at that point, in which case the CFO would have to demonstrate that the decision which he or she took was reasonable. The individual would have the opportunity to provide a counter argument at that point.

If the judge determined that the decision of the CFO was not reasonable, then, as Paula has indicated, they would have to give consideration to reversing their decision.

Mr. Blaine Calkins: Okay.

I have one more question about paragraph (d). The headline of this particular clause only goes back five years, and the new addition under (d) reads:

> is or was previously prohibited by an order - made in the interests of the safety and security of any person - from communicating with an identified person or from being at a specified place or within a specified distance of that place;

It's a PO, a prohibition order, right? Is that only going to go back to POs that are less than five years old, or is it going to go back to POs that are from 20 years ago?

Because of the way the headline of this clause of the bill is, and given the fact that there is discretion from the CFO to go back as far as they want to in certain circumstances, how do you expect that to be interpreted and implemented by the CFO, should this law pass?

● (1205)

Ms. Nicole Robichaud (Counsel, Department of Justice): Under the amended subsection 5(2), they're going to be removing "within the previous five years", which means all of these criteria would be considered going back throughout the person's lifetime.

Mr. Blaine Calkins: That's right.

That's the answer I was looking for.

Mr. Peter Fragiskatos: I have a point of order, Mr. Chair.

I find that the arguments being offered by my friends are getting to the point where they are repetitive. Each example being offered is almost a mirror of itself. The officials are answering, and I appreciate that. We all do. The answers that they are giving, however, are almost mirrors of themselves as well.

We've been debating this particular amendment for what seems like almost an hour—sorry, 45 minutes—and I wonder if we're anywhere close to voting on it.

The Chair: I don't disagree with your point that there is an element of repetitiveness in the questioning. However, that's not a point of order. Members are entitled to ask their questions. I would like it if honourable members focused those questions towards the end.

Mr. Fragiskatos does make the point that this has been a section that has gone over not only now but in the previous session.

Mr. Calkins.

Mr. Blaine Calkins: That's fine. Mr. Fragiskatos is welcome to his opinion, but it's my right as a parliamentarian to do my duty.

My question now is moving on to paragraph (d). I wonder about the implications. Can we get the implications of how this is going to impact the Youth Criminal Justice Act?

If somebody is caught up as a youth through jealousy, immature relationships, or other things at that particular point in time, and some 15 or 20 years later, if they are now a mature adult in a relationship and want to go hunting, or if they want to obtain a firearms licence for whatever reason, is it the expectation that they are going to get caught up in this?

Ms. Nicole Robichaud: Neither this amendment nor anything in the bill impacts the current provisions of the Youth Criminal Justice Act. All the current restrictions on access to records after the period set out in the act would continue to apply.

Mr. Blaine Calkins: What about somebody who's 18 or 19 years old who gets a prohibition order. Is that going to be under consideration? If somebody's in their forties now, and something happened 25 years ago when they were an adult, that will get looked at by the chief firearms officer at this particular point in time. Is that correct?

Ms. Nicole Robichaud: Yes.

Mr. Blaine Calkins: Thank you.

The Chair: Just to amplify Mr. Fragiskatos' concern, I direct members' attention to the rules of order, “Repetition is prohibited in order to safeguard the right of the House to arrive at a decision and to make efficient use of its time.” Although the principle is clear and sensible, it's not always easy to apply. There is considerable discretion in this regard, and we're close to exercising that discretion.

Thank you.

Mr. Motz.

Mr. Glen Motz: Thank you, Chair.

I have a couple of things to talk about. One, if we're trying to deal with safety, I find it rather offensive that, if this is the actual issue, we're trying to improve public safety through a firearms bill that has nothing really to do with it. It didn't have anything in it, until some of these amendments came forward, that we would want to limit debate and all that goes with it.

This amendment, although we had opportunity to talk briefly about it, was given to us this morning at the start of our committee. If we're going to be not just paying lip service to something, and we're legitimately concerned about dealing with public safety, then we—

Ms. Pam Damoff: Chair, point of order.

Mr. Glen Motz: —deal with this the way it is. So yes, I do have a question, but in response to the point of order that's—

The Chair: The point of order has precedence over the question.

Ms. Damoff.

Ms. Pam Damoff: We're losing sight of what the amendment was for. The reason we left this was we thought there was consensus about the amendments. It's becoming obvious that there isn't consensus on the intent of this nor the wording of it. I'm a little confused as to why we need to continue debate.

It's not a new amendment. It is something that was modified, based on conversations we had for about an hour last meeting. I thought we were getting towards consensus, and it doesn't seem that we are, Chair.

● (1210)

The Chair: That's an observation, not a point of order.

Mr. Motz.

Mr. Glen Motz: Chair, we talked about a number of statements that were made at committee on Tuesday, and again today there were a couple of comments on how, in the current system and moving forward in this new bill, there are always provisions for judicial review for an individual who may feel that their firearms have been.... They haven't been able to obtain a firearms licence, or they've had it revoked, or whatever. There is opportunity for judicial review.

Is there any indication, from experience, Mr. O'Reilly, of what it would cost an individual to go through that process where an error had been made in the first place, and we're trying to fix it at the front end so that we don't have law-abiding gun owners having to go through a judicial review unnecessarily?

Is there any indication of what that might cost?

Mr. Rob O'Reilly: Unfortunately, sir, I don't have any information that would answer that question.

Mr. Glen Motz: Getting back to Ms. Damoff's question, we might be closer than it appears, but this is a big deal. Getting it right, making sure that we have language that's appropriate, is all we're trying to get at and trying to understand. I know the intent behind this, and I applaud the intent behind it, and I support the intent behind it. It's the language and the interpretation of that language and how it's going to be interpreted not only now but down the road.

We can hear from witnesses today, but these aren't the people who are going to be adjudicating this in the future. It's going to be a CFO down the road, and so that's why it's important that we have a firmer understanding of what this means and the implications of some of the language, as innocuous as it might appear. For example, in (d), as I said before, “was previously prohibited by an order” has huge ramifications.

Ms. Clarke, you mentioned the exclusions before we took a break. There are exclusions that you indicated in trying to understand court orders. There are some common law peace bonds that apply, and there are some that don't. I'm looking at that and asking who decides what they are.

Right now the way it's read, you know that, but is the CFO going to know that? That's my point. If there are some orders that do not apply to the ability for a CFO or someone else to make that adjudication where someone is going to have their PAL revoked or someone is going to not be able to obtain their licence, then we need some clarity around that, because I don't see anything here that talks about the exclusions that you mentioned previously.

That caught my attention. Who's going to know that, and how is it going to be interpreted?

Ms. Paula Clarke: I'm taking your question not so much as a Criminal Code question, but it's more of a police records question, so I'm going to ask my colleagues from the RCMP to answer that question.

Mr. Rob O'Reilly: Sir, I would maybe provide this. If I can speak on behalf of the chief firearms officers, when we're talking about subsection 5(2), the very last part of subsection 5(2) before we get into the paragraphs says the CFOs “shall have regard for”. What we're talking about here are certain things that the CFO, in essence, must consider when making a determination of eligibility.

Prior to these amendments, that wasn't an exclusive list, “shall have regard” meaning they must consider these things. Subsection 5 (1) of the act says, “A person is not eligible to hold a licence if it is desirable, in the interests of the safety”, so CFOs do more broadly look, and have always more broadly looked at eligibility to hold a licence beyond what we are currently talking about under subsection 5(2) right now.

When you speak about exclusions, CFOs will look at anything that is brought to their attention, which may make a person ineligible, according to subsection 5(1), “in the interests of safety”. I don't think there are any hard exclusions of things that they will not look at, if they believe they are relevant in the interests of safety.

● (1215)

Mr. Glen Motz: That brings me to exactly another point.

You've worked within the current legislation for many years, running the firearms program in Canada, and have been working and involved with CFOs and all those interpretations from the different CFOs. We also know that there have been instances where firearms have been issued to individuals who fell through these cracks that already existed, because these provide additional language around some of the things that may be more ambiguous in subsection 5(2) of the act, but they still should never have acquired a firearm.

I'm thinking of the testimony we heard from Ms. Irons, who explained the offences that her daughter's killer had committed prior to even obtaining a firearms licence. As horrific and tragic as that incident was, this act was in place previous to that and would have prevented him from acquiring a licence and therefore legally acquiring a firearm, yet he still did.

I don't know if there's any foolproof way that this change in language completely removes the human error and allows someone not to acquire a firearm when they shouldn't have one. Really, all the new amendment has done is added more language around what already exists in subsection 5(2). I don't see anything else there that doesn't exist between paragraphs (a) and (c) other than some clarity of language around threatening conduct or an order, but the order could be covered off as "a history of behaviour". That's included in paragraph (c), and as you just said, the CFOs look at a broad range of issues when they're dealing with a licence, so paragraph (c) covers all those things. Really, in the interests of public safety, we've just added more words that already exist in subsection 5 (2).

I'm curious to know, in your opinion, will the new, improved language prevent what we heard from Ms. Irons, who told us what happened? What wasn't said was that it wasn't that the law allowed that guy to get a PAL. It was that someone who was interpreting that law and applying that law had made an error.

Will this new language prevent that from happening?

Mr. Rob O'Reilly: On Tuesday, I heard mention of Ms. Irons and her situation. Unfortunately, I don't know the circumstances regarding that case.

To your more broad question, I definitely cannot answer that in terms of whether it will prevent. All I can say is that the language that is being proposed more inclusively brings to the attention things that others feel should be taken into consideration in terms of making an eligibility determination.

The Chair: Mr. Calkins.

Mr. Blaine Calkins: Mr. Chair, I have just one question. It's likely for Mr. O'Reilly, although whoever wants to can answer it.

As the scope of this widens—and the intent is for it to widen so that we can increase public safety—right now the length of determining the eligibility on an initial application or on a renewal for a firearms licence already is somewhere in the neighbourhood of.... I think that on the website the last time I looked, it was suggested that you should apply at least six months in advance in order to make sure that you have continuous eligibility to possess your firearms on a renewal.

As the scope widens and the discretion broadens on this, we have proposed paragraph 5(2)(f):

> for any other reason, poses a risk of any harm to any person.

That is a kind of catch-all. The CFO is basically given great breadth to exercise any investigation that he or she wishes to.

Has the department come to any determination, should this bill come to pass or when it comes to pass, about what the investigative length will look like for an application or a renewal, and what are going to be the increased costs? If we're going to look at more things, it's going to take more time. It's going to take more resources to meet the standard of delivery if we want to keep it at the point where renewals should only take three months, for example. Can you give the committee any indication of what that looks like?

● (1220)

Mr. Rob O'Reilly: I can say that the intention of the program is to maintain the service standards we have in place and that any amendments proposed under Bill C-71 not lengthen the period of time by which an individual is going to be applying for a licence. I can't speak to the exact resourcing because, again, when we had preliminary discussions on the bill, these particular elements weren't necessarily in play, but the intention of the program is to maintain those service standards.

As I've answered before, what we're talking about now under subsection 5(2) in terms of what must be more broadly considered is the "must" be considered. That doesn't mean that in many cases these things weren't considered beforehand. Most CFOs in doing a determination of eligibility are trying to do as thorough a job as possible now. While this may require them to look a little bit more broadly, the intention is to maintain the service standards we have in place.

Mr. Blaine Calkins: Will that not require an increase in resources, then?

Mr. Rob O'Reilly: Quite possibly, but I can't say that I've done the full evaluation in terms of the resource implications from a human resourcing perspective relating to these new elements.

Mr. Blaine Calkins: Thank you.

The Chair: Thank you, Mr. Calkins.

At this point I'm seeing no further interest in debate. I see the mover, however, having a conversation with Mr. Motz. I would like to call the question.

In the interests of committee harmony, I will hold off calling the question if in fact there is some substantive conversation. I could suspend for a minute. I would hope that at the end of the suspension I can call the question.

With that, we'll suspend for two minutes.

● (1220)

(Pause)

● (1230)

The Chair: Ladies and gentlemen, can we come back to order. This has been a very long two minutes.

Does the mover, wherever she might be, have anything to share with the committee?

Ms. Pam Damoff: The mover has a question and would like some guidance from Mr. Fraser on some potential wording, but also on the impact it would have.

In paragraph (d), if there were something along the lines of "is or was previously prohibited by an order and currently poses a public safety risk", what would the impact of including that be, and would it make any change in terms of how the chief firearms officer reviews this?

That could be to whomever is dealing with this.

● (1235)

The Chair: Please read that framing again so that we're all aware of it, as some have not heard that phrasing before.

Ms. Pam Damoff: Could Sean give you better wording than I could, because—?

The Chair: Well, Sean will have to move it, because you can't move your own amendment.

Mr. Sean Fraser (Central Nova, Lib.): Certainly.

I stand to be corrected on this, but the language that I think would capture it would have to come after the second dash in paragraph (d), and would have to read something to the effect of the following. I'll just read out the whole thing.

The Chair: Sure, please.

Mr. Sean Fraser: is or was previously prohibited by an order—made in the interest of the safety and security of any person—and poses a threat or risk to the safety and security of any person presently

Then it continues on.

Mr. Glen Motz: Mr. Chair?

The Chair: Yes, Mr. Motz.

Mr. Glen Motz: In reading the entirety of paragraph (d), I think the language we're trying to add would be better at the end of it. When we say "communicating with", it's an order that was made "from communicating with an identified person or from being at a specified place or within a specified distance from a place".

All of that should be there and included the way it is, and at the end of that, "and presently poses a risk—

Mr. Sean Fraser: —"and presently poses a threat or risk to the safety and security of any person".

Mr. Glen Motz: Yes, at the end. All of that language is at the very end.

The Chair: First of all, we all understand the location of the framing and the framing itself, so the next stage would be to ask that it be formally moved as an amendment to the current amendment being debated.

That is moved by Mr. Fraser and seconded by Mr. Motz.

Our legislative clerks wish to have very specific wording.

Mr. Sean Fraser: Okay.

At the end of paragraph (d), before the semi-colon, I move that we add the following language:

and presently poses a threat or risk to the safety or security of any person

Mr. Olivier Champagne: Of other persons?

Mr. Sean Fraser: Of any person.

The Chair: Now, the amendment is properly on the floor. The debate would be on the subamendment.

Is there any debate on that?

Ms. Damoff and then Mr. Motz.

Ms. Pam Damoff: It was a question to the officials to find out what that does to this amendment, and if it provides direction to the chief firearms officer to not look at shoplifting charges. That's the concern that has been expressed.

Would it still capture someone who had a restraining order against their partner and no longer has that restraining order? Would they still be able to get a firearm?

Ms. Nicole Robichaud: First, just to clarify, none of these criteria would automatically mean that someone doesn't get a firearm. They're just mandatory criteria to be considered in determining whether it's desirable in the interest of the safety of any person that someone get a firearm.

With this added language, again, the CFO already considers if it's desirable in the present circumstances in the interests of safety as part of their overarching determination. Therefore, this would perhaps add some greater clarity that, with respect to this particular criteria, they also need to turn their minds to whether they currently pose a public safety risk.

● (1240)

Ms. Pam Damoff: Would that change be better placed elsewhere in that paragraph so that it doesn't only apply to...? If it's happening now, is it unnecessary?

Ms. Nicole Robichaud: Again, I think subsection 5(1) is the guiding, overarching principle that they consider the current risk to public safety in their assessment. Again, this would perhaps add some greater clarity to paragraph 5(2)(d) when they're looking at all these past orders. The past order is not necessarily relevant if the person doesn't also currently pose a public safety risk.

The Chair: Thank you.

Mr. Motz.

Mr. Glen Motz: Thank you, Mr. Chair.

Just to clarify that last statement, if I heard you right, it may be possible to put that same language in a different spot and it would be better for what we're trying to do for the entire section, or did I misunderstand what you said?

Ms. Nicole Robichaud: Are you talking about putting that in a different spot in subsection 5(2), or do you mean to include something beyond paragraph (d)?

Mr. Glen Motz: No. If I understood you correctly, you said that if we took that language, it would apply elsewhere, but it's in paragraph (d). Did I take you to mean that if that same language were elsewhere in subsection 5(2), and not just inside paragraph (d), it would have better application?

The intent behind this, as told to my friends, is to ensure that those who would adjudicate as a CFO would have greater certainty or language around not allowing the broad strokes of misinterpretation of how this should look and how this should be interpreted. That's all we're trying to get at.

If you think it should be at a different spot from paragraph (d) and that it applies to all of them, then great. We would certainly defer to that. However, if you think it's best to apply it in paragraph (d), which is where we had our greatest concern, I certainly would defer to Pam or whoever would have impact. Unless, Ms. Robichaud, I misinterpreted what you said.

Ms. Paula Clarke: I hope this clarifies. What is proposed now would limit what the CFO must look at with respect to no contact orders. The only effect of this current language is that it only applies to paragraph (d), and it would only limit the requirement that the CFO, when examining prohibition orders, no contact orders, must also consider whether or not.... There has to be a history, previous no contact orders, plus that person must continue to pose a risk to others. This would apply only to prohibition orders.

Mr. Glen Motz: Okay. Then given what the other sections say, I think it's best left in paragraph (d), because I don't want to have that apply to paragraph (e), for example, that they pose a present danger to domestic violence situations. I think that takes away the exact intent of what we want on public safety on that issue. If you've ever been convicted or if you have something going on with intimate partner violence, then if you pose a threat, you should not have a licence. It doesn't mean it's current.

If we add that language to all of it, we water down the intent. I would suggest, then, based on what we've said, that it stay inside paragraph (d), because that was my concern.

The Chair: Bear in mind, colleagues, we're writing legislation. We're not creating the Ten Commandments.

Mr. Glen Motz: It's the Ten Commandments for some people, Mr. Chair.

The Chair: Not the 10 suggestions or the 10 hints?

May I call the question on the subamendment?

Ms. Damoff.

● (1245)

Ms. Pam Damoff: Just quickly, in listening to what the officials said and conferring with Mr. Fraser and Mr. Fragiskatos, just because they've been studying this legislation, they're saying it's already in here. Right? They did. They said it was already considered and not necessary.

I don't think we need to put.... If someone has had a restraining order, if someone has had a peace bond because there are concerns about terrorism, it's already being considered because of what's in subsection 5(1).

Is that not what you were saying? The CFO would look at whether it's a present public safety issue. This is what we want to ensure they're doing.

Ms. Nicole Robichaud: The general mandate of the CFO in considering eligibility under subsection 5(1) is to consider whether it is currently desirable in the interest of the safety of any other person that the person hold a firearm. Their focus is on the present risk in their overall assessment.

Ms. Pam Damoff: Is it necessary to make sure that they're doing that when it comes to any kind of order? Do we need to put it in here to ensure that they're doing it?

The Chair: I'll just point out that there are times when we put things into legislation for greater clarity. I think that is the idea here. We are putting something in for greater clarity and ultimate guidance to those who will interpret the law. That was the intent.

I hate to walk away from a fragile consensus. That might be interpreted as a hint from the chair.

May I call the question?

A hon. member: Yes.

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

The Chair: Excellent. Now we move to the amendment as amended. Do we want a recorded vote?

We haven't got to that yet. Mr. Calkins wants to speak.

Mr. Blaine Calkins: Not to belabour the issue, but just for greater clarity, would we also like to add that same word “present” in proposed paragraph 5(2)(f), “for any other reason poses a present risk of harm to any person” for greater clarity?

If I see a willingness on the other side to accept that, then I'd happily move it.

The Chair: I'm sorry, I'm not quite sure what you're suggesting.

In proposed paragraph 5(2)(f), you're putting....

Mr. Blaine Calkins: I'm just looking across the floor right now to see, for the sake of consistency and on the same issue, if we should add the word “present” between “a” and “risk” in proposed paragraph 5(2)(f). I'm just looking. I'm not making the motion. I'm just looking to see if there would be consensus. What I'm proposing to move is “for any other reason poses a present risk of harm to any person”, just for that sake of consistency.

I'm not seeing consensus, so I won't move it.

The Chair: There's no consensus and no grammatical challenge.

I therefore ask for a recorded vote on the amendment as it has been amended.

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

The Chair: Thank you, colleagues.

That brings us to PV-1. Given Ms. May's peculiar status, shall we say, and in light of the previous vote, I'm going to rule PV-1 out of order. That saves us a conundrum.

That brings us to CPC- 8.

Mr. Motz.

Mr. Glen Motz: Chair, CPC-8 is an attempt to address the issue that we have just dealt with in LIB-1. As it was currently before the committee, the language that is used there.... Given our strict timelines, I did not have a chance to get it back to the drafters to make changes to it. I certainly was coming here to make an amendment to my amendment, which would include more of a broad ban for a conviction of anything related to a firearm or to offences related to violence against persons.

I think LIB-1 has covered off what my hopes were in CPC-8. For that reason, I would ask that CPC-8 be withdrawn.

● (1250)

The Chair: We're on to CPC-9.

Mr. Motz.

Mr. Glen Motz: Chair, the intent of CPC-9 is to address the background checks and to have the lifetime background check on a new applicant, or someone who has not held a continuous licence, or has a firearms licence that has lapsed or been sought at a later date.

I am proposing that clause 2 be amended by adding, after line 4 on page 2, the following:

> (2) Section 5 of the Act is amended by adding the following after subsection (2):
>
> (2.1) For the purposes of determining eligibility under subsection (2), in the case of an individual who is applying to renew a firearms licence or who has held a firearms licence within the previous year, only the previous five years shall be taken into account.

The government has sought to introduce lifetime background checks, notwithstanding the obvious issues that many law-abiding firearm owners don't pose a problem, as we know. They are not the problem. Criminals are the issue, but criminals usually don't seek firearms through applying for a licence, so it would seem unnecessary to have conditions on that lifetime background check.

Current firearm licence owners have been subjected to a five-year continuous screening from the time they apply and get accepted for their firearm licence. As you described on Tuesday, Mr. O'Reilly, they are having those 400 UCR codes, uniform crime reporting codes, being checked on a continuous basis. These people are already probably the most closely scrutinized and monitored of any other group in the country, I would dare say. Firearms owners are more closely watched by this government than probably the untold number of ISIS terrorists who have returned to our country.

That's true. It is. They don't get subjected to daily checks.

Mr. Peter Fragiskatos: On a point of order, Mr. Chair, is that really relevant?

We disagree very strongly on this subject—that falsehood—but let's stay within the scope of the—

Mr. Glen Motz: That's okay. We disagree.

Thank you.

To make this bill more in line with the actual goal, which is to keep firearms away from those who should not have them, I would submit that background checks should only be carried out at first-time applications, where the individual has not been subjected to continuous screening. Once someone has held a licence, whether that be for five years or 20 or 30 years, they are already basically under background checks and have been for the life of their firearms licence anyway.

This would provide the objective of ensuring that people get the background check they need before getting a firearms licence, and reasonable background checks follow afterwards, which is what we intend to have happen in the first place.

That is the reason for that amendment. It will provide the opportunity to do exactly what we want to have happen in legislation. That is, those who should not have a firearms licence do not get a firearms licence, and those who already have a firearms licence and are not flagged, and do not pose a threat to public safety, they are the majority of Canadians, who are the law-abiding kind of owners. If we're going to do a background check as extensive as is being proposed, it is for those coming forward, or those who have had a lapse in their licence, not for those who currently have a licence.

● (1255)

The Chair: Thank you, Mr. Motz.

Ms. Damoff.

Ms. Pam Damoff: I'll be quick, Chair. We're not going to be supporting the amendment. It doesn't follow the intent of the bill to follow a lifetime and I listened to Mr. Motz and his rationale, but we won't be supporting it.

The Chair: Mr. Calkins.

Mr. Blaine Calkins: I have a question for the officials.

Does the department have any statistics or evidence to suggest that people who have had a firearms licence—even going back to the firearms acquisitions certificate days, the early days—are problematic from a public safety perspective?

Mr. Rob O'Reilly: Unfortunately, I have nothing to support that notion.

Mr. Blaine Calkins: Okay, because we don't have any evidence to suggest that people who have had a firearms licence for 20 years and have reapplied successfully two or three times.... I don't know why my colleagues across the way would be unsupportive of this. This is probably going to be an amendment that will, politically, gain the most wins for my colleagues who are proposing this bill in the first place. I don't sense that there's any public safety value added, as just mentioned by Mr. O'Reilly, so I'm wondering why there wouldn't be consent to pass this amendment.

As one of the few people at this table who actually has a possession and acquisition licence, I'm continually vetted. I get checked out every time I reapply for my licence. It's only valid for five years and I'm going to have a lifetime history of having that licence, hopefully. I'm not sure why, the next time I go to reapply for my licence, somebody is going to go back to when I was 18 years old. It doesn't seem to make any sense, when I've established 20 years of credibility as a law-abiding licensed firearms owner.

This is kind of the crux of why Bill C-71 is not being accepted broadly by the current law-abiding firearms community, and I wholeheartedly suggest the government reconsider this. There's no evidence to suggest that this is going to add anything to public safety whatsoever.

The Chair: Mr. Motz.

Mr. Glen Motz: Chair, just to echo the comments that were made by my colleague, we do know from the stats from Statistics Canada and other studies that have been done, that current licensed firearm owners pose the lowest risk to public safety, lower even than those who don't have a PAL. Those who don't have a firearms licence have a greater probability of committing an offence than those who do. I believe it was by one-third.

We do know that less than 3% of those who have a firearms licence, based on the evidence of testimony that was provided to us at this committee, have actually ever committed a criminal offence once they've had a PAL.

The intent of this is to ensure that those who should not have a firearm on first instance don't receive one, which is what we have currently in legislation. The current legislation and even the proposed Bill C-71 will ensure that if someone does have a licence and commits an offence, they then will have that licence removed or be unable to renew it and have their firearms taken away.

What this does, however, for individuals who have a licence already, and as has been said, who already go through the most stringent scrutiny of any law-abiding group in our society, is make it unnecessary to have a full lifetime check moving forward. It should only be applied to those who are receiving a firearms licence for the first time or those who have let it lapse for more than a year and have to reapply. That's reasonable. Firearm owners are not opposed to background checks that weed out those who pose a threat to public safety.

The issue is how it would be applied if you have, as Mr. O'Reilly said, 2.1 million PAL licences in this country, or thereabouts. At the five-year renewals—and there's no costing around this—someone now will have to do a full background check for the lifetime of that individual, and they may have had a licence for 20 years, but now, all of a sudden, we're going to impose this on them, and it is a cost. It is a delay.

I'd like to have our officials weigh in to provide some clarity as to whether or not this sort of application makes sense and upholds the intention of keeping firearms away from those who shouldn't have them and prevents unnecessary and onerous background checks on those who are already qualified.

● (1300)

The Chair: Is Mr. Motz's question clear?

Mr. Rob O'Reilly: Kind of.

The only point I would make, Mr. Motz, is that you've used the term “background checks” quite a bit in reference to the five-year period. The five-year period certainly does apply to the background checks, but the current eligibility goes beyond just the background checks, the exclusive criminality. So when we look to 5(2)(a), “convicted or discharged”, 5(2)(b) speaks to mental health and violence. That isn't caught as part of a traditional background check, or 5(2)(c), which is a history of behaviour. I think what's intended here, in terms of expanding that, is that the eligibility in terms of what is being considered go beyond just the core background check to include other behaviours that may not be expressly as a result of a discharge or a conviction.

On an application or a renewal, there's a portion of the application that relates to self-disclosure. The self-disclosure goes to other mental health issues or loss or breakdowns in one's relationship, so the expansion of 5(2) to lifetime would bring those other elements into consideration beyond just the core background check.

You were correct when you said the other day that the background check is capturing the criminality, the things that generate FIPs, but it excluded certain other portions that would necessarily be considered as well under, for example, 5(2)(b) and 5(2)(c).

Mr. Glen Motz: True, but in 5(2), as it currently reads, it covers off the things you just mentioned that a CFO will currently look at.

Mr. Rob O'Reilly: But the whole notion of a background check really specifically relates to criminal records check and that really is only covered under the 5(2)(a) at that point, so criminal background checks are things that would come out of CPIC and be exclusively flagged.

For example, things under 5(2)(b) relating to mental health issues and violence go slightly beyond that.

Mr. Glen Motz: In my conversation if I used “background checks”, and it was not what was proposed in the amendment, I apologize for that.

Again, the amendment is about determining eligibility under subsection 5(2). That would cover off all the things you just mentioned. It covers all of those things that exist there now and what is in an amendment that we just passed, LIB-1. It would cover those off. It's not just a background check. The bill talks about enhanced background checks over the lifetime of an individual, but I'm just talking about the licence renewal eligibility, or even the eligibility in the first place. Again, I apologize for using the term “background check” because it talks about criminality there.

All of the application precessing determining eligibility for acquiring a firearm under this amendment is specific to, if you have a licence already, we're saying that there's no need to have the lifetime and [*Inaudible—Editor*] enhanced one because, as you've already demonstrated, 5(2) already does the things you just finished saying it does already. It checks all those things already on eligibility and it shouldn't apply to those individuals who already have a licence or let it lapse within a year. It should apply to those who are getting a new licence or who have let in lapse for longer than a year. That's what I'm getting at, so it's not background checks.

Given that new parameter, do you see a value to this? Are you aware of any concerns that this amendment would pose to public safety or that would make it difficult to proceed with?

● (1305)

Mr. Rob O'Reilly: I can't answer the question in terms of perceived risk to public safety. All I can say is that the amendments you are putting forward right now would therefore, on somebody who is renewing their application, on personal history questions about previous incidents, exclude things that may have occurred six years ago, as an example.

There would be an impact in terms of what would be disclosed by the individual—

Mr. Glen Motz: No, that's not true because—

Mr. Rob O'Reilly: Sorry, then I misinterpreted.

Mr. Glen Motz: When someone applies for a licence now, the CFO goes through their whole eligibility requirements and they've taken all those things into consideration already. Have they not? It's besides the criminality.

Mr. Rob O'Reilly: The firearms allocation right now only requires individuals to disclose things within the last five years, so no, they would not necessarily take further things into consideration because the firearms application right now requires individuals to disclose the last five years.

Mr. Glen Motz: But you said in testimony either today or on Tuesday that nothing precludes the CFOs from going beyond five years in their scope now.

Mr. Rob O'Reilly: That's if they are made aware of it.

Mr. Glen Motz: Right.

Mr. Rob O'Reilly: There is a self-disclosure portion to the firearms application, so if the individual is not obliged to disclose beyond five years, then the likelihood of the CFO knowing about it would be fairly low.

The Chair: Mr. Calkins.

Mr. Blaine Calkins: I just want my colleagues across the way to be aware that, when this bill comes into force, without this amendment, some prominent Canadian who has been a lifetime firearms owner will get caught up in a check and will be denied a licence. It will make a headline, and those responsible for not accepting this amendment will have to wear it. I can see a first nations leader, a veteran, or somebody like that getting caught up in this.

This is a very reasonable amendment. I'm not sure why it's not being accepted.

The Chair: Thank you. I see no further appetite for debate, so we'll vote on the amendment.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: There will be a recorded vote on clause 2 as amended.

(Clause 2 as amended agreed to: yeas 5; nays 4 [See *Minutes of Proceedings*])

The Chair: I see the clock at shortly after one o'clock, and since we're going to spend such a fun time here this evening, I propose we finish and let Mr. Paul-Hus get on to practising his questions.

With that, we are adjourned until 3:30 p.m.