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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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•(1535)

[English]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting number 30 of the Standing Committee on Justice and Human Rights. Today is Wednesday, June 10, 2009.

You have before you the agenda for today, and in the first hour, as you know, we'll be doing clause-by-clause on Bill C-26, An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime). Immediately after clause-by-clause, we'll move in camera to provide final instructions to our analysts on the impaired driving study.

So let's move to clause-by-clause on Bill C-26.

Again, we have with us Paula Clarke and William Bartlett from the criminal law policy section of the Department of Justice. Welcome here. You're here as a resource to us, I understand.

Moving to clause-by-clause, hopefully you have before you a list of the amendments. There should be four of them, numbered pages 1, 2, 3, and 4, the first one being a Bloc amendment, the second one being a government amendment, the third one being another Bloc amendment, and the fourth one being a Liberal amendment.

If that's all in order, we'll move on to clause 1. There are no amendments on that.

(Clause 1 agreed to)

(On clause 2—*Motor Vehicle Theft*)

The Chair: There are three proposed amendments to clause 2. The first one is BQ-1, so Monsieur Ménard, would you introduce that one, please.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chair, it will come as no surprise to you to learn that we are suggesting that the committee withdraw the provision in the bill dealing with the minimum sentence of 18 months after a third or subsequent offence that the government will define.

You are well aware of the reasons why we do not support mandatory minimum sentences; I will not go over them again. My second amendment deals with the next paragraph. I have every hope that we will obtain the government's support.

[English]

The Chair: All right, we have the first Bloc amendment, which is related to the second Bloc amendment. Is there any further discussion on this amendment?

By the way, I have consulted with our legislative clerk. The amendment does remove a mandatory minimum sentence in the bill, but because it's a smaller part of the bill, I'm not going to rule that particular amendment to be out of order. So we'll have a debate on that.

Is there anyone else who wishes to speak on that? Hearing no one....

Sorry, Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): I'm sorry, I didn't put my hand up, but I pressed the button. I'll just do both at the same time from now on.

Are you asking for debate on your decision not to or just on the clause?

•(1540)

The Chair: I didn't rule the amendment to be out of order, so there's no ruling for us to debate.

Mr. Brian Murphy: It's kind of curious that you would give us sort of a half ruling. Since you've opened it up for debate, I wonder if the honourable member, in speaking to his amendment, would care to comment as to in what degree the removal of a mandatory minimum from a sentence would be going too far in striking the bill as not being relevant. I'm just curious about what his thoughts on that are.

[Translation]

Mr. Réal Ménard: Mr. Chair, we are going to support this bill. It is not that it goes too far or not far enough. We just do not believe in the principle of a mandatory minimum sentence at all. It has nothing to do with the 18 months, even for a third offence and even though the prosecutor has the choice of proceeding by summary conviction or by indictment.

We are consistent. We have said this often: no study shows that mandatory minimum sentences are effective. That is why we would like to remove this provision from the bill, but it does not affect our support of the bill.

[English]

The Chair: I also note that there is a line conflict with government amendment 1, so if the Bloc amendment is adopted, the government amendment cannot be proceeded with.

Is there any further discussion on the Bloc amendment 1?

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: I thought we were voting. Are we voting?

[*English*]

The Chair: I will then call the vote on Bloc amendment number 1.

(Amendment negatived)

The Chair: We then have government amendment number 1. It is the only government amendment.

Mr. Moore, you are free to proceed with it. Do you want to introduce it?

Mr. Rob Moore (Fundy Royal, CPC): Thanks, Mr. Chair. I move government amendment 1.

I will explain briefly what it does. Under the bill, the option for the crown to proceed by way of indictment on the third offence and to avail itself of the mandatory minimum penalty is only available if the first two proceedings have been by way of indictment. A first offence would have to proceed by indictment, with a conviction; a second offence would again be by way of indictment and with a conviction; on the third offence, the crown would have to proceed by way of indictment, and then that would trigger the mandatory minimum penalty.

This government amendment opens up the possibility that the crown could have proceeded either by indictment or by summary conviction on the first and second offences. If someone has twice been convicted by way of summary conviction and the crown then proceeds by way of indictment on a third offence, it would trigger the mandatory minimum penalty.

It opens up flexibility to the crown. Let's say that on the previous two offences, one had gone by way of indictment and the next by summary conviction. If the crown proceeds by way of indictment on the third offence, there is the mandatory minimum penalty. That is the only change this amendment makes.

The Chair: Thank you.

Go ahead, Mr. Murphy.

Mr. Brian Murphy: Could I ask Mr. Bartlett a question on this point?

The Chair: Yes, you may.

Mr. Brian Murphy: In terms of corporate memory, I don't remember there being a distinction as to the mode of proceeding in any other mandatory minimums that were brought in. Maybe I'm wrong, but it seems to me that the intention of the parliamentary secretary's discussion and the intention of the legislation would be to ensure that first is first, second is second, and third is third, regardless of whether the indictment is late or the summary conviction offence is used. Is that correct? What I understand from the parliamentary secretary is that because of the way this is written, it might be played with so that a second isn't second and a third isn't third, depending on which way the crown proceeds.

Mr. William Bartlett (Senior Counsel, Criminal Law Policy Section, Department of Justice): I'm sorry, do you mean the bill as it is now or as the amendment would have it?

Mr. Brian Murphy: I mean with the amendment. The amendment seeks to treat the third offence as a third offence regardless of the method of proceeding. Is that correct?

Mr. William Bartlett: Yes. The mandatory minimum penalty would apply on a third conviction regardless of whether the previous two were both indictable, one was indictable and one summary, or both were summary.

● (1545)

Mr. Brian Murphy: The first part of the question was whether any of our other mandatory minimum sentences that were passed in the last three and a half years—or, for that matter, among the early ones from 1995 on—make a distinction as to how you proceed as to the application of a—

Mr. William Bartlett: I think there are other mandatory minimum penalties that would have the same effect. This is a somewhat different way of approaching it in order to make the issue crystal clear in this case, but there are probably other mandatory minimum penalties that would apply regardless of how the previous offence was proceeded with. It is a somewhat different approach to talk about how the previous two were proceeded with, but it's to make it clear what the effect would be.

Mr. Brian Murphy: Okay, thanks.

The Chair: Could I also ask you a question, Mr. Bartlett? This is just a stylistic question.

In the last three lines in the last amendment, the wording is:

to be an earlier offence whether it was prosecuted by indictment or by way of summary conviction proceedings.

Should it not say “prosecuted by way of indictment or by way of summary conviction proceedings”?

I'll only ask that question once.

Mr. William Bartlett: Normally we would just say “by indictment or by way of”. We don't feel it's necessary to say “by way of indictment”; it's just “by indictment”.

The Chair: All right.

Is there any further discussion on government amendment number 1?

Just so you know, because there is a line conflict between amendment BQ-2 and government amendment number 1, if government amendment number 1 passes, then we cannot deal with Bloc amendment number 2.

[*Translation*]

Mr. Réal Ménard: Since amendment BQ-1 has been defeated, there is no longer any reason for amendment BQ-2. Amendment BQ-2 was there only if amendment BQ-1 had been passed. So, very sadly, I withdraw amendment BQ-2, which no longer has any purpose.

[*English*]

The Chair: Seeing no further discussion, I'll call the question on government amendment number 1.

(Amendment agreed to)

(Clause 2 as amended agreed to on division)

(On clause 3)

The Chair: We have a Liberal amendment. Mr. Murphy, do you want introduce it?

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

I'm interested, as a result of some of the evidence we heard, in proposed section 353.1. Some of the evidence would indicate, and my experience would indicate, that an excuse—in other words, “Every person commits an offence...without lawful excuse”—opens up to the defence reasons why a person might wholly or partially alter, remove, or obliterate a VIN number. The saving proposed subsection 353.1(3) lays on further that it is not an offence to wholly or partially remove or obliterate a VIN if you're doing it during regular maintenance or any repair or other work done on the vehicle for a legitimate purpose, including a modification on the vehicle. It would seem to me that if we're trying to write good legislation, that part is redundant, because “without lawful excuse” covers it.

What I'm interested in knowing, perhaps from Mr. Bartlett, is whether there is a reason for the exception that isn't covered by “without lawful excuse”.

Mr. William Bartlett: To a large extent, it is an illustration of some particular lawful excuses that would apply, but it makes it crystal clear up front that this offence does not intend to bring within its scope the kind of ordinary legitimate repair and modification that could result in one or more VINs on a vehicle being modified or removed entirely.

There are up to 17 VINs on vehicles. They can be on places like the door, so if a door is involved in a collision and is removed, then a VIN will be removed. The intent of this offence is not to capture that kind of activity, and it makes it clear up front so that the people engaged in those industries don't have to worry about going into court and defending themselves on the basis of this being a lawful excuse.

• (1550)

Mr. Brian Murphy: Can I follow up on that?

Mr. Bartlett, would defining a specific circumstance basically for the trade and the people involved in legitimate vehicle repair shops and so on exclude any other excuses, such as those for a home hobbyist person who unknowingly obliterates a VIN? If VINs are all over the place, a person could obliterate a VIN on parts, perhaps.

I'm not trying to get into quasi-criminal offence discussions, but this looks like a fairly strict liability offence in which “unknowingly” or maybe “without care” may not be an excuse. I would like your comment on that.

Mr. William Bartlett: The offence is drawn fairly broadly because the only alternative to drawing it broadly and then providing for appropriate exemptions is to insert some sort of specific intent, which would make it very difficult to prove an intent to conceal the identity of the vehicle. That is the primary concern here. Inserting that sort of intent would make it very difficult to prove, so we've drawn it fairly broadly.

The exemptions come in two ways. The exception in proposed subsection 353.1(3) does not really limit the lawful excuse; it goes at it in a slightly different way. It simply says that despite the broad

range of the activity set out in proposed subsection 353.1(1), it does not extend. It is not intended that this offence extend to those actions that result in a VIN being altered or removed in the course of regular maintenance or repair, including modification. The lawful excuse, however, will remain for any other case in which the person charged can give some explanation for the action that would convince a court that there was a lawful excuse. One doesn't limit the other, and they have the effect of making it clear what the intended and the effective scope of the offence is.

Mr. Brian Murphy: I think you said it clearly, but just to be clear, you don't think that proposed subsection 353.1(3) limits “without lawful excuse” for other reasons.

Mr. William Bartlett: No. The defence of lawful excuse will still be there. You apply subsection 353.1(3) to subsection 353.1(1) and say subsection 353.1(1) simply doesn't include this activity: “Despite subsection (1), it is not an offence to...”. Then “without lawful excuse” remains as a residual defence that the accused can mount.

Proposed subsection 353.1(3) is something you would consider right up front. Is this activity something that was part of legitimate repair and maintenance? If so, it's not captured by subsection 353.1(1). The lawful excuse would kick in after you'd shown that the action that occurred under subsection 353.1(1) had occurred and that subsection 353.1(1) appeared to have been offended. Then the person puts forward some sort of lawful excuse.

Mr. Brian Murphy: Mr. Chair, I'm not going to be moving mine, then.

The Chair: Thank you, Mr. Murphy.

Mr. Murphy, did you actually make the amendment? You filed it with the committee, but I don't recall your making it. You're saying it wasn't moved, and that's it was withdrawn. That takes care of it.

We will move to clause 3.

Go ahead, Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Mr. Murphy is satisfied, but I am actually not satisfied. That's why I raised the question.

If he hadn't brought the amendment forward, I probably wouldn't have noticed it, but the way it's crafted is rather confusing. It would be my humble submission that a judge could, in fact, narrowly read the lawful excuse to include only what you mention in the subsequent subsection. You may disagree, but that would be my reading on the face of it.

Mr. Murphy's original suspicion is reasonably founded, and I'm going to leave it at that. I am not satisfied that this section protects the lawful excuse defence as fully as it ought to, because of the prescription that you have in the subsection.

•(1555)

Mr. William Bartlett: I can only say, Mr. Dosanjh, that we've looked at it pretty carefully. We're satisfied that the lawful excuse defence in proposed subsections 353.1(1) and 353.1(3) operate independently and that subsection 353.1(3) will not restrict other lawful excuses that could be put forward. Although subsection 353.1(3) will probably cover 99% of the possible grounds on which this sort of activity could occur legitimately, if somebody can advance something else that's not described in subsection 353.1(3) that a court would accept as a lawful excuse, that defence will remain.

Hon. Ujjal Dosanjh: The "99%" is exactly my worry, because—

Mr. William Bartlett: The lawful excuse will remain for that 1%.

The Chair: Given that we don't have an amendment now for clause 3 and we have no other amendments proposed right up to and including clause 11, are you willing to do this in an omnibus motion?

(Clauses 3 to 11 inclusive agreed to)

The Chair: Shall the title pass?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

Some hon. members: On division.

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

Some hon. members: Agreed.

The Chair: Shall the bill be reprinted?

Some hon. members: Agreed.

The Chair: Thank you.

We'll suspend for five minutes and then move on to the impaired driving report.

[Proceedings continue in camera]

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