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Chair

Mr. Ed Fast

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• (0905)

[English]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): Good morning, everybody.

I call the meeting to order. This is meeting 33 of the Standing Committee on Justice and Human Rights. Today is Thursday, September 17, 2009. As a note to all of you, this meeting is being televised.

You have before you the agenda for today. We'll leave 20 minutes at the end of today's meeting to go in camera to plan future business and also to review the report of the steering subcommittee, which was held on Tuesday.

Once again I remind all of you to turn off your cellphones and BlackBerrys, or set them to vibrate. If you're going to take phone calls, please take them outside of the room as a courtesy to our witnesses.

Now, going back to our agenda, by order of reference we're considering Bill S-4, An Act to amend the Criminal Code (identity theft and related misconduct). To help with our review of this bill, we have with us again our Minister of Justice and Attorney General for Canada, the Honourable Rob Nicholson. Welcome here, Minister.

Supporting the minister we have Joanne Klineberg and Marke Kilkie. Both are counsel with the criminal law policy section. Welcome to you as well.

Minister, you know the process. You have ten minutes to present, and then we'll open the floor to questions.

Thank you.

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Chair and committee members.

I'm pleased to be here today to talk about Bill S-4, which addresses concerns about identity-related crimes. Bill S-4 has been passed by the Senate, with some changes that I will bring to your attention. I urge the committee members to give this bill serious study and consideration, but I would also hope that the members would complete their study in an expeditious manner and return the bill to the House of Commons without amendment so it can be passed into law as quickly as possible. Canada needs this law.

Criminals have always concealed their true identities and assumed false ones. What has changed in recent decades is their increasing reliance on technology. Technology has brought us greater

convenience and speed of communications and commerce, but criminals also enjoy new opportunities to obtain greater illicit benefits at little risk. The government believes these new threats can and must be addressed with Criminal Code amendments.

In Canada the Criminal Code has always had some offences that target the actual misuse of identity. The most directly applicable offence is that of personation, a serious offence punishable by up to 10 years in prison. If you impersonate a real person, living or dead, with an intent to gain an advantage of some kind or to cause anyone a disadvantage, this amounts to personation. There are numerous secondary offences, such as forgery of documents, including identity documents; and fraud; misuse of credit cards; and other offences in order to protect specific forms of identification, such as a Canadian passport.

Bill S-4 makes some reforms to modernize and update these offences, but its main purpose is the creation of new offences that directly target the early stages of identification and identity information misuse and abuse. The new measures are necessary to close gaps created by new technologies and new criminal operations. While taking physical documents may amount to the crime of theft, simply copying or having information, even if that is done for the purpose of later using that information to commit a crime, is not addressed by traditional property offences or any other offence, unless the Criminal Code specifically addresses it. It is the unique nature of information that poses this problem, information that is not considered property by the criminal law.

The benefit of the new offences is they can be applied before offenders have a chance to actually misuse personal information to the detriment—financial or otherwise—of others. They enable law enforcement to become engaged at much earlier stages of criminal schemes. This will result in a reduction of the more serious kinds of victimization that result when identities are fraudulently abused.

Let me turn now to what I believe are the key amendments in this package. I will also point out certain amendments passed by the Senate's Standing Committee on Legal and Constitutional Affairs, later approved by the Senate as a whole. I believe these changes improve the bill.

The first key element would form a new section 56.1 and criminalize the procurement, possession, transfer, and sale or offering for sale of specified government-issued identity documents without a lawful excuse. At present, simply possessing or trafficking in other people's identity documents is not a crime. We believe it should be—subject to appropriate exceptions, of course. To this end, the bill allows for several specific lawful excuses, such as handling documents with the consent of the person to whom they belong, or carrying out one's job function.

The offence was drafted with a specific and closed list of government documents covered by the offence, such as a social insurance number card and a driver's licence. The Senate was concerned that a closed list would mean that further documents created by the federal or provincial governments, which could be used for identification purposes, would not be covered. So they opened the list slightly, by allowing for inclusion of any document that is similar to the ones used. This was a small but important improvement, in my opinion.

The second key amendment is the creation of a new offence of identity theft and a companion offence of trafficking in identity information. The proposed new identity theft offence deals primarily with obtaining or possessing identity information in circumstances that show intent to commit one of a series of other related offences, such as fraud or personation.

A related offence will be established to cover trafficking in such information, knowing or being reckless as to whether it will be used for one of those same offences. Both offences will be informed by a broad definition of identity information, which covers all the types of information that can be used to identify a person.

Based on the definition, these offences are directed at the mishandling of information. It does not matter whether the information is contained in an official identification document or whether it is merely copied or stored in some other form.

There are also related amendments to the offence of personation. The offence of personation will now be renamed as "identity fraud", so that the Criminal Code will present a coherent picture of the various stages of identity crime. The offence of identity theft will cover the early stages in gathering and handling of the information; in the middle will be the offence of trafficking in identity information; and at the far end of the spectrum, the offence of identity fraud will cover the actual deceptive use of the information.

Bill S-4 also clarifies and extends certain existing offences in the Criminal Code. The bill will improve the law in relation to credit and debit card offences, misconduct in relation to the mail, and forgery offences.

I would take the opportunity to point out one more amendment made by the Senate legal and constitutional affairs committee in relation to an amendment to the credit and debit card offences.

One amendment in the bill added the notion of personal identification number, or, as we usually refer to it, the PIN, to the offence of unlawfully possessing or using credit card data. The Senate expanded the concept to personal authentication information, the idea being that, with the advances in technology, there may one day be forms of authentication associated with credit and debit

cards beyond just a PIN—for instance, a fingerprint. The change made by the Senate ensures that developments in technology will be captured by the law. Once again, I consider this change to be an improvement.

The government realizes that officials from legitimate investigative agencies often must conceal their true identities in the course of undercover investigations. To ensure that law enforcement can continue to work under cover to keep Canadians safe from crime, Bill S-4 excludes law enforcement from certain offences in relation to forged documents for otherwise lawful conduct undertaken in the course of their duties or employment. Agencies that produce identity documents are also exempted if they make false identity documents for use in covert operations in good faith and at the request of a government agency.

I'd like to be clear that these measures do not exempt the police from identity theft or personation or fraud offences. They only permit the police to make, have, and use false documents that portray a fictitious identity—just so we're clear.

This concludes my summary and what I believe are the key elements of this package. I and the officials who were good enough to be here with me today would be pleased to respond to any questions you might have.

● (0910)

The Chair: Thank you, Mr. Minister.

We'll move to questions, but before we do, I want to welcome two new members to our committee. First of all, representing the Bloc Québécois, we have Serge Ménard, who is replacing his colleague Réal Ménard—welcome to you.

We also have, representing the Conservative government, Stephen Woodworth, who is replacing Brian Storseth—so welcome to you as well.

We'll move on to the first questioner.

Mr. Murphy, you have seven minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Minister. I first want to compliment you and the Department of Justice on this legislation.

With the compliment comes a comment, of course. I've been here almost four years, and I can say that this is new legislation. It's not just tacking on a mandatory minimum to an existing law as a band-aid to make it seem as if society is safer. This is real, important work, as you know. Bill C-27 was almost up the ladder when the plug was pulled on Parliament.

So we've been through this before, and what I think is quite interesting and gratifying is to see that you've given praise to the Senate work. I hope it's not just because the Conservatives are close to getting a majority in the Senate that you have a new thought on the good work of the Senate, but—

Hon. Rob Nicholson: It's getting better every day over there.

Mr. Brian Murphy: Your words.

I believe the amendments improve the bill. To get right to the point of one of those amendments, which I think is really quite interesting, I can understand in reading the Senate debates that the senators in the committee very much brought to bear the rub of this issue, which was to expand the list of documents. I think everybody would have been happy with the documents that were identified. There was a concern that it wasn't broad enough, yet the competing view was about not being specific enough and leaving it open, as it does in clause 1.

I think the wording is “or any similar document”.

Hon. Rob Nicholson: Yes.

Mr. Brian Murphy: Are we concerned that by leaving that open, that by not specifically identifying the goods being trafficked in or used for fraud, or merely possessing, we are leaving the section too open, and therefore open to challenge?

Take the analogy of drugs, since we're talking about possession and trafficking here. We are very specific in the controlled narcotics and substances act, and very careful—*very* careful—to specify by schedule the items to be possessed or trafficked that are attached to crime.

Whereas we're not dealing with PIPEDA, which is an administrative penalty governed by its own privacy commissioner, but we're dealing with the Criminal Code, can you or your officials assure us—and perhaps, down the road, a judge or a defence lawyer or prosecutor—that it isn't too broad, that it will stand up in a court by being left open like that?

• (0915)

Hon. Rob Nicholson: Thank you very much for the question.

I liked the amendment when it was brought to my attention, and for the following reason. We constantly have a challenge with the Criminal Code to make sure it's up to date and stays in touch with the changes in technology. I have other legislation before Parliament that updates a number of provisions within the Criminal Code. Why? Because the present provisions are stuck in another era. I mean, there are references to telegraphs and telegrams, and a recognition within the Criminal Code that most electronic communication is done by telephone. These references are obviously out of date. When was the last time anybody received a telegram? Does anybody here remember the last time they got one? Again, we have to constantly update these.

Now, there were a couple of amendments. You mentioned the one with respect to the list of government documents. There is a provision for a review after five years. Again, that wasn't in the original bill that I tabled in Parliament, but it provides an opportunity to make sure that technology doesn't outpace us on these.

When I saw the amendment, it said “or any similar document”, which I think has to be read in conjunction with the words around it, including “issued or purported to be issued by a department or agency of the federal government or of a provincial government”, and “issued or purported to be issued by a foreign government”.

To me, that is the saving provision. If we come up with a similar document...

I mean, I'm in a border community, as you know. We have seen a number of changes in the kinds of government-issued documents. The latest one we have now is NEXUS, but that's only a few years old. Again, we want to make sure that all of these get covered.

So I had a look at it, and it seemed to me that it was reasonable. As I say, following those words, you have the specific description that these would be governments, with the different levels of government listed from which these documents would be coming. I think it's good. It keeps it tight, but not too tight, so that we're not overtaken by changes in either government policy or technology.

Mr. Brian Murphy: I'm also gratified to see that because there are gradations in the offence—as in, possession, trafficking, and then the third one, leading to actual fraud—the hybrid vehicle, I guess, of summary or indictable conviction is used. On sentencing it seems, à la most of the code, fairly discretionary.

I am very drawn to the comments you made at the Canadian Bar Association this summer, Mr. Minister, where you again, rightfully and admirably, put it out that we have one of the best judiciaries in the world, the Canadian judiciary, and its independence is not under attack.

Is this a sign, in that there are no mandatory minimums mentioned here, that in this legislation the government is very happy to have discretion remain with the trial judge?

Hon. Rob Nicholson: We always give parameters, whether they be minimum or maximum sentences, and you'll see provisions here, within this piece of legislation, where we indicate that there be a maximum sentence of ten years or five years, or, as you indicated, there are hybrid offences, so they could be punishable on summary conviction. Again, it's our constitutional responsibility to give those guidelines.

I told you the example of a bill I was working on in the early 1990s. One of my colleagues came to me and asked why I was putting a five-year maximum on that particular offence and why didn't I make it ten years and let the judges decide. We think five years is an appropriate maximum. We give those guidelines to the judges. We want to make sure it fits in line with other provisions of the Criminal Code. We don't want it to get out of whack in terms of other provisions, so, yes, we do provide those maximum guidelines. Certainly I don't apologize for that. Those are a responsibility. On occasion we give minimum sentence guidance to the courts. We take each one on a case-by-case basis and come up with an appropriate penalty scheme, and I think this is an appropriate penalty scheme.

• (0920)

The Chair: Thank you.

We'll move on to Mr. Lemay for seven minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Minister, for joining us today.

I have examined the bill carefully. It is a continuation of the former Bill C-27 that the committee had begun to review, but which, may I point out, died on the *Order Paper* in 2008. Since this bill does not provide for minimum sentences, you will likely get the support of the Bloc Québécois and things should move forward even more quickly. I'm sure you are happy to hear that.

I am concerned about two things, however. First of all, the French version of clause 56.1 notes the following: “[...] délivré ou paraissant délivré par un ministère ou un organisme public [...]”. The word “purported” is used in the English version. I'm not sure how departmental officials interpreted this provision, but it is clearer in English. The definition provided in the French version appears, in my opinion, to be quite broad. We have a photocopy of a photocopy that has been photocopied. I'm not sure what you mean by this. Could you tell me why you used this particular word?

[English]

Hon. Rob Nicholson: When I used the word “purported”, Monsieur Lemay, that was, of course, the word that is used in the bill itself. Under the French version it is

[Translation]

“[...] ou de tout autre document semblable délivré ou paraissant délivré [...]”.

[English]

They draft these bills separately, as is appropriate. We draft them in English and *en français aussi*. Of course we want them to match up and say the same things.

I perhaps will call on my colleagues if they have any additional information that we can give.

Ms. Joanne Klineberg (Counsel, Criminal Law Policy Section, Department of Justice): One of the concerns that we heard a number of times when we were consulting with police and prosecution authorities was they were concerned about cases where the documents were forgeries. For instance, if I have a forged birth certificate in someone else's name, or 17 forged birth certificates and forged driver's licences, I'm still able to use those to deceive others about my identity, but they are not authentic documents. We wanted to make sure that we captured authentic documents that actually were issued, but also those that purport to be issued by.... That's the purpose.

[Translation]

Mr. Marc Lemay: It is clear, Minister, that this bill takes us into the 21st century. I quite agree that references to telegrams and telexes should be deleted. I think we will need to update the Criminal Code. When we studied Bill C-27, several judges agreed that this bill was timely and said they hoped it would be passed quickly. We will try to do that.

I would like to talk about identity theft. The year 2010 will soon be upon us. As you know, the Olympic Games will be held in Vancouver in 2010. We live in a highly inter-connected world. Has draft legislation of this nature been discussed with US authorities with whom we have close ties, or perhaps with the Europeans, with Interpol? Have some preparations already been made? Today, someone's credit card or passport can be stolen in France or in

Great Britain and used anywhere in the world. Is the global community prepared for this type of legislation?

• (0925)

[English]

Hon. Rob Nicholson: You've made an excellent point, Monsieur Lemay, particularly with your comments about bringing our criminal law into the 21st century. When I introduced the original bill, Bill C-27, in Montreal in the previous Parliament, I was asked by a reporter if this was my attempt to get ahead of the bad guys. I said, “Look, I just want to catch up with the bad guys.” This is what we want to do, because the technology is changing so quickly.

It's interesting that you would mention the Americans and the Europeans, because I have been at a number of G-8 justice ministers meetings that include a number of European countries, including France, Germany, and the United States, and this is precisely the area that I raised with them. I said that the extent that we could coordinate and update our laws so they are similar to each other would facilitate everything from the exchange of information to the cooperation between law enforcement agencies, even when it comes to questions such as extradition. As you know, under the Extradition Act we do not extradite somebody to another country unless there are similar types of laws or offences there.

So that was the message that I had to my colleagues, that this is becoming a huge problem in Canada and the United States, and we do work very closely with American authorities. And I raised this with my European counterparts, so work is being done on this. Interpol spoke to the conference on both occasions and they made the very same point, that this is where the future is taking us and we all have to work together.

The Chair: Make it just a short question.

[Translation]

Mr. Marc Lemay: Has this matter been raised with Central or South American countries, for example, with Jamaica and Barbados that are popular holiday destinations?

[English]

Hon. Rob Nicholson: I have. I've been at a meeting of the Organization of American States. As well, I was recently at a Commonwealth conference of justice ministers and I made the point that to the extent that Canada can help these countries in the drafting of their legislation, we would be very pleased to do this. Through the Department of Justice we have supported a number of conferences and meetings within the Caribbean community with the express purpose of trying to assist in the development of their laws.

The point I made to a number of my colleagues is that we don't all have to start from scratch on these things. We don't all have to reinvent the wheel. To the extent that we share legislation and we share these ideas, it helps all of us. And we certainly do that. We look at what other countries are doing in this area, and the department looks very carefully at that.

But you're quite correct. We recognize the responsibility we have and the benefit we get. If other countries have laws similar to our own, it's helpful, because in a sense we're all in this together; we're all trying to meet this challenge.

Thank you for that question.

The Chair: Thank you.

We'll move now to Mr. Comartin for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, Mr. Minister, and to your officials for being here.

If I can just pursue the line of questioning of Mr. Lemay, it's my understanding that this legislation, Bill S-4, will bring us generally in line with where England and Australia are. I don't know about New Zealand. Am I right on that, that they already have legislation that covers these points?

Hon. Rob Nicholson: Go ahead Joanne.

Ms. Joanne Klineberg: The last time I looked—and unfortunately I didn't have the opportunity to bring myself up to date immediately in advance of this meeting, but I would have done so prior to going to the Senate committee—there are a small number of states in Australia that have legislation that's very similar to this. In the United Kingdom, they have recently enacted identity card legislation, which does have similar offences in relation to identity documents. With respect to the new section 56.1 that we're proposing, they have very similar legislation. But it's my understanding that the United Kingdom does not actually have any offences with respect to the acquisition and handling of information that's not recorded in a document. This legislation would actually go farther than where the United Kingdom is, but it is quite consistent with the few—two or three, maybe four—states in Australia that have already enacted legislation.

• (0930)

Mr. Joe Comartin: Similarly, I understand that in the United States, where their criminal law goes state by state, a number of the states have moved along in this direction but others have not. Is that true?

Ms. Joanne Klineberg: I would be quite confident in saying that all 50 states have identity theft legislation. They're remarkably different from each other in a number of ways. You might see up to a dozen different patterns that are repeated throughout the 50 states, so it's not “one size fits all”. There's quite a bit of variation, but for the most part, I would say that all 50 states do have something that addresses misconduct with respect to identity information in one form or another.

Mr. Joe Comartin: Mr. Minister, in terms of the issue of extradition and crossing borders to get at what a good deal of this is, which is international trafficking, especially in documents—

Hon. Rob Nicholson: Yes.

Mr. Joe Comartin: —are we making any progress there?

Hon. Rob Nicholson: I think we are. This is one piece of legislation, but part of what we're doing is trying to basically catch up with what's happening. It's very frustrating to have law enforcement agencies tell me that this kind of information is getting moved, moving out of the country, but it's not captured by anything. Again, this will be, in my opinion, a big help towards that, to the extent that we can't standardize our laws with other jurisdictions that have a concern on this but are farther ahead.

Mr. Joe Comartin: With regard to the provision in proposed section 368.2, providing defence cover for public officials, I must admit, I pulled the code from my researcher to take a look at section 25. I would have thought that this section really is redundant. Isn't 25 sufficient to cover that type of conduct by a public officer?

Hon. Rob Nicholson: That's a good point, Mr. Comartin. Again, we did want to make it specific so that it was specifically related to the use of documentation. We wanted to make that absolutely clear, but I'll ask Marke Kilkie if he has anything to add on that.

Mr. Joe Comartin: Before we go to that, I wondered if the reason you put it in was that in fact it's extending additional cover for police that's not in section 25, and I didn't see where it was. That's really what I'm concerned about.

Mr. Marke Kilkie (Counsel, Criminal Law Policy Section, Department of Justice): It's not intended to provide additional cover. It's a different approach. I think you're referring to section 25.1. The scheme, the “law enforcement justification”, as we call it in 25.1 to 25.4, is designed to provide a justification for offences that are committed by the police in the course of their duties. It's not, as you can see by looking at it, a closed-ended scheme. It doesn't list offences; it's a justification, so it's open to challenge, and it requires a number of safeguards to be in place in terms of designation of officers. Key to that as well is that each time an offence is committed, the officer needs to weigh the proportionality, whereas what we've created in this bill is an exemption.

Mr. Joe Comartin: I'm sorry for interrupting, but I want to get onto another point before my time is up.

If they conduct themselves under 368.2, they would not be required to report that?

Mr. Marke Kilkie: Precisely. It's akin to the way we exempt the police from the carriage of firearms, which is different from citizens. Section 4 of the Controlled Drugs and Substances Act exempts the police from mere possession of controlled substances, while we have a similar scheme under the CDSA police enforcement regulations to 25.1 for other activities such as trafficking offences committed as though the offence is being committed, as opposed to incidental to carrying out their duties, which is how we would view the use of these documents—as a tool in their activities as opposed to an offence committed vis-à-vis a target.

Mr. Joe Comartin: I guess the question is why they would not have to report. I understand the exemption we've given them with regard to carrying firearms. That's just practical and logical, but I'm not so sure that's true about this type of conduct.

Mr. Marke Kilkie: What we've heard from the police is that this type of conduct is routine and it's part of maintaining the undercover work that's done every day across the country on a routine basis.

• (0935)

Mr. Joe Comartin: So if they were reporting, they would be having to report a lot.

Mr. Marke Kilkie: A lot. It would be extremely cumbersome. This is a tool in a tool box, much like the firearms, and it also raises security concerns in terms of that reporting.

Mr. Joe Comartin: Do I still have time?

I've heard concerns from the title insurance people in Ontario that sections 386 and 387 need to be addressed. I think the bar association has expressed this, that amendments to those would have strengthened the fight against fraud in real estate transactions specifically, and I think to a lesser degree in some other commercial transactions.

Is there some reason we didn't address those in this bill?

Hon. Rob Nicholson: Thank you. I'm going to ask Joanne Klineberg to address that for you.

Ms. Joanne Klineberg: Well, to begin with, these issues didn't actually arise early on in our consultations and discussions about where we should go for identity theft. More importantly, they did arise at a later date after we were well on our way with the package of amendments you see in front of you.

I suppose the main reason we didn't focus too much on these is because it's our understanding that these offences are not actually charged. Title fraud, mortgage fraud—they're all charged as fraud. So there are quite a number of very distinct, specialized offences in the Criminal Code that prohibit subsets of larger, more generically defined offences.

Industry associations typically zone in on those offences, the specific ones that apply to their activities, and say they'd like to see this modernized, they'd like to see this address their particular issues. But what we hear over and over again from law enforcement as well as the prosecutors is that they really don't pay any attention to those offences; they always charge under the more general offences, because those general offences are easier to prove. Proving fraud is actually easier than proving title fraud, because you don't have to prove the extra elements that are specific to title fraud. So from a law enforcement perspective, the focus is always on the more general offences, which is where we tend to devote most of our attention.

The Chair: All right. Thank you.

We'll move to the government side. Mr. Rathgeber, you have seven minutes.

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

Thank you, Mr. Minister and your officials, for your attendance here this morning. Once again, thank you, Minister, for promoting your very aggressive safe street and safe community agenda.

We've dealt with a number of pieces of legislation in this committee—Bill C-14 with respect to organized crime and Bill C-15 with respect to mandatory sentences for those who traffic in narcotics. Now we're dealing with identity theft, a bill that originated in the Senate and is now before the House of Commons justice committee.

With respect to your overall anti-organized crime agenda, we've certainly heard anecdotally and otherwise that identity theft is the crime of the 21st century. You indicated in your comments that often law enforcement has a difficult time keeping up to advances in organized crime, with technology and high-tech devices, the Internet, and so on.

Mr. Minister, can you tell us specifically how Bill S-4 deals with the government's overall strategy and its motivation to combat criminal activity and organized crime?

Hon. Rob Nicholson: I think it takes direct aim at criminal activity in this country, Mr. Rathgeber. And again, thank you for your participation with this committee. It's been very valuable and much appreciated.

That being said, it's not just difficult for the police to control this activity, but they have pointed out to me on a number of occasions that they don't have the tools in many cases to do this. For instance, the provisions here with respect to the compilation or assembly of information that is immediately shipped outside this country is just not covered yet. It's not a question of police resources or police desire to crack down on this activity; this activity is just not caught.

They tell me the same thing, quite frankly, with respect to auto theft. You've had a look at that bill, I'm sure. The laws in this country are out of date in these areas. And again, that bill plus Bill C-15, which is now before the Senate and which I'd like to see get passed very quickly, is directed against organized crime. They are whom we're dealing with, the people who bring drugs into this country, the people involved with chop shops, the people involved with moving your identity outside of this country for illegal purposes. This is organized crime. These are the people whom we're talking about and we should be very, very clear about this, and we have to take direct aim at these individuals and send them the message that the Criminal Code in this country and law enforcement agencies are going to be able to respond to this kind of activity.

This is the mission we are on, to update the Criminal Code to make sure we stay on top of the technological changes that are assisting organized crime in this country and go after the kind of activity these criminals are involved with. They should not have the benefit of laws that were written in 1892—and I shouldn't even say written in 1892, but compiled in 1892, and some of these weren't new then. Having laws from the 19th century dealing with crimes in the 21st century is just not going to work, so this is part of an overall strategy that you, quite correctly, have directed us to go after organized crime with in this country and to send them the right message that this kind of activity will not be tolerated.

● (0940)

Mr. Brent Rathgeber: Thank you for that.

At some point, we're going to be asked to do a clause-by-clause examination of this bill. I wasn't part of the 39th Parliament, but I understand that Bill S-4 in its original form is substantially the same as Bill C-27. The Senate made some amendments to Bill S-4.

In your view, Minister, are the amendments appropriate? Did they strengthen the bill?

Hon. Rob Nicholson: I think they are reasonable.

They expanded the identification of a PIN, a personal identification number. They put in different wording, “personal authentication information”. I think that's an improvement because the PINs might change, the technology might change. We've captured that in answer to Mr. Murphy. We also talked about the use of a “similar” government document, and that wording was added. I thought these were improvements.

In addition, the other major amendment made was that they wanted to review the act after five years, a review that could focus on other technological changes that we might see. That could be very helpful as well.

So, yes, I think these are reasonable. Again, I'd like to see this committee and the House pass this as quickly as possible.

Mr. Brent Rathgeber: On that point, with the prospect of dissolution and an untimely and, in my view, unnecessary fall election, what advice do you have to this committee to get Bill S-4 through committee and the House, and the other very important bills, too, before we're thrust into an unnecessary election?

Hon. Rob Nicholson: Mr. Rathgeber, we all have an obligation to do what's in the best interest of this country and to protect Canadians to the greatest extent possible. I'm absolutely convinced, and I believe with every part of my body, that these pieces of legislation will better protect Canadians. If the Senate will pass that drug bill, this country will be better protected against drug dealers and traffickers. I believe that in trying to protect ourselves against organized crime, this country will be better off when this particular piece of legislation is passed, just as with the auto theft and the other bills we have before Parliament to protect Canadians. We want to have the laws up-to-date, and this country will be better off with them. So I am imploring Parliament and saying, look, let's get down to business and focus on these things here, do what is right for this country, and get these bills passed.

Mr. Brent Rathgeber: Thank you, Minister.

The Chair: Thank you very much.

Next we have Mr. Murphy again, for five minutes.

Mr. Brian Murphy: I couldn't agree more that we should get on with this. It is exactly what we said about Bill C-27 before you guys pulled the plug and had an unnecessary election.

A moment ago, you ascribed comments that were mine to Mr. LeBlanc. We had a conference and we don't know who should be more upset. So just to clear that up immediately—

Hon. Rob Nicholson: I certainly give credit to both of you gentlemen, because I'm sure you both agree with that particular amendment that was made by the Senate.

Mr. Brian Murphy: Minister, I have two brief questions.

These crimes will involve, in many cases, financial loss. A quick example, as a concern, would be the lugubrious fashion with which the Criminal Code treats civil loss. I assume that the application after conviction will apply, but for any of us who know this, it's a bit inefficacious. Is there some move in the department to update the aspect of restitution for victims? It is very much pervasive in our system now for people to have civil loss as a result of criminal activity.

The second thing I'd like to know perhaps could be answered by the departmental officials.

This is complaint-driven. There has to be someone who informs or makes a complaint. In economic crimes, in identity crimes, there are other players than the victim. There are the people who have the information banks, etc. Is there some sort of public education program involved to get the other players to be more forthcoming in complaining about crimes?

As you know, many of the victims of economic crimes are reticent to come forward, because in some cases they don't trust the system. I suppose in some cases they are embarrassed that their credit card was stolen while they were purchasing something on late-night TV, or I don't know what. What public education program is there for these people who may not be as forthcoming?

• (0945)

Hon. Rob Nicholson: There were two parts to your question.

With respect to victims, I would refer you to clause 11 of the bill, which makes specific references to the expenses incurred by individuals in trying to re-establish their identity. There are direct provisions now in the Criminal Code to assist those individuals who have been the victims of identity theft.

With respect to victims in general, you'd be aware of my recent announcement that we will be bringing forward in Parliament new legislation to attack white collar crime. One of the provisions that I indicated will be in that legislation is to make the system a little more user friendly for people who are victims, to make application to the court and have their interests heard. We are very concerned about that. As you know, we instituted the first federal ombudsman for victims of crime, which is a big step forward in making sure that victims' rights are heard. I think all of these are improvements.

Concerning public education, believe it or not, Mr. Murphy, I have people coming to me—insurance bureaus, lending institutions, law enforcement agencies—who want to see these laws updated and improved. Again, we were happy to work with them.

We are happy to bring publicity to all of these measures. In fact, you and all members of Parliament can be part of that, in bringing those to people's attention through householders, and so on, and letting them know that there will be greater protection for them in terms of their identify. So we're all in this together.

Certainly this will be a huge improvement.

The Chair: Thank you.

We'll move on to the Bloc, with Monsieur Ménard, for five minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chair.

Minister, we are in favour of this legislation. We realize that its time had come. However, when I began to practice law in 1966, I could not have imagined anything like this. However, this generation has witnessed many things. Generally speaking, we support this initiative.

Privacy Commissioner Stoddart was also in favour of Bill C-27 and even went so far as to sing its praises. However, she pointed to the absence of two provisions in this bill. Specifically, you decided not to tackle the scourge of spam and phishing, the latter being the practice engaged in by Internet users such as banks, reputable institutions or government administrations to extract information from the person being contacted.

I can appreciate the difficulty in drafting up anti-spam legislation. However, such a development would be truly welcomed by email users. Why did you not correct this oversight identified by Ms. Stoddart?

[*English*]

Hon. Rob Nicholson: Again, Monsieur Ménard, the bill is very focused on a particular issue that we are trying to identify. My colleague, the Minister of Industry, and others have addressed and focused on spam. I'll pass on your comments to them that you'd like to see more legislation.

With respect to those individuals who are phishing, it would appear to me that this would come within the definition we have here of attempted identity theft. Again, I think this is a step in the right direction.

Generally, when I introduce one piece of legislation, I get asked about introducing something else. You know, this now is about the tenth bill I've had before Parliament. The bill is specific. It responds to a number of agencies and individuals and concerns across this country. That includes a number of meetings I had with law enforcement agencies in Montreal. They were very supportive and very interested in getting something like this passed. They were good enough to explain to me, and in some detail, the challenges they have with respect to this subject. So this will answer those concerns.

Again, with respect to those individuals who are personating, I'm quite confident that they're covered by the Criminal Code in addition to the amendments we're making here.

● (0950)

[*Translation*]

Mr. Serge Ménard: I see.

The legislation also addresses the problem of identity theft. However, some people resort to using a different name, for a variety of seemingly legitimate reasons. For example, a reporter who wishes to infiltrate an organization in order to investigate a particular matter may use an alias. Some performers also prefer to go by another name. A well-known Quebecer by the name of Alys Robi had a truly remarkable international career during the 1950s. Her real name was in fact Alice Robitaille.

Canada is a country of immigrants and over the years, people have simplified their extremely complex foreign names, at times retaining only the first two syllables.

Will these individuals be affected by the provisions prohibiting the use of a different identity? I think I know the answer to that question, but I would like to hear it from the minister himself, so that the message is clearly conveyed to the public.

[*English*]

Hon. Rob Nicholson: Thank you for your comments.

I'll ask Ms. Klineberg to address that.

Ms. Joanne Klineberg: That presents a real problem in dealing with identity theft legislation, but it is one that we were very aware of as we were developing the legislation.

The offence of personation, which this bill will rename as identity fraud, only applies to a person who pretends to be a real person, living or dead. The offence of personation does not apply in the case of a person who uses a purely fictitious name. As well, the offences of identity theft and trafficking in identity information, which could apply to the handling, possession, and manipulation of fictitious identity information, are only complete if there is an intention to use that information to commit another crime.

So in fact I think we can be quite confident that there isn't anything in the Criminal Code, currently or in this bill, that would criminalize people who use a pseudonym as long as they're not committing other crimes at the same time. But in terms of merely using a pseudonym, for instance, as long as it's not a name that refers to a real person, I can't think of what offence that might be.

The Chair: Thank you.

We'll move on to Mr. Norlock.

You have five minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you, Mr. Chair.

Thank you, Minister, and your officials for attending here today.

I don't wish to appear mercenary, but the Canadian Council of Better Business Bureaus estimates that ID theft costs Canadian businesses some \$2 billion annually. Despite some of the heartache from a personal perspective, the feeling of losing one's identity to some stranger, and all the ramifications in a personal way that go with that, I think we all realize that those costs are eventually passed down to the consumers. So an additional cost of \$2 billion to our economic system is passed down to people at the very time when we're least able to absorb that type of loss. Therefore it's no small issue to us all. I'm wondering if you might comment on that.

This legislation contains several offences that prohibit the use of another person's identity, such as fraud and forgery, but it also includes many other aspects. I wonder if you can once again—for us and for the folks at home who are listening to this and are very hopeful that it makes a very expeditious travel through our system—explain the changes this bill proposes, and how section 4 strengthens the Criminal Code, in terms that most of us who perhaps don't have a legal background or legal training can understand.

• (0955)

Hon. Rob Nicholson: Again, thank you, Mr. Norlock. I thanked you before the committee for your participation and membership on this committee.

You talked about the cost. I've spoken about this a number of times and used that figure of \$2 billion, which is the estimate that was given to me on the loss as a direct result of identity theft and fraud. What's interesting about that is the potential for this figure to increase exponentially. With the changes in technology and the sophistication of the criminal element that we are opposed to, I've been told that this can increase very quickly. That is why there is a need to update the Criminal Code.

As I've said before this committee, you can't use legislation that was written in another era to deal with many of the problems we have today. Some of them haven't changed. When Monsieur Ménard started to practise law, if you stole somebody's credit card, that was an offence in 1966, and if you manufactured an illegal credit card, it was an offence in 1966. It's everything else that goes with these crimes that is not being captured, and that is what we are trying to do here.

To the individual who is not a lawyer or doesn't spend all their time reading the Criminal Code or analyzing the different sections within it, one of the easiest ways to explain it is that we're not getting the information that's being shipped out of this country. There are people assembling people's information. They're taking that information and shipping it out of the country, and it's not against the law under the present law of Canada. This information is being used for illegal activity because people outside of this country are producing those illegal credit cards outside the country, but the people who are part of the organization aren't being caught.

It's the same thing with auto theft. You're stuck with laws that talk about possession of stolen goods. Well, break into a chop shop. How many people actually possess the stolen goods? If you try to get one person, he says no, it's somebody else. It's very difficult. We have to get all the people who are part of these sophisticated operations, and that's the challenge we have. If we don't pass legislation like this, Canadians can expect that this will increase exponentially, because people are in this type of activity and it will only get worse.

As I told the law enforcement agencies in Montreal, I will do my very best to get this legislation to give you the tools you need to crack down on this kind of activity. We are delivering on a commitment to people who are in the law enforcement agency, and we're delivering to potential victims so they know that the laws are up to date and are there to protect them.

So we are strengthening the Criminal Code and bringing it up to date. Canada will be a better place in which to live when legislation like this gets passed.

The Chair: Mr. Minister, you committed to giving us one hour and the one hour is up. We will break for five minutes to allow you to leave. Your officials will remain behind, so we'll have another hour with them.

Hon. Rob Nicholson: Thank you very much.

The Chair: We'll recess for five minutes.

• (0955)

_____ (Pause) _____

• (1000)

The Chair: We'll move back to the opposition side.

Mr. Murphy, you have another five minutes.

Mr. Brian Murphy: Thank you.

This is on clause 10, and moving beyond the documents and into identity information and the interplay with PIPEDA. There's a Privacy Commissioner and there's the Personal Information Protection and Electronic Documents Act. They have their own regime, I'll say. They deal with personal information, and I understand that we have defined identity information to be something less than personal information that relates to an identifiable individual.

I have two questions. Will there be an interplay between complaints to the commissioner or complaints based on the taking of personal information and what will be section 402.1 of the code?

Here's why I'm asking. People's information, I'll call it, is taken. If it's used for a fraudulent, deceitful, or false purpose, we understand what that means. That usually means some sort of economic gain. That's usually the way it is. But in the civil realm, most of the complaints at the PIPEDA level are based on invasions of privacy, which may have some sort of civil sanction. And we can get into issues about defamation, people using information for political purposes, even, and that's where I get to proposed section 402.2, where it says "falsehood". We all know what fraud and deceit means, I think, but this is "falsehood". Can someone take a name and date of birth, and come into it knowingly...? And that's all you have to do, you just have to know you have it. If you have an e-mail, you have somebody's date of birth and address, and you use it for some purpose, say you use it to show that Mr. LeBlanc doesn't live where he said he lived or someone says they had a title but they don't have a title, whatever, and it's really used for a civil purpose, is that a falsehood? Does that fall under the section?

I mean that in a more general sense. Don't be stuck with my particular example, because we really don't care where Mr. LeBlanc lives or what he does. But we do want to know where the cut is between the civil and the criminal and PIPEDA and sections 402, 403.

• (1005)

Ms. Joanne Klineberg: That's a very sophisticated question that I'll do my best to answer.

I think the federal and provincial privacy commissioners across the country, as well as privacy advocates, look at identity theft from an invasion-of-privacy perspective. But that's not really the criminal law perspective on the problem.

If you look at proposed section 402.2, it isn't merely having this information and using it in some deceptive way; it's using it in the commission of an offence, a pre-existing, independent, criminal offence that involves some element of deception. So that is in fact where there's a fairly clear demarcation between mere invasion of privacy or a violation on the civil side and where the criminal law can step in.

You referred earlier in your question to the definition of "personal information" under PIPEDA. I believe the definition is "information about an identifiable person". I think there had been representations at one time that that's what the definition of "identity information" ought to be for Criminal Code purposes as well. But again, if you consider identity theft from the criminal law perspective as opposed to an invasion-of-privacy perspective, it really ought to be focused on the type of information that can identify a person, because it's the identification of a person that leads to various forms of deception and fraud.

PIPEDA, for instance, would cover a person's religious affiliation or their shopping preferences or their marital status. All of that information may be of a private nature, which privacy legislation should protect, but from a criminal law perspective those pieces of information are not useful in perpetrating an identity fraud. Although the definition of "identity information" is open-ended, it's really constrained by the notion of its applying only to information that can identify a person as opposed to information about a person, which I believe also serves to delineate the criminal law sphere from the privacy sphere.

The Chair: Thank you.

We'll move on to Monsieur Petit. You have five minutes.

• (1010)

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chair.

Good day, Ms. Klineberg, Mr. Kilkie.

I would like to start by thanking Serge Ménard for being here. He once served as Quebec's Minister of Justice and Public Security and used his skills to fight organized crime in the province. He is responsible for sending a great many gang members to prison and for ridding our communities of this criminal element. He is to be congratulated on his achievements. He is, in my opinion, a great

asset to the justice system, to victims and perhaps to the Conservative Party, in light of his previous positions.

That being said, Ms. Klineberg, I have something I'd like to ask you. Mr. Ménard's question was extremely relevant. People, whether immigrants or refugees, sometime arrive in the country without papers because their country is at war and documents have been destroyed. The realization may dawn after a few years that a person has a different identity, or has taken on his brother's identity and that names no longer correspond. These individuals are granted permanent resident status and all of the social rights that come with living in Canada. We see the expression "other document".

If a person has no papers, then how do you take matters to the next level? We're going to encounter some serious problems. Canada is a safe haven. Many people opt to seek refuge in Canada. How are you going to administer the legislation? How do you plan to expose identity theft? How do you plan to prove identity theft, given the absence of documents in many cases?

[English]

Ms. Joanne Klineberg: I think the starting point in answering that question is to distinguish two separate offences. In proposed section 56.1, that's the offence in relation to government-issued identity documents. Identity theft doesn't require reliance on a document. That offence can involve mere possession of the information, even if it's not captured in a government-issued document.

If an immigrant comes and doesn't have papers, they still have an identity—an address, a name, a birth date, and other identifiable information such as financial account numbers. If someone obtains any of that information with the intent of using it to commit an offence, even in the absence of there being legitimate government documents, that can still be captured as an offence. But if a person has no documents, then there are no documents in respect of which another person can commit an offence. In other words, you simply can't commit an offence in respect of documents that don't exist. That is for the offence under proposed section 56.1 in relation to government-issued documents.

Whether or not or how that person might obtain government documents would not really be a matter for criminal law. That would be a matter for Citizenship and Immigration authorities, or provincial authorities. But you can't commit an offence in respect of something that doesn't exist. An individual like that would be protected in terms of the misuse of their information, but if there are no documents, proposed section 56.1 wouldn't apply.

[Translation]

Mr. Daniel Petit: Canada operates under both civil law and common law systems. Under Quebec's civil code, certain documents are issued by the provincial government. Other provinces do not operate under a civil code system. For instance, the First Nations of the Northwest Territories proceed differently.

You have used the expression "other document". However, have you covered all of the possibilities to prevent someone from using a false identity? We've seen in Quebec where persons have obtained death certificates and used them to secure certain rights. Have you covered every possibility?

•(1015)

Ms. Joanne Klineberg: I'm sorry, but I didn't hear your question.

Mr. Daniel Petit: Have you covered all of the cases that fall under the Civil Code and under common law, and considered first nations that use different codes to identify their members and to issue documents to them?

[*English*]

Ms. Joanne Klineberg: In developing the list of documents in proposed section 56.1, we got together a fairly large group of people from a variety of different federal departments to try to identify which documents were primarily used for identification purposes. As has already been noted, the Senate legal and constitutional affairs committee added the death certificate, because at the federal level we simply didn't advert to that particular document.

We can't be absolutely positive that we've covered every document. All we can do is bring together enough people, and through the parliamentary process and all the representations that get made before committees, hopefully at the end of the process we'll have the documents that are the most important. On the amendment passed by the Senate to add "or other similar documents", if it's in any way similar to the documents listed but isn't specifically listed, it should be covered. So that addition will go a long way toward making sure the list is adequate.

The Chair: Thank you.

We'll move to Mr. Moore for five minutes.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for being here today and for their testimony. I think it's been quite helpful.

Just so people who are watching can understand, of the listed identity information pieces that are in this legislation, which ones are most commonly used for illegal purposes? When people think of identity theft, sometimes they think of their credit card information or other information being stolen and someone racking up bills on their behalf. But what are some of the most typical scenarios that Canadians are facing right now? What are some of the less typical? What do you see on the horizon that this legislation will capture?

As the minister said, we're trying to catch up with where criminals are and where they're going. I know there is a great concern out there—certainly in my constituency and probably with everyone around this table—about ID theft. When you talk about ID theft, most people have a preconceived notion of what that means. So does this bill address something that goes beyond having people's credit card information stolen?

Ms. Joanne Klineberg: There are many challenges from a legislative perspective in dealing with identity theft. One of the biggest ones is that, as you mentioned, people already have a preconceived notion of what identity theft means. The various industries that have been involved in the process of developing the legislation also have their own ideas.

The credit card companies tend to like to think of credit card fraud as something different from identity theft. There are existing offences in the Criminal Code that deal with credit card fraud and debit card fraud. This legislation will overlap with that legislation,

but there will continue to be specific credit and debit card offences. It's my understanding that credit card fraud and debit card fraud make up the overwhelming majority of identity theft offences.

What would follow after that would be the creation of accounts and account takeovers. That could be a cellphone account, or even something like a cable television account or utilities account, and involve taking over someone's financial account or creating new accounts for utilities in another person's name so that the bills go to them but you're the one receiving the benefit. Those make up the largest percentage of identity theft types of issues.

There's a much smaller segment of offences, which Mr. Comartin adverted to, dealing with title fraud, real estate fraud, mortgage fraud. It represents a much smaller segment of the total of identity frauds, but obviously in cases like that the damage can be much more extreme.

So it runs the gamut. Unfortunately, I don't have with me the breakdown in statistics, but certainly credit card and debit card fraud do account for the overwhelming majority of what identity theft is. These offences will give the police additional offences that they can charge in relation to those crimes. Those crimes are adequately covered now. They would be the only offences for which possession of the information, even before it's been used, is currently criminalized. This will add to that and give the police additional charges that they can lay.

What's on the horizon? I don't know. What I can tell you, though, from the experiences and encounters I've had with people from other countries in discussing this issue, in particular in Asia, is that one of the most dominant forms of identity fraud in Asia is actually with respect to video game accounts. The video game industry there is much more massive than it is here. A larger percentage of the population plays these games. They input all kinds of money into their online accounts for certain video games. If people can obtain their identities, they can log onto their accounts and spend down all of the money they have in there.

I don't know whether that will become a major phenomenon in Canada, but in other parts of the world you can start to see—depending on the culture and society, and on what sorts of activities people participate in—that there is scope for identity theft, regardless of what those are.

So anyone could guess as to what will be coming down the line.

•(1020)

The Chair: Thank you.

Mr. Moore, is there anyone else on the government side who wants to ask a question before we move to the opposition?

Mr. Rob Moore: I don't think so.

The Chair: All right. We'll move back to....

Mr. Woodworth, you're free to ask some questions.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Mr. Chair, since I'm being extended such great courtesy, perhaps I'll take advantage of it, if that's all right.

The Chair: You have five minutes.

Mr. Stephen Woodworth: Thank you. I may or may not take all of it, in which case I'll defer to other members.

First of all, I was glad to hear mention earlier of the estimate of \$2 billion that is lost as a result of identity theft. I know this is not the first time the government has attempted to introduce measures of this nature. I was very glad to hear today the degree of support coming from the opposition side. I can only hope that the support that was expressed this morning will be followed up in the House and that this bill will be passed at the earliest opportunity, without any further delay. I think this bill has some relevance to those who are most vulnerable in our society, particularly seniors and others who are sometimes victimized by identity theft offences.

I'd like to, if I may, focus on a specific clause just for a moment, which is clause 9. I suppose it's a picky little point, but I'd like to understand it. If I'm correct, it appears to deal with the offence of forgery instruments and to amend section 369 by including a section 368.1. It appears one of the major purposes of that is to take a straight indictable offence and hybridize it. This is not the first time that I have seen offences being moved from straight indictable to hybridizing, and my thinking on it is that perhaps there's some recognition that it's easier to prosecute if the prosecution, the crown attorneys, have the opportunity to deal with an offence otherwise than by indictable procedure.

So I would be grateful for comment from the department about whether or not this is a recognized principle. Are we moving to recognize that perhaps hybridizing offences makes them a little easier to prosecute and that this is a good thing? That's where I'll start. Thank you.

Ms. Joanne Klineberg: I wouldn't say that there's a recognized principle that proceeding by way of summary conviction.... It certainly doesn't make it easier to prove the offence, but if you proceed by indictment, it's a different set of procedures that apply, including the right to a jury trial, and it may go to a different level of court. If you proceed on summary conviction, the procedure can be quicker. Proving the offence would remain exactly the same, but the procedure might be simplified, and that's made available.

What we do here repeatedly from prosecution authorities across the country is that if you get a less serious case where you don't want to be seeking the highest possible penalty—maybe you're going to be seeking a penalty in the lower range—you go with the simpler procedure that avoids the potential for a jury trial and other procedural ramifications. For the less serious offences, the crowns do like the option of proceeding by way of summary conviction because it makes the trial process simpler, but it certainly doesn't make proving the case any simpler.

• (1025)

Mr. Stephen Woodworth: If I said proving, I misspoke. I did mean to speak about easier procedure.

Ms. Joanne Klineberg: Yes.

Mr. Stephen Woodworth: I suppose in the back of my mind I really meant easier convictions. I thank you for that.

The other thing I wondered about is whether or not when the department introduces a change of this nature there's any attempt to track how it is applied. I know that every province has its own set of provincial prosecutorial people, and I don't know how much of a national database, if any, there is regarding prosecutions, convictions, and sentences. However, I wonder, especially since this is, as one of our colleagues across the ways said, a new piece of legislation—really new—if there's going to be any attempt to track how it's implemented and what the results might be in terms of convictions and sentences.

Mr. Marke Kilkie: I think your second question is focused on the new offence as opposed to the hybridization aspect, but I will add just on the hybridization point that there was a larger effort to hybridize offences that began in the mid 1990s, around 1997, working with the provinces and the territories in terms of them being on side with the concept as described by Joanne, the benefits on both sides.

In terms of tracking the specifics of a new offence with the provinces, I won't say that the data is always as robust as we'd like it to be, but there is the Canadian Centre for Justice Statistics that does provide us with our main source of data on tracking new developments in the code and prosecutions as they go forward, and that's run by Statistics Canada.

Mr. Stephen Woodworth: All right. Thank you very much. I appreciate that.

The Chair: I believe the Liberal members are passing on their opportunity to question, so we'll move to Mr. Lemay, with one more question from Mr. Comartin, and then we'll move in camera.

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: I just have one question. I believe the teenage practice of using someone else's birth certificate is covered under subsection 403(1)(a). Is that correct?

Ms. Joanne Klineberg: Yes.

Mr. Serge Ménard: You thought about that.

Let's consider another example. Suppose I lost my driver's licence and borrowed the licence of a family member. Obviously, this would be an indictable offence if the intent was to avoid arrest or prosecution. However, if I borrowed the licence for identification purposes and committed no crime, would this be considered an offence under section 403?

[*English*]

Ms. Joanne Klineberg: I think it's fair to say that the offence of personation is fairly broad in scope. Some of the conduct you've described may technically fall within the offence of personation. What we could say in response to that is simply that this offence is one that tends to be charged quite infrequently. We would rely on the excellent discretion of the police across the country and prosecution authorities to consider the advantage for which someone might have pretended to be someone else. If it is merely a matter of, "I forgot my driver's licence and just in case I was stopped I wanted to have a driver's licence with me," we would not expect to see a prosecution.

• (1030)

[Translation]

Mr. Serge Ménard: I didn't say "suppose I forgot". Perhaps I was misinterpreted. When I said "suppose I lost my driver's licence", I meant that suppose I lost it further to a court ruling, for instance.

[English]

Ms. Joanne Klineberg: Ah.

[Translation]

Mr. Serge Ménard: Having lost my driver's licence, I decide to use another person's licence. If I use that licence, not to shirk a responsibility, avoid a fine or some such thing, but simply for identification purposes, does section 403 apply?

[English]

Ms. Joanne Klineberg: It would be a decision for the police and the prosecutor to make, whether they want to—

[Translation]

Mr. Serge Ménard: Your answer implies that if they use their discretion to initiate prosecution, then indeed this is deemed to be an offence under section 403. However, I do not see it that way, either in subsection (a), (b), (c) or (d).

Ms. Joanne Klineberg: Would they not have had the intent of gaining an advantage?

Mr. Serge Ménard: What kind of advantage? I don't see one.

Ms. Joanne Klineberg: The right to drive a vehicle, a right that they have lost.

Mr. Serge Ménard: Yes, but in this instance, I have not committed an offence, and the police is merely conducting a roadside check. I have not had anything to drink.

Mind you, I realize that I have done something illegal.

Ms. Joanne Klineberg: Yes.

Mr. Serge Ménard: It's not something that I would do. Of course, I wouldn't lose my licence either.

[English]

Ms. Joanne Klineberg: This is why I do policy and I'm not a prosecutor. It would be an argument that a prosecutor might wish to make, or they might not consider it sufficiently injurious to the public to proceed with a criminal prosecution. But the offence is broadly and flexibly drafted to cover quite a range of conduct.

[Translation]

Mr. Serge Ménard: Thank you.

Mr. Marc Lemay: I have a quick question.

Perhaps I misunderstood Mr. Murphy's comments. I'm not sure that my interpretation of subsection 402.2(2) in clause 10 is correct. It notes the following about the trafficking of identity information:

(2) Everyone commits an offence who transmits, makes available, distributes, sells or offers for sale another person's identity information, or has it in their possession for any of those purposes, knowing that or being reckless as to whether the information will be used to commit an indictable offence that includes fraud, deceit or falsehood as an element of the offence.

In my opinion, this goes much further than the definition of drug trafficking, for example. I simply want to know the reason for including this provision.

[English]

Ms. Joanne Klineberg: Usually with the notion of trafficking, for instance in relation to drugs, you traffic drugs. Another person can use them. If I traffic information, it's the person I traffic to who has the intention to commit a crime.

There's a sequence of steps that may be different from the case of trafficking in firearms or trafficking in a physical object. Once I've trafficked in contraband, the object itself is illegal to possess. If I traffic in drugs or firearms to another person, they now possess something, and it's a crime to possess it. Here we're talking about information, which is not a crime merely to possess. If I give you the information, I still need to have a belief or a suspicion that you are going to use it in a criminal act.

The Chair: Thank you.

Mr. Comartin, you'll have the last word. You have five minutes.

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

I thought I understood when you answered Mr. Ménard, but let me give you this scenario. You have a journalist who's taken on a false identity, just for the purpose of getting the story. If the false identity is not a real person, there is no offence?

Ms. Joanne Klineberg: This is going to sound terrible, but there is no offence unless there is an offence. For instance, if he forges documents in support of his identity, then he may be committing forgery. Merely walking into a room and claiming to be a person you're not, if it's a fictitious person, and then proceeding to have a conversation based on a fictitious identity, is not a crime.

• (1035)

Mr. Joe Comartin: If they walk into that room and say, "I'm so-and-so's brother", as a way of ingratiating them into the group or giving themselves credibility, and that brother really does exist, the siblings exist, is that a crime?

Ms. Joanne Klineberg: If that brother really does exist, possibly yes, I would say. There's not a tremendous amount of judicial interpretation of the offence of personation, because it has not been charged very often. We do know that the person personated must be a real person, living or dead. We do know that there must be a real intention to pretend to be a specific person. If I invent a name that happens to correspond to a real person, I'm not committing personation. If I know something about the brother, and I know the people I'm talking to know the brother, and I say "I'm this guy who you've heard all about", I would say I'm impersonating the brother.

Mr. Joe Comartin: In the preparation of the bill was there discussion with journalists or journalist associations?

Ms. Joanne Klineberg: With journalists, no. But many members of this committee may recall a private members bill, C-299, from a few years ago. It dealt with identity theft, but it was tabled prior to Bill C-27. What that bill did was it said anyone who pretends to be someone else essentially commits a criminal offence. We narrowed that, because what was missing from that idea was that you have to be doing it for a criminal purpose. Lots of people pretend to be other people or engage in deception, such as journalists, for a whole range of purposes.

We did not consult with journalist associations. We were certainly aware of the practice of going undercover in order to gather information, but that's not for a criminal purpose. In developing the identity theft and trafficking offences here we absolutely were mindful of that situation, even though we didn't have direct consultations with journalists.

Mr. Joe Comartin: Okay.

In terms of *Juristat*, did you look at how many charges historically we've had under sections 386 and 387?

Ms. Joanne Klineberg: No, in fact I didn't. The easiest thing we do sometimes is open up our annotated Criminal Code, and we don't see any annotations there, which is a good indication that it's not an offence that's charged frequently.

What I do know is that where you do see title fraud, real estate fraud, and mortgage fraud prosecuted, you see them prosecuted as fraud with forgery and associated general offences.

So no, I can't say I've assured myself that there have been no uses of that section, but I would bet you might have a difficult time finding prosecutors or police who were even aware that it was there.

Mr. Joe Comartin: And the way *Juristat* gathers data on fraud generally, it wouldn't show whether it's credit card fraud or commercial fraud or real estate fraud.

Ms. Joanne Klineberg: The difficulty with general offences is that when you gather the data, the data don't distinguish between different types of fraud. But one of the difficulties with very specific offences—which we frequently receive proposals for—is that they don't get prosecuted because they contain elements that the general offences don't. Therefore, prosecutors just don't like to use them.

So it's a constant challenge between addressing issues with specificity and being able to collect the data, but at the same time crafting offences that are user-friendly.

The Chair: Thank you.

Mr. Joe Comartin: [*Inaudible—Editor*]...not have proceeded with the auto theft one, but that's just a comment.

I am done with my questions, thank you.

The Chair: Thank you, Mr. Comartin.

Thank you, Ms. Klineberg and Mr. Kilkie, for attending and for your testimony. We're going to suspend for a moment to allow you to leave, and then we'll go in camera.

[*Proceedings continue in camera*]

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