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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

Wednesday, November 25, 2009

● (1535)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

This is meeting 50 of the Standing Committee on Justice and Human Rights. Today is Wednesday, November 25, 2009.

Once again, I will reminder all those present to turn off their BlackBerrys, or at least switch them to vibrate. If you're going to take a call, please take it outside of this room. Thank you.

You have the agenda before you for today. We're continuing our review of Bill C-52, and we have a number of witnesses with us.

Mr. Comartin, we left off at our last meeting with your point of privilege. Are you intending to raise that again?

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I am, Mr. Chair. I think it was clear, not only from me, but from other members of the committee, that we wanted to resolve this at the start of this meeting.

I reiterate that I am bringing forward that motion asking for a report to come from this committee. I think there was an attempt to have it translated. Could I ask whether we have a translation of the wording that I proposed at the last meeting?

The Chair: I'm advised by the clerk that we don't.

Mr. Joe Comartin: That's fine, Mr. Chair, I can go ahead without it. I want to do a quick review of the situation.

Perhaps, Mr. Chair, we should indicate to the witnesses that there's going to be a slight delay while we deal with this.

The Chair: They may have already noticed that we're doing a procedural matter ahead of their testimony.

To the witnesses, we have a point of privilege that has been raised by Mr. Comartin. That may take some time to resolve, and then we'll move on to hearing from you.

Back to you, Mr. Comartin.

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

There are one or two members who weren't here at the last meeting, so I'll just do this quick overview.

I and Mr. Lemay had asked for certain data from Mr. Don Head, Head of Corrections Canada. He in fact had provided that. I now have information, which I didn't have then, that on November 13, having committed to do that for us in advance of the clause-by-clause meeting on Bill C-36 on November 16, unfortunately he sent the letter, although it was addressed to the clerk of this committee, to the minister's office of Public Safety and National Security. That letter then sat there until it was handed to me yesterday; I received a copy of it from the government House leader yesterday. I believe it has been now delivered today to all members of the committee. This is the advice from my office this afternoon, anyway.

So we have finally received it. Of course, we received it after clause-by-clause and after the debate took place in the House on Monday and Tuesday of this week. There was absolutely no reason given, either by Mr. Head or the minister's office, and the minister himself, as to why the material wasn't provided to us as had been promised and undertaken by Mr. Head in the meeting when he attended on November 4.

There is, I think, ample precedent, Mr. Chair, for the fact that when that type of undertaking is given it is to be complied with by a public servant. If Mr. Head felt that he was under some compunction or compulsion to give that to the minister before it got to this committee, I'm not sure where he would have come by that. That's not the proper process. But at the very least, if he passed it on to the minister's office, the minister's office should have been responsible for getting it to this committee in a timely fashion, as had been committed to this committee.

If they couldn't have done that, Mr. Chair, they should have advised the committee and the committee could have taken appropriate steps to ensure that the material was before us before we conducted clause-by-clause by adjourning clause-by-clause to a later date until the information was received.

The information clearly was pertinent. I say that from having only had some time to go over it. It was clearly pertinent to the issues that were contained in Bill C-36 and it would have been very much pointed to, at least by me and Mr. Lemay, as to why Bill C-36 should not have proceeded as prepared.

Mr. Chair, again, for maybe a couple of the members who weren't here on Monday, what is required at this point, if I can go ahead with my point of privilege in the House, is for this committee to send a report to the House to advise the Speaker, who has authority to determine whether in fact there has been a breach of my parliamentary privilege and that of Mr. Lemay's, and I think of the committee as a whole. In order for the Speaker to be able to determine that, the Speaker has to have a report from us as to what in fact occurred. And, again, I had given the committee a summary of the report that I thought was appropriate. I read that into the record on Monday afternoon at our last meeting.

In addition, there is some urgency on this, as I again made the point on Monday. If you are going to pursue a point of privilege, you have to pursue it at the first opportunity. For me, that opportunity arose on Monday morning when I found out that in fact this material that I and Mr. Lemay had requested and committed to receive had never been delivered to us, as I had been informed previously, and as I understand some other members of the committee had. We in fact never got it. We were advised that it had been given to us. We thought we had simply misplaced it or we had simply not seen it.

● (1540)

I became aware that it had never been received and that the minister's office had somehow intervened in this process. My time in bringing my point of privilege started running on Monday. I think the general rule is that you should get this before the House within a day or two. This is now the second day, I suppose you could argue maybe even the third day. The Speaker has made it clear in the past, not only this Speaker but others, that you must move on this quickly.

So it's absolutely essential that we deal with this today, that we issue the report, get it back to the House either tomorrow or Friday, so I can bring my point of privilege before the House.

The Chair: Thank you.

As members know, I haven't yet ruled on whether this is a matter that relates to a privilege of a member.

Before I do, are there any other comments?

I'll go to Monsieur Lemay...

Oh, sorry; Mr. Moore was already on the list. We'll go to Mr. Moore and then to Monsieur Lemay, then Madam Jennings.

Mr. Moore.

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

I'll be really quick. We do have witnesses here, and I'd like to see us proceed as quickly as possible.

I was not here on Monday when Mr. Comartin brought this forward. He mentions clearly pertinent information. Well, my position would be, and I think most of us have been around this table long enough to know, that if there is some information someone needs before proceeding or before deciding how to vote, that request should be made well before we proceed to clause-by-clause. If the information that was needed to decide how to proceed with clause-by-clause wasn't available, clause-by-clause could have been delayed. No request was made. Now this bill is no longer with our committee. We're no longer vested with it. It's with the House, and this is not the appropriate time, in my view, to try to bring a bill back to our committee. If the information was necessary, we could have dealt with it at that point.

I think we do have a very busy agenda here. I don't want to delay this any further, so I'm not going to speak on it any further, except to say that on this side we are going to be opposing Mr. Comartin's motion, and think it's inappropriate to bring it at this time.

The Chair: Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I am going to try to stay calm, which will be very difficult, considering the comments I have just heard from the parliamentary secretary.

It is not our fault if you have overloaded, and I do mean overloaded, the committee. You have introduced nine bills. You want to amend just about the entire Criminal Code, and you would like us to do it expeditiously. That is what I call disrespect, and you are being disrespectful to the members of this committee and the House of Commons, period. The document is now in our possession, we should have received it on November 13. Someone hid it or forgot to send it, and it is the privilege of the members of this committee and the members of this House to speak out against that. I don't know that this will be the decision of the chair—I somewhat doubt that—but it seems to me that this is an attitude we must speak out against. This has to stop.

It is not our fault if you call so many witnesses that we don't have the time to hear them. It's too bad and I would like to apologize personally to the witnesses who have made a long trip to come here today. Everyone knew... I apologize to the chair, but he knew, and you knew as well, that the discussion on this motion would be continuing today. You knew it and you still took the risk of inviting witnesses. When I see the list of witnesses invited to appear today, I am outraged for them. I am telling you that, and I hope you will take note: you are not going to derail us, to bulldoze us. You are going to take your time, you are going to calm down, and we are doing to do it peacefully. These are extremely important bills. For example, in a few minutes, some of us are going to have to go to the House to speak to Bill C-58. That isn't stopping.

So take your time, take a deep breath, and submit the documents. You knew that you had to submit them before November 16 and it could have been done. I have the French version here; it was signed on November 13. There was nothing to stop you from giving them to us and it is that failure that seems to me to be deplorable on the government's part.

Thank you, Mr. Chair.

● (1545)

[*English*]

The Chair: Thank you.

We'll go to Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Very briefly, I'll simply give my thoughts on whether or not the motion that Mr. Comartin has raised here relates to parliamentary privilege.

In my mind, it definitely does. Members of this committee, while conducting a study on a bill, in this case Bill C-36, properly asked questions of one of the witnesses. The witness said he had the information to be able to answer the questions but not in his physical possession at that time. He was then asked if he could provide that information to the members of the committee through the chair before November 16, as we were going to clause-by-clause at that time. The witness clearly stated that, yes, he could do so.

On November 16 we presented ourselves for clause-by-clause, and some members asked where the information was from that witness. They were informed that the information had been sent to their offices, that it had been distributed to all members.

In answer to Mr. Moore's statement, those members, having being informed they were in possession of the information they felt they needed to properly conduct their duties and responsibilities as parliamentarians and proceed to clause-by-clause as it would inform their decisions on the clause-by-clause, did not make an issue of it because they assumed the fault was theirs or that of their staff.

It was only once we had completed clause-by-clause that we were informed, or at least some members were informed, that this information had been available but had been...I hesitate to use the word “diverted”, but had landed in the office of the minister and had not been distributed to members of this committee. Therefore, these members, Mr. Comartin in particular and Mr. Lemay, proceeded to clause-by-clause based on erroneous information.

I believe it does relate to parliamentary privilege. We have a duty and a responsibility to do what we feel is necessary to prepare ourselves when we're conducting a study of legislation in that particular case. Some members felt they needed certain information prior to feeling comfortable to moving to clause-by-clause. They were informed they would get the information. In fact, they did not get it but were misinformed that they had gotten the information.

My view is that it does relate to parliamentary privilege and to a potential breach of parliamentary privilege.

● (1550)

The Chair: Thank you.

We'll move to Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): I just want to put it on the record that, as I understand it, this item was delivered to the minister's office on November 13, which was a Friday. We have no information as to what time of day it was delivered to the minister's office. The clause-by-clause apparently occurred on the Monday, which in effect is the next business day. We have no information that it was even brought to the minister's attention on the morning of November 16.

The fact is that the minister would have had no reason to expect this letter to be delivered to him. The clause-by-clause having been completed, there was no reason to rush it to us. We have now received it. It's a moot point.

Thank you.

The Chair: Mr. Lemay, on a point of order.

[*Translation*]

Mr. Marc Lemay: The document I have in hand was addressed to Miriam Burke. As far as I know, she is the clerk of the committee, and also an employee of the House of Commons. The document was sent on November 13. Someone stepped in on that date, because the document I have in hand is dated November 13.

[*English*]

The Chair: Monsieur Lemay, it doesn't sound like a point of order. I'd be glad to add you to the bottom of the list to speak to this. Unless it's a point of order I'm going to move to the next speaker, who is Mr. Rathgeber.

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

Very briefly, with all due respect to Ms. Jennings, I think her argument actually weakens Mr. Comartin's petition for breach of privilege. When she indicated that somehow members on that side, or the members who are claiming privilege, that the fault was their own that this information wasn't provided, it—

Hon. Marlene Jennings: That's not what I said.

Mr. Brent Rathgeber: That's exactly what you said—and I do have the floor, thank you.

With reasonable diligence, certainly the members would have been able to know that they did not receive the documents. If these documents were so pertinent, as my friend Mr. Moore aptly pointed out, it was incumbent upon the members to know that they didn't have them and that it wasn't some clerical error, or that the fault wasn't their own. That objection should have been raised on November 16. If these documents were so pertinent that they were essential to deal with clause-by-clause, it should have been raised at the first available opportunity—November 16, not today.

This motion is out of order.

The Chair: All right, thank you.

We'll move on to Mr. Moore.

Mr. Rob Moore: Thankfully Mr. Rathgeber just made the point that I was going to make about Mrs. Jennings' intervention. To say somehow that because you thought your staff had the documents, but they didn't have the documents, then it was okay to proceed to clause-by-clause, because there was important information that you had been waiting for—it was so important—but because you thought you had it you would take a pass and just go to clause-by-clause...

The fact is that all the information that people needed to vote on this bill had been presented. The vote was taken. We went to clause-by-clause and the bill has been passed on to the House.

On Mr. Lemay's point about the pace that we're studying justice legislation, we make no apologies for introducing bills that will improve the criminal justice system. There are many improvements that are needed, so many bills have been put forward. The agenda of this committee and the pace at which this committee studies legislation is set by the opposition, which has more members than we do.

In no way do we control even the scheduling of the clause-by-clause. The clause-by-clause date could have been moved. There was no request made to move it, so one would assume that members had all the information they needed to make an educated decision on how they would proceed with clause-by-clause. We went to clause-by-clause, and the bill is in the House. That should be the end of the matter.

It's inappropriate to now say that members want to hear more witnesses or look at more evidence. That's our responsibility when we set the agenda in the first place, and that decision was made.

Mr. Chair, I would like us to end this matter so we can hear from witnesses.

● (1555)

The Chair: Is there anybody else?

All right. I will rule on whether this is a matter that relates to a point of privilege. I'm using as my reference the newly issued O'Brien and Bosc.

I'd like to first of all highlight the fact that the peculiar rights, as they're referred to, I'll divide into two categories. One is extended to members individually, and then there are those that are extended to the House collectively. From everything I've heard, I believe this deals with the rights extended to members individually.

There are five heads under that right. First of all, there is freedom of speech, which this doesn't impact. There is freedom from arrest and civil actions, which it doesn't impact. There is exemption from jury duty, which, again, is not applicable. There is exemption from being subpoenaed to attend court as a witness. The fifth one is freedom from obstruction, interference, intimidation, and molestation. I believe, from the material I've seen from Mr. Comartin, and from the comments he's made both today and on November 23, he's referring to obstruction and interference.

My role is to determine whether the matter raised by Mr. Comartin relates to privilege. I also note that the point of privilege raised is against a minister of the crown specifically and relates specifically to the Minister of Public Safety.

I have consulted with the clerk and have reviewed O'Brien and Bosc. There's no specific case in point that previous speakers have ruled on. There are some cases that are similar, and for those of you who wish to check this later, I refer to page 115 of O'Brien and Bosc , and specifically to footnote 242.

Speaker Milliken on February 25, 2004, was dealing with a prima facie breach of privilege concerning misleading statements in the 1999-2000 report on plans and priorities of the Department of Public Works and Government Services.

What's important are the two sentences I will read right now, again in that footnote 242 on page 115:

> The Speaker found no evidence to indicate that departmental officials had deliberately intended to deceive and obstruct Members. He noted, however, that if the Standing Committee on Public Accounts were to present the House with such evidence, it could constitute grounds for raising a question of privilege.

I note there the words “deliberately intended”. I believe the words “obstruct” and “interfere” imply an element of intent and an element of deliberation.

I wanted to refer to some of Mr. Comartin's comments leading up to this matter being dealt with today. I'm going to refer back to his comments on November 23, when he referred to a discussion he had with Mr. Lukiwski, the Deputy House Leader of the Conservative Party.

He said that he—referring to Mr. Don Head—believed he gave it—referring presumably to the information Mr. Comartin was seeking—to “the Minister of Public Safety and National Security. Mr. Lukiwski confirmed early this afternoon that, in fact, the minister had it, has had it since at least last week, last Monday, has not seen it, is reviewing it, and will provide it to us in a week's time”.

● (1600)

That causes me some concern, because I believe Mr. Comartin assumes the information he received from the clerk, as well as from Mr. Lukiwski, is correct that in fact the minister had not seen that information at the time Mr. Comartin apparently was considering this point of privilege. Yet later on he remarks that “there has been direct interference by the minister in a situation where he should not have had any involvement at all”.

Then I go on again to quote Mr. Comartin as follows:

> Whether or not the information was withheld intentionally or unintentionally, the minister has nonetheless, without reasonable excuse, refused to answer a question or provide information required by the committee, which created the possibility of a finding of obstruction by the minister in the committee's work.

So I have to draw from Mr. Comartin's comments at our last meeting that he's not sure whether in fact the information was withheld intentionally or unintentionally. He alleges “without reasonable excuse”. I'm not aware that the minister has ever been provided an opportunity to answer that claim—certainly not here at this committee. And I'm not sure that simply referring to the possibility of finding obstruction is enough to make out that this matter relates to privilege.

To wind this up, I want to say that a matter of privilege is not simply conjecture. Alleging that a minister has infringed upon a member's privileges by deliberately and with intent obstructing or interfering with a member's work is a very serious charge. Before I would find that a matter relates to a point of privilege, I would have to be confident that the member raising the point of privilege is alleging an actual intentional act to interfere or obstruct.

As I say, I don't have any clear direction in O'Brien and Bosc on the issue. There are no cases specifically on that point. I can just draw from the cases there that are somewhat similar and come to a conclusion on that.

I don't believe a point of privilege was ever intended to be used as a fishing expedition, although I'm sure that was not Mr. Comartin's intent here. This committee and Mr. Comartin himself have means available to secure a clarification from the minister as to the reasons for the delay in receiving the documentation Mr. Head provided on or about November 13.

I also want to note that we often face cases where information is delayed, and for many different reasons. I can think of many different reasons why a minister would not be able to immediately provide information, which would provide a reasonable excuse. The allegation is that there is no reasonable excuse here. I would think it would behoove us to first determine the cause of such delays through other means before resorting to a point of privilege.

It's for those reasons that I am unable to find that the matters Mr. Comartin has raised relate to a matter of privilege. I do want to assure the members of this committee that I take questions of privilege very seriously. If a matter properly deserves to be treated as relating to a point of privilege, I will act accordingly.

I thank all of you for your input into that process.

Mr. Comartin.

Mr. Joe Comartin: On page 151 of O'Brien and Bosc, the last two sentences say that

> Should a member disagree with the Chair's decision

—this is what the role is of the chair, but obviously I disagree with the decision—

> the Member can appeal the decision to the committee (i.e., move a motion "Shall the decision of the chair be sustained?"). The committee may sustain or overturn the Chair's decision.

I move that motion at this time, Mr. Chair.

● (1605)

The Chair: Are you challenging the chair's ruling?

Mr. Joe Comartin: Yes.

The Chair: I anticipated you might.

All right. The ruling of the chair has been challenged.

Shall the ruling of the chair be sustained?

Mr. Rob Moore: Mr. Chair, could we ask for a recorded vote?

The Chair: A recorded vote has been asked for.

(Ruling of the chair overturned: nays 6; yeas 5)

The Chair: Thank you, Mr. Comartin. Your challenge to the chair has been successful.

I think the next step now is for you to place on the table the report that you have suggested be made to the House.

Mr. Joe Comartin: It actually is on the table, Mr. Chair. It's been here since the last meeting.

I would just reiterate that I want to move that motion in the terms that I set out before—it's now in the record—which is a motion to, in effect, recite the facts of what happened and get that report to the House as quickly as possible.

The Chair: All right. It's on the table.

Mr. Storseth.

Mr. Brian Storseth (Westlock—St. Paul, CPC): If I may, Mr. Chairman, I know I just came in, but having been here for a few years, I would like to congratulate you on a very in-depth and thorough ruling. I've seen many of these. I've never seen a chair take so much time and so much due diligence in his ruling. I just want to congratulate you on the excellent work that you showed and demonstrated in this situation.

The Chair: Thank you.

Is there any debate on the motion that is before us, which is to submit the report in the form that Mr. Comartin presented it at our last meeting?

Seeing none, I'll call the question.

Mr. Joe Comartin: Can we have a recorded vote?

The Chair: A recorded vote is called for.

(Motion agreed to: yeas 6; nays 5 [See *Minutes of Proceedings*])

The Chair: The motion carries.

Shall the chair present the report to the House?

Mr. Joe Comartin: Yes, as soon as possible.

The Chair: I assume we don't need a recorded vote on this.

All those in favour?

Some hon. members: Agreed.

The Chair: Before we move on to the witnesses, I just want to clarify something.

There appeared to be some confusion at the end of our last meeting as to whether the chair can adjourn at 5:30 on his own. Apparently the can't. *House of Commons Procedure and Practice* doesn't make any provision for that; the standing orders don't make any provisions for that. It would really require a motion to adjourn, which is in fact what occurred at our last meeting.

Really, the committee has full charge of when a meeting actually ends. Typically, the chair will recognize that he's at the end of the agenda, and there being no objection, and no implied objection, he will adjourn. But there's no automatic right to adjourn at 5:30.

This is just for clarification so everyone knows in the future.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: I will be brief, Mr. Chair, because I have to go to the House to speak to Bill C-58. I was very surprised to see that the agenda provided for us to sit until 6:30. But I will tell you, if you didn't already know, that there is going to be a vote at 5:30; there will be three vote, two of them by standing vote.

We will certainly not finish before 6:00. To avoid any ambiguity, can we now ask that the committee meeting end at 5:30 or 5:35, so we can go and vote, and have the other witnesses come back on Monday? I am making a motion to that effect, Mr. Chair.

● (1610)

[*English*]

The Chair: Actually, we're in Toronto next Monday, Monsieur Lemay.

Mr. Marc Lemay: Wednesday, then.

The Chair: The agenda says we're going until 6:30 p.m. I don't presume to know exactly when the votes will end. I do know that this is the second time we have scheduled the witnesses from the law enforcement community.

This is the second time they will be here and I would like to think that we would provide them with, perhaps, an additional 15 minutes after 6:30 p.m. and go to 6:45 p.m. to get them in, because it's very important. We need to get input from a wide variety of witnesses.

But I'm open to hearing from other members of the committee, because I am in your hands.

Mr. Comartin.

Mr. Joe Comartin: I'm in full agreement with Mr. Lemay. When I saw this list... Quite frankly, Mr. Chair, I don't know where you felt you had the authority to extend today's hearings by an hour. We have a steering committee. For an issue like that, past practice has always been to raise it there.

Then to set... I think there are 11 witnesses. Knowing that the motion also was going to be here and that there would be at least some time spent on that, I'll go back to some of the comments made earlier by Mr. Lemay about just trying to force stuff through without giving us a reasonable opportunity to fulfill our job here, which is to do appropriate oversight on legislation. I'm fully supportive of the motion that, if we can, we'll try to stop the witnesses who are coming in the latter part of the meeting, but end the meeting at 5:30 p.m. and continue it next Wednesday.

The Chair: Mr. Comartin, I don't believe there's a motion on the floor right now.

A voice: Yes.

The Chair: Is there? Did Monsieur Lemay make that motion?

Mr. Marc Lemay: *Oui*.

The Chair: All right. We've heard from Mr. Comartin.

Is there anybody else?

Ms. Jennings, I believe you wanted to speak to this.

Hon. Marlene Jennings: Yes, Mr. Chair, very briefly. I do understand that under the rules and procedures there's nothing that states the meeting automatically adjourns at 5:30 p.m., and it actually takes a motion to do so.

But I believe all members will recognize that the tradition has been that meetings are scheduled in the afternoon from 3:30 to 5:30, and that when there has been a necessity to extend, it has been decided by the committee beforehand, so no one's taken by surprise coming in the morning and seeing that there's a notice on their... I mean, I didn't even look at it. It's only now that I suddenly realize that right at the bottom of the page it says 5:30 to 6:30 p.m. I looked at the top of the page and finished at Madam Joncas, not realizing that there was someone else behind her.

Anyway, I would just suggest that in future there be a go-round to all of the members when the chair believes it's necessary to go beyond 5:30 p.m., if it hasn't been decided at a committee meeting, to see if everyone's okay with that. That's all I'm suggesting. I don't see any reason for anyone's back to get up. I'm suggesting that in the future it would definitely make relations in the committee a lot more conciliatory. It's a suggestion.

The Chair: I'll certainly take that suggestion under advisement. I had always assumed this committee worked quite collaboratively. In fact, it's actually been a joy to work with this committee and for this committee.

Let me just explain that between meetings we have emergent things that appear from time to time. In this case, I was taking note of the fact that at our last meeting we had the RCMP scheduled to appear. We kept them waiting, and then at the last minute, because of votes, we decided not to hear them. So we wanted to accommodate them with an additional hour. We could have put them into the two hours we have today, but that would have compromised some of the testimony or the time that today's witnesses would have to provide their own testimony. We're just trying to be reasonable.

I will certainly ask the clerk to correspond with you a little more in the future just to get your feelings as to whether an extension is appropriate. But I also note that the agenda is sent out usually in a timely manner. The notice of meeting spells out exactly what times are proposed. It can be and often is amended, sometimes even on three or four occasions, to reflect changing circumstances. I ask all of you to take note of the notice of agenda as soon as you receive it. If you have a problem with it, please advise me or the clerk, and we'd be pleased to work with you in making sure our committee works well.

Having said that, I am now going to move to our....

Do we have two more?

Mr. Woodworth.

● (1615)

Mr. Stephen Woodworth: *Très rapidement, monsieur le président,* I just wanted to say that I find nothing unusual in the chair of a committee making such arrangements as have been made today, based on the very unusual circumstances that occurred at our last meeting.

Merci beaucoup.

The Chair: Thank you.

Mr. Storseth, you wanted to speak on this?

Mr. Brian Storseth: Yes, just a couple of quick points, Mr. Chair.

One, in your defence, we did sit on a committee jointly where it was common practice for the chair to take this authority so we could expedite committee business in fairness to everybody.

Two, I would like to know if you could reference for the committee—perhaps not today—where you found your ruling on the time allocation, because we have had this question come up in another committee, where a clerk informed us that because the agenda shows 3:30 to 5:30 traditionally, the committee is deemed to be shut down at 5:30 unless otherwise requested by the committee, as these rooms are often booked afterwards for other reasons.

So could you clarify where you found that?

The Chair: I'd be pleased to clarify.

Again, in O'Brien and Bosc, on page 1087, dealing with adjournment, it reads as follows:

> A committee meeting is normally adjourned by the adoption of a motion to that effect. However, most meetings are adjourned more informally, when the Chair receives the implied consent of members to adjourn. The committee Chair cannot adjourn the meeting without the consent of a majority of the members, unless the Chair decides that a case of disorder or misconduct is so serious as to prevent the committee from continuing its work.

I can assure you, I've never yet witnessed a circumstance in this committee where I would have had to adjourn due to disorder. So I'm very pleased with that. As I say, I think this committee has worked as collaboratively as one might expect in a minority Parliament, and I want to thank all of you for that.

We still have a motion on the table.

I have Mr. Bigras and Monsieur Lessard to speak.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Mr. Chair, I just wanted to make sure that Mr. Lemay's motion had been accepted and we would take the vote before hearing our witnesses.

The Chair: Yes.

Mr. Lessard.

Mr. Yves Lessard (Chambly—Borduas, BQ): I am saying the same thing, Mr. Chair, because there is one unavoidable fact: there will be a vote at 5:45. We would have to finish our work at 5:30. To use our witnesses' time well, I think we should take the vote.

[*English*]

The Chair: Absolutely.

Seeing no one wishing to speak further, I'll call the question on the motion, which is to adjourn at 5:30 rather than at 6:30.

(Motion agreed to)

The Chair: So we will adjourn at 5:30 to go to our vote.

We'll now go to our witnesses. I want to thank them for their patience.

First, we have the Insurance Bureau of Canada, represented by Dennis Prouse and Richard Dubin. We also have the National Pensioners and Senior Citizens Federation, represented by Jim Hayes and Art Kube; it's nice to see you again. We have the Canadian Justice Review Board, represented by William Nichol, who is its Chief Executive Officer, and finally we have the Association québécoise des avocats et avocates de la défense, represented by Lucie Joncas.

I'm going to allow Ms. Joncas to begin because she has a timeline to meet.

I believe you have to be at another meeting at five o'clock.

Ms. Lucie Joncas (President, Association québécoise des avocats et avocates de la défense): I am before the senate committee on another bill at five o'clock.

● (1620)

The Chair: Yes. So we'll give you time to make your presentation.

Perhaps what I'll do, given the fact that we may be running out of time, is allow any specific questions to you to be asked first. I'll give a five- or ten-minute period if anyone has specific questions for you, and then we'll move on to the other witnesses.

Is that all right?

Ms. Lucie Joncas: Thank you very much for the accommodation. I'm sorry, but obviously I thought I was starting at 3:30.

[*Translation*]

To begin with, the Association québécoise des avocats et avocates de la défense would like to thank the committee for this opportunity to talk to you about our concerns regarding Bill C-52.

The AQAAD is composed of more than 600 members who practise mainly criminal law, and each region is represented on our board of directors. The needs of the regions are very diverse, and when we present submissions we try to consider the needs of both northern communities and urban communities.

The AQAAD is aware of recent problems involving frauds that caused substantial losses for many members of the public. Quebec has been particularly affected by the embezzling of funds invested by individuals, but we do not believe that the judicial system has responded to this situation adequately. The AQAAD has always taken the position, in principle, of favouring judicial discretion, so is inevitably opposed to mandatory minimum prison terms.

In recent years, we have seen a significant erosion of judges' discretionary authority, and we deplore that situation. Repeated attacks undermine the credibility of the system and jeopardize its ability to operate. Bill C-52 provides for a two-year mandatory minimum sentence. The Quebec Court of Appeal put us on notice several years ago when it refused to impose conditional sentences of imprisonment for substantial frauds. We will recall the guilty pleas or verdicts in certain cases that affected Parliament more directly, and the Court of Appeal definitely put us on notice that firm prison terms should be handed down. So we recognize that principle and we respect it.

However, I think we have to recognize that there are exceptional cases and that major injustices could result. The amendments proposed to subsection 1.1 of section 380 refer to "the total value of the subject-matter of the offences", or,in the French version, "*la valeur totale de l'objet des infractions en cause*". We have to remember that under section 21 of the Criminal Code there are various ways of being a party to an offence that might involve a very significant total sum, but where an individual who played a very minimal or secondary role would fall within the provisions you are proposing. So I think the specific role should be taken into consideration, and the need to individualize sentencing is not being respected when this kind of minimum sentence is imposed.

I also think we have to remember that the Criminal Code provides for a maximum term of 14 years for any fraud over $5,000. So judges have all the latitude they need, lots of elbow room, to impose sentences well over what is proposed, in appropriate cases.

There is also another clause that concerns us. We see that you want to impose the condition that a person not work in places that could result in more offences being committed, but the Criminal Code already provides for this possibility. Paragraph 732.1(3)(h) provides that when a probation is made, the court may prescribe that the offender

> (h) comply with such other reasonable conditions as the court considers desirable, subject to any regulations ... for protecting society and for facilitating the offender's successful reintegration into the community.

So the Criminal Code already provides for this possibility in probation orders. We must remember that the people who sit on parole boards, both provincially and federally, have complete authority to impose exactly these kinds of conditions. And believe me, they do their jobs well and they regularly impose all sorts of conditions for protecting society.

● (1625)

So our position, in principle, as representatives of the Association québécoise des avocats de la défense, is that we have to stop usurping the discretion of the courts. I think this bill does not meet any legal need and can only be a response to a political need. This is what concerns us: that there will be a constant erosion of judicial discretion.

Thank you.

[*English*]

The Chair: Thank you.

Welcome to Simon Roy; we'll get to you in a moment.

I'm going to open up the floor to short questions of two minutes apiece.

Mr. LeBlanc.

[*Translation*]

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

Thank you for your testimony, Ms. Joncas.

[*English*]

The Chair: Mr. LeBlanc, you're asking questions, correct?

Hon. Dominic LeBlanc: Yes, of Madam Joncas.

The Chair: Okay, that's fine. Go ahead.

[*Translation*]

Hon. Dominic LeBlanc: We apologize for the delay at the start of the meeting.

I have a very specific question. We have met with people involved in the Earl Jones case, for example. When it comes to the alleged victims of these situations, a lot of their frustration arises from the impossibility of recovering funds that may have been taken in one of these major frauds. There are changes proposed to the law to try to enable judges to give certain instructions to facilitate recovery of these funds, but in reality it is very difficult.

It has been suggested that we borrow certain aspects of the law on organized crime. For example, if a person is convicted of a massive fraud of more than $1 million, there would be a reverse onus, if I have understood the provisions of the law on organized crime correctly, that would require the person who is convicted to prove that their property was not the result of the fraud. That would help the court and the judicial system to try to recover property and then compensate the people who lost money.

I would like to hear your reaction to this. It is not included in the present bill, it is a suggestion that has been made to us.

Ms. Lucie Joncas: It is odd that you would ask me about that section, because I was the*amicus curiae* to the Supreme Court in *R. v. Lavigne*, in which the Court considered precisely the possibility of seizing property obtained by crime. In fact it is a possibility, but a civil action and class actions are always possible.

Victim statements and the impact on victims are already provided for in the Criminal Code. Often, in cases, that is part of a settlement: the property is returned or is seized. The Crown has the power to make that kind of application, and we see it regularly in relation to proceeds of crime. So it could be a more viable option than the one being proposed.

[*English*]

The Chair: Thank you.

Now we'll move on to Monsieur Lessard.

[*Translation*]

Mr. Yves Lessard: Thank you, Mr. Chair.

I would like to thank our guest and the other guests for being here today. I will be very brief because we have only a little time.

As you understand Bill C-52, would you be able to tell us whether the sentences for similar frauds will be applied cumulatively for multiple frauds of the same nature? For example, if a person commits 12 frauds, the minimum sentence would be 12 times two years.

● (1630)

Ms. Lucie Joncas: As I understand it, the Court of Appeal answered that question recently in the case of Mr. Lacroix. He had been sentenced to five years, calculated consecutively. The Court of Appeal refused because he would certainly be entitled to a jury trial. The Charter provides that any offence that where a sentence of five years or more can be imposed for an offence there is a right to trial by jury. So after reading through the bill, I think there are several issues that should be noted, but I don't see how the sentences could be consecutive.

Mr. Yves Lessard: That doesn't change the present situation at all, including in the case of securities, for example. In the case of Mr. Lacroix, he was tried under two separate statutes, and that meant his sentence was reduced.

Ms. Lucie Joncas: It was reduced, but in the criminal case, he was sentenced to prison for 13 years. So it was not a very big reduction, after the sentence to five years in prison! Without going into the separate statutes, if someone is liable to imprisonment for five years or more, they are entitled to trial by jury. We have to abide by the provisions of the Charter, but I don't see how these sentences could be concurrent.

Certainly if other offences are committed and there is a criminal record, the sentences will go up, because the criminal record is an aggravating factor. When there is a single transaction, although there may be several counts, I think there should not be concurrent sentences.

[*English*]

The Chair: *Merci.*

Mr. Comartin.

[*Translation*]

Mr. Joe Comartin: Ms. Joncas, have you done an analysis of thefts or frauds of around $1 million? Is a two-year sentence common? Is it generally lower, or higher?

Ms. Lucie Joncas: Experience in recent years, following the decisions by the Quebec Court of Appeal, shows that the sentence is higher. The courts are not reluctant to impose sentences of four or five or 13 years. I think that a sentence of two years does not reflect what the courts have decided, at this point. The courts impose much more severe sentences, in a majority of cases, where the circumstances are all taken into consideration. The fact that there will no longer be any discretion concerns us, however. Imagine a case where a person played only a minimal role and was convicted under section 21 of being an accomplice who aided or abetted the offence, but received no personal benefit from it. We are not talking about any benefit someone may have received, we are talking about the total amount. I am very concerned about the wording. It talks about

[*English*]

"the total value of the subject-matter of the offences".

[*Translation*]

That really can be anything.

Mr. Joe Comartin: That is what I had understood.

Do you think there is another potential problem, that judges might start considering two-year minimum sentences as the standard sentence for major thefts and frauds? Is that a possibility?

Ms. Lucie Joncas: That might happen, but as I said, we are now seeing more severe sentences than what the bill provides for.

[*English*]

The Chair: Thank you.

I will move on to Mr. Moore.

No questions?

Okay, go ahead, Mr. Woodworth.

[*Translation*]

Mr. Stephen Woodworth: Thank you very much for being here today, Ms. Joncas.

[*English*]

I am intrigued by your comments about eroding the discretion of judges. It almost sounded to me as though you were saying that it was not legitimate for the legislature to impose restrictions on judges. I myself thank God frequently that I live in a democracy, and I cherish that precious fruit of democracy.

I want to make sure I understand whether or not your association agrees with me that citizens do have the right, through the democratic process, to insist upon minimum sentences for serious offences.

● (1635)

Ms. Lucie Joncas: I believe the Criminal Code as written can respect the rights of all citizens. I do not believe imposing such restrictions on judges is a good idea.

Yes, we live in a democracy, but I am not sure what the catalyst is or what the need is for such legislation when the crime rate is not going up and there is absolutely no proof that this will reduce crimes of this nature.

Mr. Stephen Woodworth: I fully respect as a democratic matter your right to disagree with the legislation, but I'm glad you are not suggesting that there is some divine right of judges not to have their discretion fettered by the legislature.

I have one other question. Do you understand that the provision in the act for prohibition orders is not necessarily going to result in prohibition orders that are as time-limited as probation orders, that in fact it is probably intended to result in prohibition orders that might exceed the length of probation orders, and that therefore there is a purpose in separating it from probation orders? Does that seem clear?

Ms. Lucie Joncas: If the judge believes a harsher sentence should be imposed, usually it will not be in a probation order. It will follow a term of imprisonment during which the correctional facility has the ability to impose such conditions.

Mr. Stephen Woodworth: I think I'm out of time, so I thank you very much for your answers.

The Chair: Thank you very much, Ms. Joncas. You are free to go whenever you wish.

What we'll do now is move to the other witnesses.

You have up to 10 minutes.

Mr. Richard Dubin (Vice-President, Investigative Services, Insurance Bureau of Canada): Thank you, Mr. Chairman.

The Insurance Bureau of Canada is the national trade association that represents Canada's home, car, and business insurers. As a national trade association, we have an investigative services division that has a staff of 59, of which I am the head. Our team includes a number of seasoned former police veterans who spend their days investigating organized insurance crimes involving staged auto collisions and auto theft. This is a very busy job for our people due to the growth in Canada of organized crime.

Insurance fraud is a big business in Canada. In just home, business, and auto insurance, it is estimated to be a $3-billion-a-year business. On average, 10% to 15% of all claims have an element of fraud. Consider for a moment that our industry paid out $25 billion in claims in 2008 and you'll see the scope of the problem. Let's be clear as to where that money has to come from; it comes from individual Canadians in the form of higher premiums.

Organized crime long ago saw an opportunity in insurance fraud. Why? Because it is a low-risk, high-profit business. The penalties are minor, and jail time is rarely handed out, even for cases involving substantial fraud. In the brief time I have here, I want to tell you about just one type of highly organized insurance fraud: staged auto collisions.

Phoney car crashes are a big business in the Greater Toronto Area, which is considered the staged auto-collision capital of Canada. These complex schemes frequently involve organized criminals linked with tow-truck operators, body shops, paralegals, and registered health care providers. I also refer to them as rehab centres or rehab clinics. In one particular investigation, which is ongoing right now, 41 staged auto collisions are alleged to have taken place involving fraudulent auto physical damage and fraudulent accident benefit claims. Further investigation suggests a possible 116 additional alleged staged collisions involving this criminal organization.

Altogether, we estimate that this one project alone could cost insurers and their customers between $20 million and $25 million in potential fraud. To date, over 200 charges have been laid against 38 individuals.

Staged collisions involve not only those intentionally causing the collision but also the innocent drivers who are placed at great risk of serious injury or death. Particularly dangerous is the “swoop and squat”, in which two cars intentionally box in the innocent driver. A third car quickly passes in front and then jams on the brakes, forcing the innocent driver to rear-end the vehicle ahead. The vehicle struck in the rear is usually carrying several passengers who paid for their seats so that they can claim to be injured. They submit fraudulent accident benefit claims, which are supported by rehab clinics.

In more elaborate schemes, a runner recruits drivers and passengers to play roles in a carefully scripted, choreographed, controlled crash. Bogus witnesses are positioned near the staged collision to support the criminals' account and to contradict the innocent driver's testimony.

IBC's investigative services investigates, on average, over 30 such projects a year. Unfortunately, those convicted and sentenced usually receive conditional sentences, and restitution is rarely ordered. In keeping up with organized crime, however, designated investigative bodies, like ours, and police and prosecutors need more tools. A strengthened Criminal Code to get tough on these types of crimes is a top priority, and we were pleased to see that the House of Commons has already passed Bill C-26 in regard to auto theft.

This legislation, Bill C-52, is another positive step that takes direct aim at the kind of organized criminals our industry battles every day. Tougher penalties for fraudsters will send a clear message that Canadians will no longer tolerate having their savings targeted by criminals.

● (1640)

It is time for the fraudsters' free ride to end, and Bill C-52 makes strong steps in that direction. We urge parliamentarians to pass this legislation.

Thank you. We would be pleased to answer any questions committee members may have.

The Chair: Thank you. And thank you for being brief; it’s very helpful, because our time is short.

Who will be speaking on behalf of the National Pensioners and Senior Citizens Federation?

Go ahead, Mr. Kube.

Mr. Arthur Kube (President, National Office, National Pensioners and Senior Citizens Federation): Thank you, Mr. Chairman.

I'll tell you a bit about our organization. It's been in existence for 57 years. It started largely in the province of Saskatchewan and it has grown to where we now have 380 organizations affiliated to our federation, with an approximate total membership in excess of a million individual seniors.

What has been happening in the last few years is that more and more of our members are depending upon their individual investments for their retirement income. As you know, the number of people who are covered by a pension plan has been declining for some time, and therefore a good number of our members have to operate in the market.

We appreciate that Parliament is moving on Bill C-52, and I think it's a step in the right direction. However, I want to assure the committee members and the chair that it's not quite sufficient for our members. Let me give you an example.

In the Bre-X case, you had a situation where it was a publicly sold security. Let me tell you that the president of Bre-X had an exit strategy all along. How are you going to get hold of the president of Bre-X who is now, I understand, living either in the Turks and Caicos Islands or somewhere, beyond the Canadian jurisdiction? To a certain extent, with that bill, unless you have an extradition agreement, really nothing will happen.

The other thing is that when seniors are defrauded, quite often they're ashamed to report it. To a certain extent, they're leery of the rest of the family because they feel they should have consulted the family. But we then find out that somebody does goes ahead and lay a complaint and the person is prosecuted.

You know, there's nothing in the legislation that says, if a person is found guilty of fraud, they're not only found guilty of the fraud perpetrated on the person who complained...but there should be compensation and restitution for all of the people who got defrauded by that particular person. I think to a certain extent the bill falls short.

We passed a resolution at our convention, which emphasizes the direction we seniors would like to go in. I'd like to read that resolution:

> Whereas the federal government, in the January 27, 2009, budget set out the plan for regulatory reform of Canada's capital markets; and whereas the expert panel on securities regulation that reported in the Hawkin Report, published January 2, 2009, recommends reform of the multiple and provincial Canadian securities regulatory schemes to a single Canadian securities regulator; and whereas the Canadian capital markets need efficient, effective, and shareholder-friendly regulatory protection; and whereas a change in the Canadian securities regulatory schemes has the support of the majority of the provinces; and whereas a single securities regulator will enhance the detection and prosecution of serious capital market crimes, where the current fragmented system of provincial securities regulations has shown that it cannot prevent such crimes; and whereas the current financial crisis has provided the motivation and optimism that such a reform to a single Canadian securities regulator will work and be supported by most provinces; therefore it be resolved that the National Pensioners and Senior Citizens Federation lobby the federal government and opposition parties to establish a national securities regulator through legislation that enhances the right of investments.

The reason it's so important for seniors to have a regulatory framework is that, to us, prevention is really the answer to stopping crimes. If you have a strong regulatory system, where, for instance, we could separate people who either sell or advise in the security field into different parts, that would be a beginning. If we could license them properly and bond them properly, that would be another help. We think the answer to white-collar crime, especially as far as seniors are concerned, rests more on the side of regulation than really punishment, because, as I said, these crooks are pretty smart. They always have an exit strategy. We know it's awfully hard to recuperate these fraudulent gains.

● (1645)

Quite often they ship it out of the country, they transfer it to the rest of the family and so on, and it makes it very difficult. And for an average senior to have access to the judicial system, it's very hard. We're saying prevention is the answer to white-collar crime, especially when it comes to the question of seniors.

Thank you very much, Mr. Chairman.

The Chair: Thank you.

We'll move on to Mr. William Nichol, representing the Canadian Justice Review Board.

Mr. William Nichol (Chief Executive Officer, Canadian Justice Review Board): Thank you, Mr. Chairman, and members of the committee.

On behalf of the directors of the Canadian Justice Review Board, I wish to thank the committee members for providing the opportunity to appear here this afternoon. I've provided the committee clerk with a brief that highlights our concerns in more detail, and I understand you have received copies of it electronically.

The key point that I would like to emphasize is that Bill C-52 deals only with the sentencing aspect of an otherwise very lengthy process, and by its nature, it already provides many opportunities to avoid sentencing in the long run.

The brief contains a list of some of the many possible escape routes. I hope you will review and consider those in terms of the content of this legislation. My friend here has alluded to some of those escape routes.

Yesterday's *Ottawa Citizen* carried an opinion piece from Mr. James Morton, entitled “We need 21st-century law”. Mr. Morton is, among other things, an adjunct professor at Osgoode Hall. In my opinion, a key passage in his article touched on the matters being considered here today. Mr. Morton asks, “Is crime really best dealt with by prisons?” He answers the question by saying that in some cases—white-collar crime—probably yes, but in other cases, as with most drug-related crime, probably not. But here we're dealing with white-collar crime. Bill C-52 seeks to address white-collar crime and it does so in the general context of the criminal justice system's goal of preventing crime.

Fraud has a legal definition in the Criminal Code, but fraud can be very difficult to prove. If the goal is to prevent damage to society, and more specifically financial damage, then perhaps it's time to define in the Criminal Code some of the other undesirable white-collar activities—for example, creative accounting. In my opinion, this bill would be considerably improved if it did that.

If we were speaking of fraud alone, then the Canadian Justice Review Board submits that a two-year prison term is not an effective deterrent, especially given our current parole board policies. We ask that you, as legislators, consider a mandatory five-year sentence.

Ms. Hazel Magnussen, who is a colleague of mine operating in Victoria, British Columbia, who is also the secretary of the Canadian Justice Review Board, specializes in victims' rights issues. Over the past two years or more, she has been conferring with the Federal Ombudsman for Victims of Crime, Mr. Steve Sullivan, and also with our own board member Professor Ted DeCoste. As a result, they designed a curriculum that Ted DeCoste was able to introduce for law students at the University of Alberta that raises awareness of victims' rights.

Since Mr. Sullivan may also be appearing in front of this committee, I don't want to steal any of his thunder, but I would like to point out that the Canadian Justice Review Board agrees with sentiments he expressed in a November press release. He said:

> I am pleased to see the federal government moving forward on important victims' issues like financial crime and restitution...I am however concerned that the restitution piece of this new legislation applies only to victims of fraud. We need to ensure that we are supporting all victims who may have been devastated financially as a result of a crime.

If I may, I'd like to return quickly to the comments I made a few moments ago and reiterate that this legislation would be greatly improved if it brought within the ambit of the Criminal Code some of these other socially unacceptable practices often associated with what we might call the financial industry, and also legislated significant penalties for those behaviours, including restitution.

Fraud is not the only problem. I believe it's very upsetting, or depressing, for the general public to hear or read about major financial swindles and then learn that even those fraudsters who admit guilt receive what many consider to be laughable sentences, such as house arrest or early six-month parole.

What Bill C-52 should be doing is restoring public confidence in the justice system by giving society a legal framework that applies to the 21st century's financial world.

In closing, I would like to thank the committee again for the invitation to appear. I trust that you will give some consideration as to the recommendations we've made.

Thank you.

● (1650)

The Chair: Thank you.

Finally we'll go to Monsieur Roy.

[*Translation*]

Mr. Simon Roy (Lawyer and Criminal Law Professor, University of Sherbrooke, Faculty of Law, with joint responsibility for the Financial Crimes Prevention Program, As an Individual): First, I would also like to thank the committee for giving me the opportunity to address it. I would like to note that I am before you here today as a professor of criminal law and also as the co-chair of the master's program on fighting financial crime, a program offered in Montreal. So I hope that I am somewhat neutral on this subject.

Before making my presentation, I would like to reply to the question that Mr. Lessard just asked, whether two-year minimum sentences might be considered to be consecutive where there are several frauds in one case. I think the answer is no, because when the Criminal Code provides for consecutive sentences, it says so specifically. We might think of firearms offences. It adds that the sentence for those offences must be consecutive. The same is true in relation to criminal organization offences. That is not the case here, so I don't think it could be seen as consecutive, at least not as that being mandatory.

My observations will address the six main points in the bill. I would like to start with the two-year minimum sentence. I think that there are in fact still fraud cases where judges are giving sentences of less than two years. We need only consider the Coffin case, which went to the Quebec Court of Appeal not so long ago, relating to the sponsorship scandal. So adding a two-year minimum sentences does have an impact, and I don't think it will mean downward pressure. Traditionally, when a minimum sentence is added, a section, judges increase the average sentence, they don't decrease it. So I do not anticipate a downward effect.

That being said, there are still problems. Ms. Joncas spoke here about the case of an accomplice. Obviously this is a problem. An accomplice does not have the same degree of responsibility as the actual perpetrator. An exception might be made for them.

Another even more important factor is the amount of the fraud. A minimum sentence is to be added for frauds of $1 million and over. In my opinion, that minimum sentence would not apply in cases like Vincent Lacroix's. Why? Because in Vincent Lacroix's case, even though his total fraud was $115 million, his individual frauds were all under $1 million. In that situation, all the counts would probably be for fraud under $1 million, and there would be no two-year minimum sentence on any count. Ultimately, it will not change greatly, because his total sentence will be more than two years. But in my opinion, taking the amount of the fraud into consideration is a bad idea, because if there are multiple victims, the fraud may exceed $1 million in total, but be less than $1 million for each victim.

Conversely, the amount of the fraud does not include the benefit to the accused. For example, if I sell buildings worth $2 million and I tell my clients I am certified by the APCHQ when that is a lie, even if I receive no benefit, even if I intend for the buildings to actually be built, that's fraud, and the amount of the fraud is equal to the value of the building, $2 million, even if the benefit to me personally is limited to my profit in the building. So setting the figure for the amount of the fraud at $1 million causes problems, in my opinion.

Even more importantly, adding a minimum sentence and increasing the maximum sentences—in the case of section 380 we have both—should be done more comprehensively. In this case, fraud is the target, but nothing has been done about sexual assault with a knife, under section 272 of the Criminal Code, or incest, under section 155 of the Criminal Code. Might society see this approach as creating a hierarchy of crimes? Might they not think, in the public's eyes, that fraud over $1 million is more serious than sexual assault with a knife, or more serious than incest? The message sent by the bill is that this is in fact the case, because there is a two-year minimum sentence for fraud.

So playing with parts of the Criminal Code, adding minimum sentences in some places and not adding them in others, might send a bizarre message. This should be done comprehensively. There is a justification for minimum sentences. They can be good, but this should perhaps be done more comprehensively.

Regarding restitution for victims, this adds little in my opinion, because it is already provided in section 738. So the bill makes no change in that regard. It simply imposes certain duties on judges. But in itself, it will not facilitate restitution for victims. The problem is still the difficulty of establishing the actual losses in criminal law, which will mean that in any event the victims will have to go to the civil courts.

As well, obviously there is the accused's genuine insolvency, or apparent insolvency. In the case of genuine insolvency, the accused has no money, they can't pay. In the case of apparent insolvency, you have to know where they have put the money. If they have hidden it in a tax haven, the restitution order won't change anything.

● (1655)

The addition to the list of aggravating circumstances is essentially a codification of current law. Here again, no additional protection is being offered to the public against fraud. It is worthwhile to codify the current law, but it should be done as part of a broader reform of the Criminal Code. Some parts of the Code are up to date and have really been improved, while other parts are not. For example, section 181, about spreading false news, which the Supreme Court held to be unconstitutional in 1992 in the Keegstra decision, is still in the Criminal Code. When we talk about updating the Criminal Code and a section that the Supreme Court held to be unconstitutional in 1992 is still in the Code, I think there is some work to be done on reform.

Regarding the fourth measure, entitled "Judge required to record aggravating circumstances and to state reasons for refusal to order restitution", I don't understand why that is required in the case of fraud when it is not required in the case of other crimes. Why should a judge be specifically required to record the aggravating or mitigating circumstances in a fraud case, but not be required to do it in a sexual assault case, for example? I find it hard to understand why this measure is being called for.

Measure 5, which is probably the most interesting feature of the bill, in my opinion, is entitled "Prohibition on having authority over the affairs of another person". As was noted earlier, this covers a much broader area than probation. Probation is for a maximum of three years and may be applied only where there is a prison term of no more than two years.

Here, that kind of limit is not imposed. If I am not mistaken, the model you have in mind is much more along the lines of the prohibition for driving while impaired. We know that in the case of drunk driving, the judge may, for example, order a 10-year or 15-year driving prohibition, or even a lifetime prohibition, upon conviction. In my opinion, it is a very good idea to want a similar measure for fraud cases.

Obviously, however, this raises the question of supervising orders prohibiting handling the affairs of another person. In the case of driving, it is relatively easy. There are police on the roads who can do random checks of drivers' licences. In the case of another person's affairs, does this mean that the person will be under a probation officer for the rest of the order? We can assume it does, but the idea is worthwhile and it is probably the measure in the bill that offers the most protection for the public. When we talk about preventing fraud, protecting the public, it is really the only measure in the bill that is clearly dedicated to that idea.

And the sixth aspect of the bill deals with the "Victim statement on behalf of the community". In my opinion, that already happens and the bill adds little to the current situation, other than that it might provide better guidelines for how it works.

In conclusion, I would like to make a more general comment on the bill. I agree with what was said earlier: people who commit fraud can be deterred. Fraud is not an impulsive crime like some murders or some sexual assaults. It is not a crime associated with drug addiction, like selling or possessing narcotics. It is ordinarily a well thought-out and planned crime. In this situation, the fraud artist often does a cost-benefit analysis. They consider the benefits of committing a crime and the potential costs. At this state, deterrence can play an important role. That being said, deterrence is based on two factors: severity of sentence and certainty of sentence. I see that here there is a lot of work being done on severity of sentence, and that is laudable.

However, if a person has a one in 100 chance of getting a 14-year sentence, the cost-benefit balance is still tipped in their favour. That is why the work must focus not just on severity of sentence, but also on certainty of sentence. Are we catching more fraud artists? Are we catching them faster? That could have a real deterrent effect.

● (1700)

I will conclude by giving you the example of Mr. Madoff in the United States. Everyone believes that a 150-year sentence in Mr. Madoff's case has a deterrent effect. When I read about the Madoff case, I kind of said to myself that I was sorry I had never done what he did. Why? Because he led an extraordinary life, in the best hotels and the best houses on the planet; the travelled, and led a life we can hardly even imagine. Obviously, he got 150 years in prison, but he is 70 years old. If I compare the costs and benefits, in his case, I am not sure there is a deterrent factor.

Thank you.

[*English*]

The Chair: Thank you.

We'll open it up for questions. Given our limited time, we'll do five minutes each, if that's all right with the committee.

We'll go with Ms. Jennings, five minutes.

[*Translation*]

Hon. Marlene Jennings: Thank you. I appreciate your testimony and you patience with the committee's work. I have some questions for Mr. Kube and Mr. Roy. Unfortunately, Mr. Nichol, I did not hear your presentation, and that is why I will not be asking you any questions.

Bill C-52, in its present form, applies only to crimes of fraud, in general. As you said, that doesn't cover cases like Bre-X. A fraudulent prospectus was issued by a company. It also doesn't apply to insider trading, and so on.

Do you think the bill should be amended so that it applies to other fraudulent acts that are already regarded as criminal, to ensure equality, if I can use that expression?

Mr. Roy, you said it might be wise to create an exception for accomplices to fraud, given that the evidence often shows, beyond a reasonable doubt, obviously, that their role was minimal. In your opinion, how could we be sure, in terms of the drafting, that an accomplice who did play a relatively major role in the case was dealt with? Could there be aggravating factors that would determine whether the person should be subject to a mandatory minimum sentence?

You also talked about prohibitions on someone convicted of fraud handling other people's affairs. If the bill is amended to give a judge the power to impose such a prohibition, will other sections of the Criminal Code have to be amended to be sure that this makes sense? What I want to talk about here is what you said earlier, probation, monitoring a person who is subject to the prohibition.

Thank you.

[*English*]

Was that short enough?

● (1705)

The Chair: Two minutes left.

Hon. Marlene Jennings: One minute each.

Mr. Arthur Kube: To answer your question, yes, I think it should apply to publicly traded securities because seniors deal with a whole range of things. And what we also have seen is that stock exchanges, in many instances, don't have the mechanisms to keep all their listed companies honest. So I think it should definitely apply.

[*Translation*]

Mr. Simon Roy: I think a minimum sentence should not be imposed on accomplices. That should be left to the judge's discretion. Otherwise, it gets too complicated.

On the other amendments, I think there would have to be an express reference to the sections on probation and the rules relating to that would have to apply. It works in impaired driving cases. It could be modeled on that; that wouldn't be so complicated. However, rather than aim it at certain particular cases, the wording "and such other conditions as the judge considers desirable" could be used. That might give the judge a little more latitude in formulating appropriate conditions.

Hon. Marlene Jennings: Thank you.

[*English*]

The Chair: That's it? All right.

We'll move on to Monsieur Lemay, *cinq minutes*.

[*Translation*]

Mr. Marc Lemay: First, I have to apologize. I had to go to Parliament to speak to another justice bill, Bill C-58. I said, and it will be noted: it is a very good bill, one that is very worthwhile and will be debated here by the committee in the near future.

However, I find it more difficult to accept Bill C-52. I don't know what your opinion is, I didn't hear you. So I am going to listen to you and ask you just one question. I practised criminal law for many years and I know of no case where someone committed a fraud, a theft, because I call it theft, of over $1 million and got a sentence of less than two years. So I wonder whether it is really necessary to impose a minimum prison term.

As well, I would like to talk about the obligation to make restitution. I think section 741 of the Criminal Code is not really used, which provides that the court may order restitution to victims, and this automatically becomes a civil judgment that the thief will be required to pay.

There are some things I don't understand. Minimum sentences of imprisonment are not a problem for me. The problem is that we don't go far enough and the risk is that we send the message that this isn't serious, that it is just a $1 million fraud, and the thief gets off with two years or less, or maybe more. That is a bad message. I don't know what you think, I didn't hear you, but I would like to hear your thoughts.

[*English*]

Mr. Arthur Kube: I partially agree with you, but something has to be done because it has become so prevalent and so damaging. In British Columbia a number of seniors committed suicide. There has to be some stop to that carnage in the financial marketplace, because lives depend on it.

Maybe it needs improving and it should be broadened, and maybe it should be less than $1 million. But it should be cumulative, because the $1 million can be arrived at in different ways. If you defraud 500 people for $2,000, that's $1 million. Maybe that $1 million should be cumulative. It should also compensate people who haven't reported but were found to be defrauded.

● (1710)

[*Translation*]

Mr. Simon Roy: The decision I will talk about first involves Mr. Coffin, in the sponsorship scandal. In fact it was discussed in the House in the debate on first and second reading. Coffin, as you know, had been sentenced to a term in the community at trial, and the Quebec Court of Appeal order an 18-month sentence for a fraud of $1.5 million committed against the government. Yes, there are sentences of less than two years for very large frauds.

On your question about restitution, you have to understand that this is a matter of the division of powers. Ordinarily, Quebec is the first to fiercely defend that. The authority to determine questions of damages has to be left to the civil courts. It is not up to a criminal court to deal with those matters. So the main limit, in terms of restitution, is net damage. If I were a victim, I would much prefer to go before a civil court and have several days to prove the damage suffered than to go before a criminal court that will deal with the matter expeditiously in a few minutes because there is a whole list of other cases waiting. Restitution orders under the Criminal Code are not limited to very clear cases only, and it is more difficult in the case of complex frauds.

[*English*]

The Chair: Thank you.

Mr. Comartin, five minutes.

[*Translation*]

Mr. Joe Comartin: Mr. Roy, I am going to ask you this question in English because I speak faster in English than in French.

[*English*]

The last point you made bothers me a bit. I know the history of our criminal courts being adamant about not being a collection agency. But in many respects we do it in a different way when we go after the proceeds of crime. We did that in a number of very strong ways in going after organized crime. It has not been effective because it is not being used, but that's another problem with our administration of justice.

Why wouldn't we do the same thing with regard to proceeds of crime when it comes to the kind of abuse that Mr. Kube is talking about? We don't have good figures on how much white-collar crime has increased—if it has increased—but it's prevalent enough that it's a major problem. As a society, should we not be treating proceeds of that crime no differently from how we treat the proceeds of crime for organized crime groups?

[*Translation*]

Mr. Simon Roy: That is in fact a good comparison. However, in the case of proceeds of crime, we have to understand that the person seeking confiscation of the proceeds of crime is the Queen, the government. The government is in a position to have lawyers and investigators to prove the case.

In the case of fraud, the victim is the one seeking restitution. So unless we accept...

Mr. Joe Comartin: That is what the bill says now, but it will not necessarily be passed in that form.

Mr. Simon Roy: Exactly.

Unless we accept the idea that the government will act on behalf of the victim, through some form of legal aid or reimbursement assistance, and we put the burden on Crown prosecutors, who already have enough of a burden, in my opinion, and who are not experts in civil law, I don't see how it would go faster. We have the civil courts, they are experts in this area. Even the criminal court judges are often not conversant with civil cases or civil law. In my opinion, we already have a mechanism for this and that is what should be used.

Mr. Joe Comartin: The problem is that there are not enough people who can afford the services of lawyers in the civil courts.

[*English*]

The Chair: You have two and a half minutes left.

Mr. Joe Comartin: Mr. Dubin, I'm a bit concerned about—I always take shots at the insurance bureaus—and I really have to question your analysis. Why would you be pushing the use of this bill as opposed to using the organized crime sections in the code for the kind of crime that you see with the fraudulent auto accidents?

It's clearly organized, it's clearly quite sophisticated, and it seems to me that the sections of the code dealing with organized crime groups would be much more appropriate than the contents of Bill C-52.

● (1715)

Mr. Richard Dubin: So far, we're not seeing that other section being used enough, naming organizations formally as criminal organizations.

Mr. Joe Comartin: I want to add to this. Specifically in regard to the charges you mentioned, about 200 in Toronto, were any of those organized crime?

Mr. Richard Dubin: Absolutely. That was one project that involved many cases. We have 160 alleged that we're working on now, plus the initial 41. That's all just one project, the same participants, in staged auto collisions.

Mr. Joe Comartin: Is it within an organized factor at some point?

Mr. Richard Dubin: It's all organized.

Mr. Joe Comartin: There is a directing mind.

Mr. Richard Dubin: Yes. It's all organized. There is a key ringleader or key ringleaders who are involving other participants in playing a role, who are then linked to service suppliers, as I say, to body shops, paralegals, rehab clinics, and it just goes on and on. We're seeing identity theft and fraudulent billing that is costing millions and millions of dollars.

Mr. Joe Comartin: Was there any consideration given by the prosecutors in the Toronto area to go with organized crime charges?

Mr. Richard Dubin: There are further charges being brought and the key individuals have actually recently been charged with conspiracy. It is very rare for the police to actually lay the charge in “conspiracy”. This is actually the first time we've convinced local police to lay the charge of conspiracy. There are two dedicated prosecutors on this because it's so large, and they haven't ruled out whether they're going to proceed and go after them as a formal criminal organization.

Mr. Joe Comartin: I just have one last quick question for Mr. Nichol.

The Chair: Quickly.

Mr. Joe Comartin: I don't know your group. I think this may be the first time you've appeared before the committee, so just briefly, who are you?

Mr. William Nichol: We're an association based across Canada. I think Wallace Craig has been here to talk on various justice issues. He's our current vice-chairman.

Mr. Joe Comartin: That's fine. Thank you.

Thank you, Mr. Chair.

The Chair: Thank you.

We're going to move on to Monsieur Petit for five minutes.

[*Translation*]

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

My question is for Mr. Dubin and Mr. Prouse. I don't know which one may be able to answer.

When you are a lawyer and you practice both criminal law and civil law, which is what I did for nearly 30 years, and I am still a lawyer in good standing with the Barreau, you know that quite often, in fraud cases, there is insurance that covers the fraud; that is, the insurance companies have to pay the client, unless the client was a party to the fraud.

There are also the cases we have seen recently. To explain the problem, let's say that a lot of people work in securities, and there are brokers who have mutually reinsured themselves precisely to prevent potential frauds. For example, in the case of Vincent Lacroix, there was one group that was reimbursed and one group that was not. It depended on the types of contracts or companies that were behind it.

I may have been out at the point when you might have talked about this, but this is how I understand the main point in this regard. In most of these cases, as Mr. Roy said, when a person, an individual, for example a retired person, is a victim of fraud, they aren't covered because the person who allegedly sold a contract of some sort didn't have a licence, etc. So they are on their own with their problem.

In your case, at the Insurance Bureau of Canada, what are the total losses, for your clients, that you insure?

I understand that you support us, and I am very glad of that, but what order of grandeur are you talking about when you say you are losing money? I know that in Quebec you have lost a lot in recent times, but in Alberta, there is a $100 million fraud, and in other provinces, it is even... Can you give me an order of grandeur, when we're talking about fraud?

● (1720)

[*English*]

Mr. Richard Dubin: Yes, I can. First of all, in what we were talking about here—they're conservative numbers—we estimate fraud is costing Canadians at least $3 billion because it's passed on to them in premiums. The project I'm talking about, only one project out of an average of 30 big ones a year that we investigate, has a potential cost of between $20 million and $25 million, passed on to the consumers.

What we're finding is that, if we take the example of these staged accidents, they were not only claiming for false damage to the vehicles that may not have even actually been in a real collision, so you have specific body shops repairing those vehicles over and over again, replacing the panels with good ones; those individuals involved are loading up their vehicles and making claims for accident benefits for loss of income, attendant care, home maintenance, and it just goes on and on. Plus there's a whole ton of assessments that have to take place between doctors and the insurance companies, and it just adds up and adds up.

So the amount we're talking about is significant.

Mr. Dennis Prouse (Director, Federal Government Relations, Insurance Bureau of Canada): I could add, Mr. Chairman, that the 10% to 15% number comes from a study of closed claim files. A few years ago they took closed claim files—claims that had been paid—did a forensic study of them, and discovered that indeed 10% to 15% of these claims were fraudulent.

I always want to point that out in case people think it's just a number we're grabbing out of thin air.

Mr. Richard Dubin: Actually, the 10% to 15% is considered an extremely conservative number by us. In Canada there really hasn't been an effective substantial study of the full impact of fraud. I know Statistics Canada has been working with us and many other large organizations, banking and so on, to try to get a handle on how big this is. With what we're seeing, the 10% to 15% can very well be opportunistic fraud and not necessarily even taking into consideration this huge animal of organized insurance fraud that's actually taking place in Canada.

I have to say it is taking place here and we see it growing, not reducing, because there is no deterrent, no real punishment. They're not getting jail time, they're getting conditional sentences. We're not seeing the courts order substantial restitution for them.

The Chair: Thank you.

Now we'll open it up to anybody who still wants to ask questions.

Mr. Comartin, Mr. Murphy, and then maybe one question over here.

Mr. Joe Comartin: Mr. Kube, on the incident rate, in the work you have done, have you seen any studies analyzing whether there is identifiable growth in white-collar crime?

Mr. Arthur Kube: We're only concerned with seniors. The evidence we have is people telling us and hearing from different sources. There haven't been any comprehensive studies to put a number figure on that, but as I said, the great difficulty is that a great number of people just don't report them.

We need to somehow have preventive measures. I think Parliament should look much more closely at the issue of regulatory framework to stop these things from happening.

The Chair: Is there anybody else?

All right, Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Pardon me for missing some of the testimony. I was in the House giving a speech on child pornography, which may not seem to be related to this, but in New Brunswick, a provincial act is going to be brought in by the government envisioning civil forfeiture for crimes in the realm of child pornography.

According to my colleague,

[*Translation*]

Mr. Roy said something about the role of the province, in that case.

[*English*]

Do you see a need for better and more provincial statutes harmonizing with the federal Criminal Code—which is pretty weak on restitution, to be blunt—to get into the idea of forfeiture, not just restitution but freezing of assets pending lawsuits? You may all know that there are such remedies in civil law when applied for. You can pay a lawyer $5,000 or $10,000 to get an injunction to tie up assets.

Do you all agree there has to be some vehicle to make that more ready? Because often you get judgments against straw men.

That's to anyone.

● (1725)

Mr. Arthur Kube: Look, I think it's really necessary to have a broad federal view of that. These characters move from province to province. They con all kinds of people in one province, and if the thing gets hot, they move to another province.

I think there is a federal role to be played. I mean, surely the administration of justice is federal legislation, but the provinces can enforce it.

Mr. William Nichol: I would add that the civil courts are, for the most part, cost-prohibitive. Unless you're talking about a huge claim, most of the people my friend would be representing suffer claims of less than $100,000 and you simply cannot go to a civil court for those kinds of amounts. So you don't report it or you look for an alternate remedy.

What a lot of people are looking for in this act is for the federal government to step up to the plate and provide some sort of mechanism for restitution either by seizure...if we are talking about proceeds of crime. There is provincial legislation in various provinces that treat deadbeat dads in a manner that forces them to make support payments, and you could look at something similar in this regard.

The Chair: Mr. Prouse, very quickly, and we'll move over to the other side.

Mr. Dennis Prouse: We would just add that it is cost-prohibitive on civil actions. There is no question about that. We're running into that where we have opportunities to try to get individuals involved to join together and bring civil actions. That hasn't worked well because of the huge expense involved.

The reason this should be federal is that we're finding, when we shut the door in one region on part of the activities of organized crime, that they then move to another jurisdiction. We've done certain things in Quebec to make it more difficult at times to get away with auto theft, and we've seen at times an increase of that organized activity move directly into Ontario. There does need to be a lot of consistency by the government, such as in the Criminal Code, so that the same approach can be taken right across the country.

The Chair: Monsieur Petit, do you have a question?

[*Translation*]

Mr. Daniel Petit: Mr. Dubin, I am going to ask you a question.

You spoke earlier about a $3 billion loss. We have met with people working in banking who talked about bank frauds committed using credit cards and debit cards, and so on, totalling $8 billion a year; you are talking about $3 billion.

The $3 billion you are talking about, I had actually considered that from the bank standpoint. In banking, it is essentially the same system: someone organizes a fraud to get money using false credit, a false name, false references, and so on.

Do you think that the response from bank representatives, that there are frauds on the order of $8 billion, is plausible? If I add your $3 billion, it comes to $11 billion, which is really an enormous amount.

To your knowledge, as a representative of the Insurance Bureau of Canada, are there other areas where there might be other types of fraud? I am talking about bank fraud; you talked about another type of fraud that you estimate at $3 billion. Are there others? That is what I want to know. What are we talking about? Because this bill will also apply to various commercial frauds.

[*English*]

Mr. Richard Dubin: Thank you for that question.

Yes, there are. You know, when we talk about the 10% to 15%, which is an estimate, and I think a very conservative one, of reaching $3 billion a year representing insurance fraud, you're correct; that doesn't take into consideration other areas where organized crime also attacks, such as the banking institutions. As you mentioned, they would be involved in mortgage fraud, in real estate transactions, in securities, etc.

The problem of organized fraud in Canada is substantially more, I would suggest, than anything we're even aware of at this point in time.

● (1730)

The Chair: Thank you.

That will bring to an end our session. Unfortunately we're out of time. We have to go to vote.

I want to thank all of our witnesses for appearing. Your testimony is now part of the public record. We'll consider it as we move forward in our consideration of Bill C-52.

Again, thank you.

We are adjourned.

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