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Chair

Mr. Ed Fast

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• (1530)

[English]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting number 12 of the Standing Committee on Justice and Human Rights. Today is Monday, March 30, 2009.

You have the agenda for today before you. By order of reference, we have before us Bill C-14, An Act to amend the Criminal Code (organized crime and protection of justice system participants).

Please note that we will be leaving half an hour at the end of this meeting to discuss in camera a number of work plan issues that the committee has to address.

To assist us in the review of Bill C-14, we're glad to have with us the Minister of Justice and Attorney General of Canada, the Honourable Rob Nicholson. With him are representatives from the Department of Justice. First of all, we have Mr. William Bartlett, senior counsel, criminal law policy section; we also have Matthew Taylor, who's also counsel with the criminal law policy section.

Minister Nicholson will be with us for one hour. I believe Department of Justice officials will be here for another half an hour after that, so that works well.

Minister Nicholson, you're aware of the routine. You have 10 minutes to present, and we'll open the floor to questions. The floor is yours.

[Translation]

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Mr. Chair, for giving us the opportunity to come and talk about Bill C-14.

[English]

As you know, our government is committed to fighting crime and ensuring the safety and security of Canadians. We've made great strides in protecting Canadians and cracking down on crime. We passed the comprehensive Tackling Violent Crime Act, which increases penalties, including for those convicted of street racing, and establishes the national anti-drug strategy to curb illicit drug use. Ours is a comprehensive approach on these matters.

Bill C-14 is another plank in our ambitious crime agenda. This important piece of legislation is an example of this government's ongoing commitment to improve the safety of our streets and communities by tackling organized crime, especially violent street gangs. I'll set out some of the major components of this, and of course I would be pleased to answer any questions you may have on this.

Gang violence is an extremely serious concern for many Canadians, especially right now in Vancouver and the Lower Mainland, where recently there has been a wave of violence from gang members. I receive letters and e-mail from citizens, mayors, and attorneys general urging the federal government to take action to address the threats that gangs are posing to their communities.

Bill C-14 proposes four key reforms. They are making gang murders automatically first degree murder; creating a new offence to target drive-by and other reckless shootings; fortifying the scheme for responding to assaults against police and other peace officers and public officers; and strengthening the gang peace bond provisions.

With respect to murders that can be linked to organized crime, we are proposing amendments that would automatically treat these cases as first degree murder regardless of whether they are planned and deliberate. Furthermore, if it can be established that the murder occurred while the person was committing or attempting to commit another indictable offence for the benefit of, at the direction of, or in association with a criminal organization, then it will be classed as first degree murder even in the absence of planning and deliberation. The person would obviously have to be guilty of murder in the circumstances. I want to emphasize that we are not talking about some form of constructive murder or raising manslaughter to murder in these circumstances. Rather, the effect of the provision would be to make any murder committed in the course of another criminal organization offence first degree rather than second degree.

Gang homicides account for approximately 20% of all the homicides that take place in Canada, but in British Columbia, which has been hard hit by gang violence, that number is a staggering 40% of all homicides. What is even more troubling is that gang homicide rates have been climbing each year. Clearly, this demands attention from all levels of government.

Under this law, any person found guilty of first degree murder is sentenced to a mandatory term of life imprisonment. As you know, in the case of first degree murder, there is no eligibility for parole for 25 years. In the case of second degree murder, the parole ineligibility period is a minimum of 10 years up to a maximum of 25. These amendments to section 231 of the Criminal Code mean that police officers and prosecutors will have another tool to treat gang murders as the extremely serious cases that they are.

The second area of reform relates to drive-by and other reckless shootings. We are proposing a new offence be added to the Criminal Code that would target all intentional shootings involving reckless disregard for the life or safety of others. Currently the offences available to prosecute these kinds of cases range from offences such as section 86, the careless use of a firearm, to section 244, the discharge of a firearm with intent to cause bodily harm. The negligence-based offences do not appropriately capture the seriousness of a drive-by scenario that involves consciously reckless conduct. Section 244, on the other hand, requires proof that the firearm was discharged at a particular person with a specific intent to cause bodily harm.

While the offence is clearly the more appropriate one if the shooter does have a particular target, it can sometimes be difficult to prove in a drive-by shooting scenario where the intent may be generally to intimidate a rival gang or the community. In many cases, the shooters may just be firing wildly, in any event, without a particular target. The proposed offence will fill a gap in the Criminal Code and provide a tailored response to this dangerous criminal activity.

• (1535)

This new offence requires that the accuseds specifically turn their minds to the fact that discharging their firearms would jeopardize the life or safety of another person, and appreciating this fact, they still went ahead. This offence would be punishable by a mandatory penalty of four years of imprisonment and a maximum of 14 years. The mandatory minimum penalty would be increased to five years if the offence were committed for the benefit of, or at the direction of, or in association with a criminal organization, or it involved the use of a prohibited or restricted firearm such as a handgun or automatic firearm. In addition, repeat offenders in these circumstances would be subject to a higher penalty, beginning at seven years of imprisonment.

A third area of reform is aimed at increasing the protection to police officers and to responding to violence committed against other justice system participants. It does this by creating two new offences to prohibit assaults causing bodily harm to police officers, or involving the use of a weapon and aggravated assaults against police officers. These offences would be punishable on indictment by a maximum imprisonment period of 10 and 14 years respectively. To ensure these offences are adequately punished, we have proposed amendments that would require a court, when sentencing an offender for any of the specific offences, to give primary consideration to the principles of denunciation and deterrence. The same principles would also apply to cases involving the intimidation of justice system participants, including judges, prosecutors, jurors, and many others who play a role in the criminal justice system.

Finally, the fourth area of reform proposed in Bill C-14 relates to the strengthening of the gang peace bond provision. These amendments would clarify that when issuing a reconnaissance order or a promise to keep the peace, judges may impose any conditions they feel are necessary to secure the good conduct of the defendant. The amendments would also provide for these orders to be extended past the normal one year up to 24 months if the defendant had been previously convicted of a criminal organization offence, or the intimidation of justice system participants offence, as well as a terrorism offence. These are important tools because they seek to prevent the commission of organized crime offences before they take place, and they are extremely useful for the police in controlling gang activity. These amendments will ensure that the orders are used as they are intended.

Mr. Chair, as I've said in the past, there can be no more important task for any government to undertake than the protection of its citizens. Bill C-14 will result in greater protection for Canadians everywhere. I think Canadians would like to see legislation like this passed, so I urge honourable members of this committee to work collaboratively and efficiently to ensure a speedy passage of this bill.

Thank you very much.

• (1540)

The Chair: Thank you, Minister.

We'll now go to the first questioner.

Mr. Dosanjh, you have seven minutes.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you. I may finish early and split time with my other colleague here.

Mr. Minister, I'm not going to ask you any questions on Bill C-14. I have some other questions that I want to ask you, and I'm glad you're here.

You obviously know British Columbia made three requests when they came to see you, and they met with us as well. We said the Liberal Party of Canada supports their three requests. Recently other provinces—Saskatchewan, Alberta, and Manitoba—have added their voices to those three requests. I understand that some time ago Ontario was of the same view. Four other provinces in addition to British Columbia have added their voices to British Columbia's voice for those three changes, at least.

I'm going to focus on the change with respect to the wiretap and electronic surveillance request that British Columbia made. The other day before this committee we had the opportunity to hear from assistant commissioner of the RCMP, Mike Cabana, and he echoed his support for that request as well.

My question to you is very simple. You're moving on two for one, thank you. This particular organization of investigative techniques, MITA as it's called, was brought forward in 2005 by then Minister Anne McLellan. It died on the order paper. You don't have to do any more drafting. It's done. It's sitting there within the justice department. Why have you not moved on it? Why do you not think this is important for the police? They want to be able to apprehend or disrupt gang activity and they are at a disadvantage because of the state of the law in this area. It goes back over 30 years.

Hon. Rob Nicholson: Mr. Dosanjh, if it really had been done in 2005, it would have been passed, wouldn't it?

But that's part of the lessons we've learned from that time. There were dozens of bills introduced in the minority government of which you were a member, and it was striking how little, if anything, got done during those years. My colleagues and I are determined that we're not going to fall into the same pit the previous government found itself in. When they figured out that some of these things were very difficult, that they were a problem, well, you know, you introduce the legislation and it dies on the order paper, hurrah. We don't want to get into that, so what I have indicated to you is that we are taking these one step at a time.

We've introduced this bill. You said you're not going to ask any questions. That's good. I hope that means it's going to get passed, get out of here, and get back into the House of Commons. I'd be delighted to see that. We've introduced this bill and we've introduced the bill with respect to drugs. These have received widespread support across the country.

Then, once I introduced the bill on drugs, you said, how about credit for time served? I suppose I could ask you why this wasn't done, as this has been a problem for years, but in any case, this government, of which I'm a member, will do it.

With respect to other issues, I'm quite sure that if I introduced a bill with respect to wiretaps, you wouldn't be happy. You'd say, what about something else? I appreciate that—

Hon. Ujjal Dosanjh: Absolutely, I'm going to say, what about something else?

Hon. Rob Nicholson: You're in the business of—

Hon. Ujjal Dosanjh: That's my job.

Hon. Rob Nicholson: I'm in the business of getting these things passed, so I can tell you—

Hon. Ujjal Dosanjh: I'm in opposition.

Hon. Rob Nicholson: —that I was with your colleagues in British Columbia on Friday, and they were delighted to see us move forward on the bill on credit for time served. I hope that will be dealt with expeditiously.

As I always say, and as I've said to my colleagues, we have an ambitious agenda and we're moving one step at a time. I can assure you that if you can get these bills passed, I have other legislation. I'm not announcing that today, but I have other justice legislation. Now that you're onside, hopefully, with these things and you've realized what a challenge changes to the criminal justice system are and how important these reforms are, I know that you'll stand up and applaud,

as you must have been applauding on Friday when we introduced that bill on credit for time served.

• (1545)

Hon. Ujjal Dosanjh: Well, I'm actually surprised that you're filibustering the committee and not really answering the question. Why would you not answer the question? When are you going to move—

Hon. Rob Nicholson: I'll tell you why I'm not making any more announcements—

Hon. Ujjal Dosanjh: When, sir? It's my—

Hon. Rob Nicholson: I don't want to fall into the same trap that your government fell into—

Hon. Ujjal Dosanjh: It's my job to ask questions. It's yours to answer.

Hon. Rob Nicholson: —when nothing got passed.

The Chair: Gentlemen—

Hon. Ujjal Dosanjh: I'm not the minister.

The Chair: Thank you, gentlemen.

Hon. Ujjal Dosanjh: It's my job—

The Chair: Mr. Dosanjh, just one moment. It's one person at a time.

Right now, we're going to have Mr. Dosanjh ask his question, and the minister can answer it. Thank you.

Hon. Ujjal Dosanjh: My question to you, sir, is very direct: when are you going to move on the request of British Columbia, supported by Saskatchewan, Alberta, Manitoba, and Ontario, to change the wiretap and electronic surveillance provisions to make lawful access more effective? When are you going to move? That's the question.

Hon. Rob Nicholson: I am not giving you a date today, Mr. Dosanjh, because I want to get the bills that are before you right now passed and then—

Hon. Ujjal Dosanjh: Nobody is preventing the bills before us—

Hon. Rob Nicholson: Just a second. I will not do what happened even in this Parliament. We introduced five pieces of legislation. Some of them had huge and widespread support, protecting 14- and 15-year-olds from adult sexual predators, and not one single thing got passed.

Hon. Ujjal Dosanjh: You prorogued.

Hon. Rob Nicholson: So we put them all together in the fall, a little over a year ago. I want to see them get passed. So on credit for time served, get that passed. Get tough on drugs and gangs, and I can promise you that you'll have more legislation. When I'm prepared to announce that new legislation, you'll be one of the first to hear.

Hon. Ujjal Dosanjh: Mr. Minister, the last I remember, it was your leader who prorogued Parliament. We didn't prorogue Parliament, so let's not go back as to who did what to whom and when. Answer the question today. When are you going to move on this very important request from British Columbia? Why wouldn't you tell a parliamentary committee—

Hon. Rob Nicholson: I have a question for you: when are you going to pass this legislation? Get this legislation passed and then you will see new legislation coming from this government.

Hon. Ujjal Dosanjh: I'm not even asking a question about this legislation—

Hon. Rob Nicholson: That's what you'll see.

The Chair: That's enough. I want to remind members that there is a general rule of relevancy. Today we're dealing with Bill C-14. The bill before us deals with organized crime.

Mr. Dosanjh, I've given you a fair degree of leeway to ask questions that are perhaps outside the bill. But let's remember, folks, that we're all working together to try to make this country safer. Let's keep the partisanship to a minimum, as much as we can.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): On a point of order, Mr. Chair, I think that actually it's sort of a pre-ruling, but if you look at the preamble of the bill, you'll see that it talks about tackling organized crime. It's perfectly within the purview of the members, as it has been for the three years that I've been here, to ask the minister what other measures he has to tackle organized crime. If it were about driving while impaired offences, you might have a point, but we're going to ask questions about organized crime and how to fight it, Mr. Chair.

The Chair: I understand that, Mr. Murphy, and you understand we're doing a very comprehensive study on organized crime. The minister is here to address a specific bill that was tabled in the House of Commons to address a very specific aspect of organized crime. And as I said, Mr. Murphy, I did give Mr. Dosanjh a great deal of leeway.

I want there to be an open, forthright discussion about the issues, but let's make sure we keep the relations here civil, because we're trying to achieve a result, which is to make Canadians safer. I'm going to leave it at that.

Mr. Dosanjh.

Hon. Ujjal Dosanjh: You've taken two minutes of my time. May I go on?

The Chair: No, actually you were at the end of your time.

Hon. Ujjal Dosanjh: Because you took it.

The Chair: No, I didn't. You were already at the end of your time.

Monsieur Ménard, you have seven minutes.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): Thank you, Mr. Chair.

I want to welcome the minister and his colleagues. I hope that the atmosphere here will remain cordial and friendly, as usual.

As you know, the Bloc Québécois is an extremely reasonable and enlightened party with regard to establishing what we need to best fight organized crime. We support this bill and obviously we hope that it will be adopted as quickly as possible. Of course, this does not mean that we will not be hearing from witnesses.

At present, the Criminal Code contains provisions that, if I am not mistaken, ensure that we can tie an individual with characteristics corresponding to those set out in section 467 of the Criminal Code to a criminal organization. Am I wrong in saying that such individuals, if they commit murder, will automatically be deemed guilty of first degree murder and will face 25 years in prison, with no possibility of parole? How is first-degree murder changing... What is really new in this bill? I would remind you that we do support the bill, but I want to understand what is new here.

Also, I would like to know whether your department has a table that it could provide to us concerning street gangs, criminal organizations. Is your department looking at these issues or would it be your colleague at the Department of Public Safety who would have that information?

Let's start with those two questions. I have two more to ask you after that.

• (1550)

[English]

Hon. Rob Nicholson: There is some shared responsibility, of course, with Public Safety. In fact, much of the whole question of lawful access is within the purview of Public Safety as well, but we certainly work together.

When you ask what is new for the person—and we're talking about people who have committed murder—I've been asked that question just recently. Perhaps Mr. Bartlett may want to add something to that. They're asking what is the difference? Murder is murder. How is it improved if the guy is going to be in for 25 years as opposed to 10 or 15, which would be possible under something other than first degree murder?

I say I know for sure there will be a lot fewer victims out there for that last 10 or 15 years that individual is being detained if he or she is a part of a gang-related activity and they have committed a murder.

Again, I appreciate the comments, Monsieur Ménard, and Mr. Bartlett has asked to make an intervention on that as well.

Mr. William Bartlett (Senior Counsel, Criminal Law Policy Section, Department of Justice): Monsieur Ménard, there is no provision in the Criminal Code currently that makes any murder related to gang activity first degree. If the murder is planned and deliberate, regardless of whether or not it has anything to do with a criminal organization, then it is of course first degree.

There's also a provision that makes it a first degree murder if the murder occurs while the person is in the course of committing an explosives offence for the benefit of, at the direction of, or in association with a criminal organization.

I know you would be familiar with that provision, which followed the death of the 12-year-old boy in Quebec in the course of the Rock Machine and Hells Angels war. This would expand that provision quite thoroughly, and it would do it in two ways. It would make it automatically first degree murder if the murder is committed for the benefit of a criminal organization. Many of those will be planned and deliberate, and if the evidence is there that they're planned and deliberate, then they would already be first degree. But some of them may not be, and the evidence of the planning and deliberation may not be there. More importantly perhaps, though, in other offences that are being committed for the benefit of a criminal organization, where a murder occurs, the murder will probably more commonly be spontaneous. In those circumstances the current law would restrict that only to an explosives offence. This will mean that if they're in the course of committing any indictable offence, then—

[Translation]

Mr. Réal Ménard: Okay, I understand. You have answered my question. It is the element of premeditation that will no longer automatically need to be present, for someone to be found guilty of murder in the first degree.

Hon. Rob Nicholson: I want to say one other thing.

[English]

You asked for some statistics, Monsieur Ménard, with respect to gangland activity. I can leave that with you here. We have that breakdown here. You were asking for that in the second part of your question.

[Translation]

Mr. Réal Ménard: The committee looked at the issue of drive-by shootings a year and a half ago, after I tabled the motion on organized crime. For example, if someone committed a drive-by shooting in Montreal, at the time, it would have been difficult to prove that that person had ties to organized crime, based on the criteria set out in section 467.

How did you resolve that difficulty? Does the wording of the offence in the bill allow this obstacle to be removed?

[English]

Hon. Rob Nicholson: The wording is different in that it is now specific. The problem with the existing legislation is that it doesn't require specific intent against the particular individual. A person who is involved in drive-by shootings may be trying to intimidate the public or members of a gang. You find that individuals get killed as innocent bystanders, and nobody can be shown to have formed a specific intent to go after these individuals. In a sense, we are drafting a piece of legislation that has specific reference to this type of activity. For instance, an individual could try to shoot a specific person on the street corner, but if another person was killed it would be difficult to prove the formation of intent against the other person. This covers that. It provides for a general intent.

Is there anything you would like to add to that, Mr. Bartlett?

• (1555)

Mr. William Bartlett: Regardless of whether it can be shown that a drive-by shooting is connected to a criminal organization, this proposed offence would make it a mandatory minimum of four years in jail if you can show that the shooter fired a gun with reason to

believe that he was running the risk of killing somebody. They may be shooting at somebody in particular, or they may be shooting wildly, but you will have an offence that will provide a four-year mandatory minimum sentence. That will go up to five years if you can prove that it was connected with a criminal organization.

[Translation]

Mr. Réal Ménard: Is that different from human negligence?

[English]

The Chair: Monsieur Ménard, you are at the end of your time.

Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you for being here, Minister.

Do we know how many additional first-degree murder charges, based on past practice during the last few years, will be laid with this provision?

Hon. Rob Nicholson: That would be speculation at this point.

Mr. Joe Comartin: It's just that we are proposing—

Hon. Rob Nicholson: You have to have the facts in each case, it seems to me.

Mr. Joe Comartin: But looking at it historically over the last few years, do we know how many of these crimes are gangland related?

Hon. Rob Nicholson: According to the statistics given to me, approximately 20% in this country were gangland related, and in British Columbia it is double that. It's up to 40%. Mr. Taylor, the counsel, has a breakdown of the statistics, and I would be glad to leave it with you.

Do you have anything to add, Mr. Taylor?

Mr. Matthew Taylor (Counsel, Criminal Law Policy Section, Department of Justice): If you are asking how many new charges...

Mr. Joe Comartin: I'm aware of the 20% figure that's gangland related. What I'm asking, Mr. Taylor, is how many of those were second degree murder or manslaughter charges that are now going to be upgraded to first degree murder. Do we know that?

Mr. Matthew Taylor: In 2006, 74 murders of the 104 were first degree, 29 were second degree, and one was manslaughter. We have statistics going back to 2000. Looking at this historically, according to our Statistics Canada information, you are seeing an increase in both first degree and second degree murder rates.

Hon. Rob Nicholson: We can give you that breakdown as well.

Mr. Joe Comartin: Okay.

The other problem, and I'm getting this from prosecutors, is both a legal one and a practical one. The legal one is the definition of an organized crime or organization and how closely we can tie that to the street gang. Is this street gang an organized crime organization under the definitions in the code? I don't see any attempt to try to clarify the language, Mr. Minister, in this legislation.

Second, and this is the more practical one, is that we don't have enough experts in the country who can say, yes, this group in the city of Vancouver, in the city of Toronto, is an organized crime group, and here's why. We've had evidence, Mr. Bartlett—and I know you're frowning about this—from witnesses from the province of Quebec about the shortage of witnesses they had. Again, I don't see anything, nor would I expect it in the legislation. But is there anything practically happening to increase the number of people who would be available to go into court and say, yes, this is an organized crime organization?

Hon. Rob Nicholson: First of all, let me say this. I don't think, strictly speaking, that it's us. Most of the administration and the prosecution of a case is done by provincial attorneys general, of course, in this country. In terms of the how and why and the resources they have, it's a little difficult for me to answer.

I'm sorry, the first part of your question was what?

• (1600)

Mr. Joe Comartin: What is the legal definition?

Hon. Rob Nicholson: Oh yes, it was the legal definition. I haven't had that much push-back, quite frankly, from provincial attorneys general. I appreciate the fact that you're raising the matter with me, but in terms of the priorities they've had, this hasn't been at the top of their list. But I appreciate the fact that you're raising it. If some crown attorneys across Canada are having a look at that, I'm certainly pleased to have a look at it.

Did you have any comment?

Mr. Matthew Taylor: It is a difficult question you raise, and I think you're right that the legislative answer might not be the best one. What we do know is that street gangs are being successfully prosecuted under the criminal organization offences. It's not frequent, but we have had successful prosecutions in Quebec, for example, and in British Columbia as well.

I think the other side of the equation is to build on that experience by having the training and support necessary to help articulate the fact that the criminal organization offences can be used to go after these loosely organized street gangs.

Mr. Joe Comartin: But we've had problems. We've had at least one superior court that would not make the finding that a biker gang was an organized crime group. We've had two other ones. Ontario and Quebec have come on, although there was a lot of doubt as to whether we were going to be successful in Ontario in that one case. I think it was the case in Barrie. They ultimately were, but it was nip and tuck.

I'm a bit surprised that you haven't heard from the attorneys general, Mr. Minister, but I'll leave it at that. I'll leave it with you to look at.

Hon. Rob Nicholson: To be fair to the attorneys general, we get a long, long list, and appropriately so, of all the different issues that face provincial prosecutors. In terms of where most of the attention has been focused, that hasn't been one of them, but that's not to say that it may not be a focus of attention in the future.

Mr. Joe Comartin: Going to the section that amends the recognizance, again, I know I'm playing statistics, but is there any sense of how much more we'll be able to use this? I saw this as a

significant improvement in terms of preventing crime by controlling gang members at an early stage. Do you have any idea of how many cases we're going to use?

Hon. Rob Nicholson: It's just one more tool, it seems to me, that a judge has. Up to now, traditionally—and this is really across the board, quite frankly, in the justice system—we had a 12-month bond. When we have increased it in other cases, it's generally been well received. We have it up to 24 months, because by the time you get these procedures in place and you get there, time marches on. I think it would be difficult to predict how many people would get the 24 as opposed to the 12. The 12 may be appropriate in some circumstances. Again, it'll be up to judicial discretion to decide if that's appropriate in terms of trying to modify or direct the behaviour of an individual.

Mr. Joe Comartin: Practically, in terms of using the bracelets to locate on an ongoing basis, are you hearing about any problems at the provincial level on the availability of that technology across the country? Let me assume there's going to be a 10% to 20% increase in the number of cases in which we're going to use them. Is there any indication that we have the ability to deal with it?

The Chair: Give a short answer, please.

Go ahead, Mr. Bartlett.

Mr. William Bartlett: There are certainly some areas where the technology is probably not readily available to local police forces. It's one of the reasons this provision requires that the Attorney General make the request for that particular condition. It's to ensure that the necessary facilities are available in that area. Certainly, it's growing across Canada, particularly in urban areas. I think you're going to see more and more of it becoming available in the coming years.

The Chair: We'll move on to Mr. Rathgeber. You have seven minutes as well.

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

Thank you, Mr. Minister, and to your officials, for your appearance here today. I'd certainly like to congratulate you on not only Bill C-14, but also Bill C-15, and I think Bill C-25, which are the two-for-one provisions that were introduced last week. As you know, I'm a strong proponent of all of these measures.

I'll follow up on a question that my friend Mr. Comartin asked with respect to the recognizances. I'm certainly familiar, and it's certainly been my experience in domestic violence situations that peace bonds and recognizances have been quite successful in protecting victims. I was wondering if you might be able to illustrate some examples, anecdotal or otherwise, of how the proposed changes will provide better protection for the public.

• (1605)

Hon. Rob Nicholson: Well, thank you very much.

Thank you very much for your support of these initiatives. Indeed, I could extend that to your colleagues as well. It's not easy to get criminal law legislation passed in this country; we know that from the last Parliament. Again, all your efforts to get this and indeed the other pieces of legislation we have are much appreciated. I appreciate your comments with respect to the bill for credit for time served.

We know that when there is violent or unacceptable behaviour, sometimes these things can't be fixed, righted, or modified. I think there has been a consensus developed that when you're putting these peace bonds—and you gave the example of domestic issues—24 months can be the appropriate measure. One of the good things it does in cases like this is that it means you're not immediately back in court in 12 months, or I suppose 10 months, to try to get it extended. For a person who is the subject of this, if they have a record of violence or threats—and indeed that's what we're talking about here in the criminal law with respect to criminal or gang activity—we give that discretion to a judge to say that it may be more appropriate to have it up to 24 months in terms of trying to control or modify the behaviour of certain individuals.

I think this is an idea whose time has come, quite frankly. I mentioned in my response to Mr. Comartin, or perhaps it was Monsieur Ménard, that I think the 24 months works better. It gives one more tool to the judiciary, and I think it's an appropriate one, be it in a domestic dispute, or in this case trying to handle or modify gang-related activity.

Mr. Brent Rathgeber: Thank you.

At this table and elsewhere, when we discuss criminal law and criminal justice, often the focus is on the accused and their rights. Of course the system has built-in safeguards—the preponderance of evidence, and the onus on the state. As you know, the charter gave a whole bunch more rights. Through all that, it often concerns me that the rights of victims are frequently neglected in that process and, quite frankly, in that debate. Victims are not well represented. There's no national association or lobby of criminal victims. They lack the resources, and quite frankly, they lack the voice.

With respect to the accused and the defender, we talk about deterrence and rehabilitation. I congratulate the government again with respect to the victims' ombudsman, which was created during the 39th Parliament.

Minister, my specific question is with respect to making sure the victims of crime are heard and consulted, and with respect to consultation, not only for Bill C-14 but for your other initiatives generally.

Hon. Rob Nicholson: I think you've made a very good point, and I think for too long they weren't a priority, quite frankly. I think one of the things we have done that I was very proud and pleased to be part of was establishing the first federal ombudsman for victims of crime, thereby having an individual whose focus is on victims, innocent people, in this country. I think this is again an idea whose time has come. If you came to Ottawa three years ago and you asked folks who is here championing victims' rights, you might have been hard-pressed to find out exactly who was doing that. But now you have a government in place for whom victims are a priority, law-

abiding Canadians and their rights is a priority, and indeed this particular office, because we all have a stake in this.

This particular bill talks about reckless shooting, somebody taking a gun and firing it into a crowd. You think of the potential, the harm, the tragedy that can occur as a result of that. So we're one component of it. And I appreciate that the administration of justice for the most part is in provincial hands and law enforcement has a huge provincial component, but we have a responsibility with respect to the Criminal Code and issues that we can take at the federal level to bring in either changes to the legislation or programs that assist victims and law-abiding Canadians. This is one of the great responsibilities that we have. And I'm proud and pleased with what we have done and the moves that we have made, because who are we protecting when we have specific laws with respect to reckless shooting? For the most part, it's those innocent people on a street corner who find themselves caught up in this activity. They want to know that the laws are being changed to protect them; they want to be heard in our justice system, and appropriately so.

You'll be dealing with a bill that took a pass on drugs. Who do you think these people are who are bringing drugs into this country? These are people involved with gangs and organized crime. They are in the business of trying to destroy Canadian society. So I say we have to send out the right message. People say, yes, but you're sending them to jail. I said of course we're sending them to jail; that's exactly where you should be if you get the idea that somehow you should be bringing drugs into this country.

We are committed. We're taking them one step at a time. I'm working very closely and cooperatively with members like you, and I see my parliamentary secretaries here, the both of them, and the justice committee chairman and your colleagues. I very much appreciate the encouragement that you've given us and the support you've given us and we'll continue to move forward.

● (1610)

Mr. Brent Rathgeber: Thank you, Minister. I look forward to a speedy passage of Bill C-14.

The Chair: Thank you.

Next we're going to move Mr. LeBlanc. You've got five minutes now.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chairman.

Thank you, Minister, and your colleagues of the Department of Justice, for being here.

As you know, Minister, we're supporting Bill C-14 and we'll work with colleagues on this committee to make sure it's passed expeditiously.

I have two specific questions with respect to the bill. In regard to the provisions that create the automatic first degree murder charge, some opponents have said that what this will lead to is a desire on the part of some accused persons to perhaps plead guilty to a lesser offence. Are you worried, or do you have any reason to think, that in fact there will be a pressure on the system for an accused person to try to plea bargain to a less serious offence and in fact the convictions you're seeking for these organized criminals will be pushed down to a lesser offence—for example, manslaughter?

Hon. Rob Nicholson: I don't think they plea bargain murderers, quite frankly, Mr. LeBlanc.

Again, these things are at the call of the crown attorney, of course. They have a look at what they can prove and what they can't prove and all this. I believe this is one more tool for them. If you keep some of these individuals—now, we're talking about people who are murderers—people who are involved with gangs and criminal behaviour, in jail for 25 years, as I think I indicated in my opening comments, they'll have about 10 to 15 years of fewer victims in this country if they aren't on parole.

So I'm not concerned about that. I think crown attorneys will welcome these provisions and I can't conceive of the fact that they would be interested as groups or even individually of trying to plea bargain down murders into something else, like criminal negligence or manslaughter, something like that. I don't see it. But again, I don't direct crown attorneys; the provincial attorneys general do that, of course, and it will be there call and their discretion on each of these cases.

Hon. Dominic LeBlanc: Mr. Chairman, one of the things we've seen in some commentary from those who oppose this bill is that there's no objective evidence or research-based evidence that says mandatory minimum prison sentences are deterrents. I'm wondering what evidence you have to the contrary.

Hon. Rob Nicholson: I was asked that question. They asked, how about the individual who's part of a gang and decides he's going to murder somebody? Is he not going to commit that murder now because he'll be subject to the provisions under this bill of first degree murder? I responded that he may or may not decide to. I wish he wouldn't commit the murder, but I do know that he'll spend a lot longer in prison because of this. So there will be better protection, going back to what my colleagues were saying about victims. Victims and law-abiding Canadians will feel a lot better having this dangerous individual off the streets for another 10 to 15 years, depending upon the circumstances. We have to take them into consideration as well.

My understanding about a lot of these organizations is that they know what's up. They know what they could be looking at. I want them to have some serious consequences. I remember I was asked this on the subject of firearms. One of our colleagues in the House of Commons said they didn't understand how some of these people just don't appreciate the consequences of their actions. I told him that I actually do want to help. Give them five years in a federal penitentiary, and that should be able to focus their attention as to just how serious some of this stuff is.

I'm afraid the other way, Mr. LeBlanc. If we give somebody a slap on the wrist after they commit a serious crime and send them home

to play video games, I'm worried about the message that sends out to that individual and to society as a whole. So when we bring in these mandatory jail terms, we're articulating society's disgust with what some of these individuals have done, and we're sending out the right message. On some of these bills, including this one, I like the idea that if you don't get the message the first time—and it's possible that you might serve your mandatory prison term and get out and still not have figured out that you shouldn't be a part of that—the penalty will be in increased the next time around in the hope that those individuals will figure out that this isn't what they should be doing, this isn't how they should be spending their lives.

• (1615)

Hon. Dominic LeBlanc: Mr. Chairman, do I have time for another brief question?

Minister, I think in answer to a question from Mr. Comartin you referenced one of the problems that your colleagues the provincial attorneys general have spoken about with respect to adequate resources. One of the reasons there's often a delay in prosecutions... and this comes into the other bill we're going to be looking at soon, Bill C-25. My sense is that depending on the jurisdiction, there are increasing delays. One of the sources of the delays has been identified as the requirements around the Stinchcombe case and disclosure. Do you have a view on whether there's a way to streamline the disclosure requirements?

The assistant commissioner of the RCMP, Mr. Cabana, who was here last week, said they too believe there's a way to define what might be relevant, and there are some other ways to simplify it around electronic disclosure, obviously without taking away the rights of the accused to know the case against him or her—nobody would advocate that. Do you think there's a way to help speed up the process of these prosecutions and take some of the pressure off the resources required?

Hon. Rob Nicholson: We're always looking at ways to assist and speed up the process, at the same time respecting the rights of the individual, whether it's disclosure or any other aspect of this.

In terms of expediting the process, I think I can speak for every provincial attorney general. They have assured me that moving ahead on credit for time served in that particular piece of legislation will help unlog the system, that the system will expedite the cases that are before the courts. I think that's one of the reasons so many of them were out on Friday with us, to make sure that message was delivered.

With respect to other areas we can go into, I'm always open to suggestions; we're always looking at other ways. I can assure you that when we get these pieces of legislation passed we'll be bringing in other pieces.

But I thank you for your input on that particular issue.

The Chair: Mr. Ménard, five minutes.

[*Translation*]

Mr. Réal Ménard: Mr. Minister, I'd just like to clarify something.

A colleague asked a question that was thought-provoking. Following a decision handed down by a Quebec court, street gangs are currently deemed to be criminal organizations. Are we in agreement in saying that organized crime includes criminal motorcycle gangs and other such groups, but also street gangs? Consequently, the provisions concerning organized crime apply to the various phenomena related to street gangs. Are you in agreement with that statement?

Hon. Rob Nicholson: That's correct.

Mr. Réal Ménard: Earlier, someone implied that this was not the case. However, we raised that question a year ago.

According to the information at your disposal as Minister of Justice, would you say that this current situation in British Columbia and the reason why the committee has mobilized is different from that prevailing in Quebec between 1994 and 1997? What is the difference between the two for you? Are there still gangs? In Quebec, it wasn't about street gangs.

[English]

Hon. Rob Nicholson: It's hard to compare any set of criminal activity, Monsieur Ménard, and we have to deal with what we have.

I can tell you that everywhere I go in the country—I could be in Halifax or in Montreal—the whole question of gang-related activity is always raised with me. If I'm talking with law enforcement agencies, they raise this with me. While there has been quite a bit of attention paid, and justifiably so, to what is taking place in British Columbia, challenges with gangland activity are not isolated to British Columbia. We remember a few years ago that an innocent person was killed on the streets of Toronto in terms of a reckless shooting.

So it's not confined to British Columbia, it's across the country, and the law really has a general application to everyone.

• (1620)

[Translation]

Mr. Réal Ménard: Minister, based on what we know about organized crime, I would tell you that nuances need to be made. When I was elected, in the early 1990s, no one talked about street gangs but rather about the Hells Angels. Measures were taken in that regard. I am told that, with regard to street gangs, one of the problems for police is that the shadowing system is different. Gangs are less predictable and there is less hierarchy. The Hells Angels have a structure, a whole criminal organization, but that is not true for street gangs. As legislators, we need to make these nuances, in looking at criminal organizations.

Clearly, for individuals subject to intimidation and fear in their communities, it is important for those responsible to be arrested and locked up for 25 years. We are in agreement there. As parliamentarians, I think that we need to make the distinction nonetheless, and this one is quite important. Let me give you an example. A police officer told me that shadowing street gangs related to the Haitian community was extremely difficult. In fact, the officers could not understand Creole, so even if they were to go before a justice of the peace and get a wiretap warrant—and you know that these warrants can be extended up to a year under the second anti-gang law—the information gathered is not easily usable.

Such distinctions are what lead us as legislators to modulate or vary our response. As Minister of Justice, you feel that there is no distinction between what has been happening in British Columbia for the past few months and what happened in Quebec in the mid 1990s. Of course, you are concerned with the effectiveness of the measures that you will put forward.

[English]

Hon. Rob Nicholson: I find, Monsieur Ménard, on the whole question of trying to deal with crime in this country, you're right, it's an evolving process. I was in Montreal when we introduced the bill on identity crime, and I remember one reporter said, "Is this your attempt to get ahead of the bad guys?" I said, "Look, I'd just like to catch up to the bad guys, never mind get ahead of them." These things are changing so quickly.

I can tell you that when I was at the G8 justice ministers' meetings in Japan last year, that's one of the points I made. I said that we were finding problems with identity crime and some of these other issues and that they were going to get them. They were telling me that in certain countries the criminal enterprise wasn't as developed as it is in Canada and the United States and in a couple of other countries. But I told them that they were going to get these things.

So that's the challenge we have. As these organizations evolve, as you point out, it's not quite the same thing, obviously, as it was 15 to 20 years ago in this country, but we have to make sure the tools are there.

We were talking about extending the peace bond provisions to 24 months. If you go back 30 years ago, 12 months was probably fine and it was never an issue. Well, now it is an issue. We want to be able to modify that or control some of this behaviour. So put the provision in for 24 months, and a judge will make up his or her mind as to what's appropriate.

The Chair: Thank you, Mr. Minister.

We'll move on to Mr. Norlock, for five minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you, Minister, and to your officials, for being here this afternoon.

When you were making your preliminary remarks, it brought to mind a witness we had before our committee who represented the Vancouver Board of Trade. I believe his name was Mr. Rezac. When the issue of mandatory minimums came up, he said that has been a widely held misconception, that there is no evidence that they work. He made reference to the United States and the fact that actually it was. So we have a person, who is independent of the political realm, whose organization has done some investigation into this.

My question has more to do with the worst of the worst. Minister, you also made reference to that. You said that at least near the end of their term there are 10 more years, I think you said, when they're not out on the streets. By the way, Mr. Rezac used the same terms, that there are people who aren't going to be victimized either in their stores or on the streets, and whose daughters are not going to be worried about walking on the streets at night. When speaking about hardened criminals, the fact is that these people are not average Canadians.

We want to make sure that the rights of average Canadians are upheld and that the rights of all Canadians are upheld. But we want to see those who are recidivists and those who commit crimes of violence related to organized crimes and street gangs behind bars. Those are the people Bill C-14 is dealing with, to ensure the worst offenders are unable to endanger the lives of Canadians.

I wonder if you could make a comment on some of those issues.

•(1625)

Hon. Rob Nicholson: There is no question, Mr. Norlock, that we live in a wonderful country. The vast majority of people are law-abiding, outstanding citizens, and they've helped make this the greatest country in the world in which to live.

We do, unfortunately, have a few individuals who have a completely different view of how we should live our lives. I pointed out examples, the people involved with reckless or drive-by shootings, or people bringing drugs into the country. Who is bringing drugs into this country? This isn't somebody who has unfortunately become an addict or who is experimenting with drugs. These are people who are out to destroy Canadian society. That's who they are.

I've had law enforcement agencies across this country tell me that these people bringing drugs into this country are part of organized crime and gangs. They have a mission, and that mission is completely at odds with the vast majority of people in this country.

So when they ask whether this legislation is the whole solution, the answer is no, it's not the whole solution; it's part of the solution. There are so many aspects to this: the work of police, crown attorneys, provincial governments, non-governmental organizations. Of course it needs a complete approach.

You are aware, I know, as your colleagues are, of what we are doing on national crime prevention projects, projects under the national anti-drug strategy, and working with other levels of government and organizations that want to assist individuals. We want that.

The drug courts are a good example. The drug courts do great things in this country. They try to get people out of the system and get them the assistance, the rehabilitation they need. This is in everybody's interest. But at the same time, we can't close our eyes. We have to be aware that there are people who do not share the vision of what this country is all about. We have to do something about that.

So each of these pieces of legislation, this bill you have before you... Shortly thereafter, we put the bill in on drugs. We want to reinstitute the Anti-terrorism Act provisions. That bill has been tabled before Parliament. You saw another piece of legislation this past Friday dealing with the whole subject of credit for time served. These are all steps along the road to overhauling the criminal justice system in this country, bringing it up to date, and responding to the challenges we have.

As Monsieur Ménard said, it's not the same business you were dealing with 15 years ago. These groups evolve; they don't stand still. We have to continually be looking at the legislation to try, as I said, to catch up to the bad guys, to make sure there are no gaps, and

that to the extent possible, we reduce the possibility that these groups or individuals take advantage of law-abiding Canadians.

The Chair: Thank you, Minister.

Do you have time for one more question from Mr. Murphy?

Hon. Rob Nicholson: Yes, by all means.

The Chair: Mr. Murphy.

Hon. Rob Nicholson: Go ahead.

Mr. Brian Murphy: Thank you, Minister.

My question has to do with your response with respect to the definition of criminal organization. I'm not privy to meetings with the provincial attorneys general, but I believe it has been raised that the definition is not as flexible as prosecutors would like. They talk about the difficulty in seeing material benefit, for instance, in some of the acts that are done.

These crimes can be premeditated. Quite often they're done for vengeance or retribution. Unless there's a broadening of the definition, it's difficult to see that a drive-by shooting, which intends to kill or seek retribution against a particular target, is a material benefit. This traps the section in question. This could easily be remedied, and it may be being worked on right now, probably in the bowels of the justice department. Maybe I didn't read it right, but it looked as if the first-degree murder offence for a drive-by shooting still requires the perpetrator to belong to a criminal organization. And I believe there has to be some proof that there's a material benefit.

Am I reading this too finely?

•(1630)

Hon. Rob Nicholson: I think you have most of it, Mr. Murphy. To go back to the first part of your question, the number of issues that can be and are raised are limitless. In respect of what was at the top of the list for provincial attorneys general, it is credit for time served. As to the definition, extending the prohibitions on certain types of activity and upping the penalties are steps in the right direction.

As I always say, we're not done looking at these things. In the next half hour you have the Department of Justice officials with you, and I'm sure they will be able to expand on that. I'm always pleased to get input on these matters, whether it be from the committee, provincial attorneys general, my colleagues, or law enforcement agencies. We're listening all the time. We want to get it right.

•(1635)

The Chair: Minister, thank you for appearing before us.

Mr. Murphy, you still have two minutes.

Mr. Brian Murphy: Thank you, Mr. Chair.

I wanted to follow up on the question I was asking the minister about the definition of criminal organization. I want to make sure of something. Typically in a gang there's a leader, and a gang leader might ask a gang member to do something, like shoot someone in public. Unless we read in the conspiracy provisions, it's not clear to me that the new act traps the gang leader, the gang boss.

Can one of you shed some light on that?

Mr. William Bartlett: First of all, Mr. Murphy, the particular offence, the drive-by shooting offence, does not have to have a direct material benefit link. I think there's a misunderstanding about where that element of the definition comes into play. It's only part of the definition of whether or not there is a criminal organization in existence. Once you establish that, you do not have to show that in the particular case the purpose of that offence was to gain a material benefit.

Secondly, there is case law that says a material benefit could be the kind of turf war, gaining of turf, that is often the basis for these kinds of intimidation offences. It doesn't necessarily have to be simply a straight financial benefit. If you're showing—

Mr. Brian Murphy: Time is running out. What about the gang leader question?

Mr. William Bartlett: There is already an offence in the Criminal Code, section 467.13, for anyone—not necessarily a gang leader; it can be people farther down in the structure of the gang, assuming it has a structure—who instructs somebody to commit an offence for the benefit of a criminal organization. It's quite a serious offence. It's a life imprisonment offence.

Mr. Brian Murphy: Perfect. Thanks.

The Chair: We'll move to Mr. Moore right now.

Mr. Moore, are you ready for a question?

Mr. Rob Moore (Fundy Royal, CPC): Sure. Thanks, Mr. Chair, and thank you to the witnesses for being here.

I have a question on the interplay here, if you could comment on the Tackling Violent Crime Act in the last Parliament. We had provisions dealing with an escalating mandatory minimum penalty, should someone use a firearm in the commission of certain criminal acts. The law had stated there was a four-year minimum in place, and the law was changed. The proposed change was that it be five years on the first offence, seven years on the second, and ten years on the third. As the bill came out of the committee, it was down to five and seven, and seven on subsequent offences.

What would the interplay be, if at all, between those minimums passed in the Tackling Violent Crime Act and what we have here on drive-by shootings?

Mr. William Bartlett: The bill would apply exactly that same penalty as was applied in the Tackling Violent Crime Act to a group of eight offences, including section 244, discharge of a firearm with intent to harm someone. This offence is very close to that offence and bears the same penalty, with the distinction that there may not be evidence that they had a particular target. In this case it would be the same—four years minimum, but five years if you can prove either a link to organized crime or that they used a prohibited or restricted firearm.

Mr. Rob Moore: Okay. One thing that hasn't been discussed much is the provisions regarding assaults or offences against police officers. Can you lay out for us the change that is put in place, specifically how that's different? I know it's been well received. We had representatives from the police here. The provisions were certainly well received. How will they come into place, and how are these officers better protected by the provisions?

• (1640)

Mrs. Matthew Taylor: What we have in the Criminal Code right now is, I guess, what one could call a partial scheme with respect to police officers and protection afforded to police officers. We have section 270, which is a simple assault of a peace officer acting in the course of their duties, and at the far end or the more serious end of the spectrum, we have an automatic first degree murder, where a police officer is killed while acting in the course of their duties.

What Bill C-14 proposes to do is plug the gap, so to speak, by creating two new offences, one that would deal with assaults against peace officers causing bodily harm, and one that would deal with the aggravated assault of a peace officer—the most serious assault. What this does is create a complete and separate scheme to respond to violence committed against police and other peace officers.

Mr. Rob Moore: I think we're all familiar with it. You read your local paper, and from time to time you hear of someone charged with the offence of assaulting a police officer. What's contemplated in this bill then are actions that go perhaps beyond what would be a less serious assault into the realm of something more serious. Then that action is pulled out and distinguished if it was taken against a police officer. Is that right?

Mrs. Matthew Taylor: That's exactly what it's doing. It's proposing to address the more serious offences, and in addition, Bill C-14 would codify the principle that in sentencing for such attacks, which undermine the justice system more broadly, judges would be required to consider deterrents and denunciation as primary sentencing objectives.

Mr. Rob Moore: We're probably all familiar with, as I said, the assault of a police officer. What are some examples that this new bill contemplates? Can you give a scenario, a hypothetical, that goes beyond assault of a police officer as we currently know it?

Mr. William Bartlett: An example would be any case in which a weapon was used—a knife or a firearm. Often if a firearm is involved, it may be a more serious offence, but a knife might be a common weapon used in those kinds of assaults that actually cause the officer some significant bodily harm. Common assault involves a very wide range of things that constitute an assault on the officer, but when they actually cause any significant bodily harm, if someone uses a weapon, that would be a more serious offence. It would be an even more serious offence if they wounded, maimed, disfigured, or endangered life. Those cases would constitute an aggravated assault, and that's the most serious level of assault.

The Chair: Members of the committee, I have a question for you before you move on.

Monsieur Petit has a question. As I understand it, both Monsieur Ménard and Monsieur Comartin also have short questions. We were trying to arrange for a steering committee meeting as well for tomorrow, but apparently one of our members is unavailable, so we're trying to accommodate him today after we adjourn this particular meeting and go in camera. If we keep those questions really short, and if everyone cooperates, we might actually be able to get all the steering committee work done in camera immediately after this meeting.

Is everyone in agreement with that? Could we have a very short question and short answers from our justice department officials? Thank you.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Good day, gentlemen. I am going to ask an extremely technical question to ensure that I properly understand the bill before us.

With regard to specific primary designated offences, as set out in the Criminal Code, DNA sampling is mandatory. In the briefing notes provided by the Library of Parliament we see the following:

[...] adds the following three new offences: intentionally discharging a firearm while being reckless about endangering the life or safety of another person, assaulting a peace officer with a weapon or causing bodily harm, and aggravated assault of a peace officer.

The following question could be informative for us and for those watching. Why are these three new offences allowing mandatory DNA sampling being added, when a judge can refuse such sampling? We are adding them, but we are leaving the door open. First of all, why are these offences being added?

• (1645)

[*English*]

Mr. William Bartlett: This would add the three new offences that are being created in this bill to the primary designated list. When an offence falls within that primary designated list, the judge is instructed to make the DNA order but is left with some residual discretion. We're not changing the DNA scheme, and frankly, the discretion that's available to the judge in the case of a primary designated offence is relatively small, but there is that small element of discretion.

We're not changing that scheme. We're adding these three new offences. We're adding to the primary designated list rather than the

secondary designated list for which the judge has general discretion to make the order or not.

[*Translation*]

Mr. Daniel Petit: You have put these offences in the category of primary designated offences instead of in secondary designated offences, in order to avoid any confusion. Is that correct?

[*English*]

Mr. William Bartlett: Yes, we're doing so to ensure that these orders are made in all but the relatively rare cases where a judge might exercise the residual discretion not to make the order. But the proposal is that they should, in the ordinary course, be made whenever there's a conviction for one of these offences.

The Chair: Thank you.

Mr. Comartin, a short question.

Mr. Joe Comartin: I have a follow-up question to the scenario that Mr. Murphy gave you. I just want to be clear.

If you have the gang leader or boss, or some mid-level person, who makes the order and is charged with murder, is it going to be a charge of first degree murder using this section in this law?

Mr. William Bartlett: It's not quite that simple. If the person actually instructs them to go and carry out a murder, then they would be a party to the murder, pursuant to the party liability offences under the Criminal Code. In that case we're not using section 467.13 of the code, but the fact that they are guilty of the offence of murder as party to that murder.

Mr. Joe Comartin: But in the past they might have been charged with second degree murder in those circumstances. Because of this bill, this law—assuming it comes into effect—they would now be charged with first degree murder.

Mr. William Bartlett: If they participate in a murder that's done for the benefit of the criminal organization, and they're instructing somebody to commit the offence for the benefit of the criminal organization, yes. Just as the person committing the murder is guilty of first degree murder, so is the person instructing them, knowing that the purpose of it was for the benefit of a criminal organization.

Mr. Joe Comartin: Thank you, Mr. Chair.

The Chair: Monsieur Ménard, a short question.

[*Translation*]

Mr. Réal Ménard: Thank you, Mr. Chair.

Has the department looked at the summaries of the decisions handed down under sections 467.11, 467.12 or 467.13? If the committee wanted to obtain more information on court rulings, would you be able to provide us with the summaries? I am not talking about all the decisions, because that would be too long. It would be important both with regard to the bill being studied as well as for our study on organized crime, which we will be beginning shortly.

[*English*]

Mr. Matthew Taylor: Certainly we do have information on reported decisions. I'm sure we could make that available, as organized by different issues—for example, what constitutes a material benefit, who is a criminal organization, etc.

[*Translation*]

Mr. Réal Ménard: That is what I want. Thank you.

[*English*]

The Chair: Thank you to both of our witnesses.

There was some information you had volunteered to deliver to the committee, as Monsieur Ménard had requested some. If it could just be a sampling of the cases, I think that would be helpful. There were also some statistics you were going to provide us as well. If you can get those to the clerk, it would be very helpful.

Thank you to both of you.

We'll briefly suspend and then we'll go in camera.

[*Proceedings continue in camera*]

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