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Chair: Mr. Randeep Sarai



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• (1600)

[English]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order.

Welcome to meeting number 60 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to the order of reference of March 27, 2023, the committee is meeting to begin its study of Bill C-41, an act to amend the Criminal Code and to make consequential amendments to other acts.

Today's meeting is taking place in a hybrid format pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application. I'd like to make a few comments for the benefit of the witnesses and the members. I don't think there is anyone on Zoom. No, so we'll skip that. I think all of you are familiar with microphone issues and how to get your translation services.

On our agenda today, we'll be proceeding to the clause-by-clause study of Bill C-41. If time permits, we'll try to begin our study in camera of the draft report on extradition. If it isn't possible, we will continue doing that on Wednesday.

Before I begin the business of today, I want to wish Ms. Dhillon a happy birthday. It's her birthday today, so happy birthday, Ms. Dhillon.

Some hon. members: Hear, hear!

The Chair: Going back to our first item of business today, we will have officials with us. We have Mr. Gilmour, Mr. Brookfield, Mr. Bilodeau, Ms. Loten and Ms. Beattie. They are here to provide answers on technical questions for our study today.

Welcome to all of you, and thanks for being with us today.

I would like to provide members of the committee with some reminders about the clause-by-clause process. Members should note that any new amendments must be submitted in writing to the clerk of the committee. During debate on an amendment, members are permitted to move subamendments. Those subamendments must be submitted in writing. They do not require the approval of the mover of the amendment.

That concludes it. We will continue with clause-by-clause.

(On clause 1)

The Chair: The chair calls clause 1. I believe we have NDP-1.

Ms. McPherson, you have the floor.

Ms. Heather McPherson (Edmonton Strathcona, NDP): Thank you, Mr. Chair.

We've brought forward a recommendation for clause 1. We've sent it to everyone, of course. It replaces line 8 on page 1 with the following: "10 years who, directly or indirectly, wilfully and without lawful justification or excuse, collects property or". It will also replace line 18 on page 1 with the following: "years who, directly or indirectly, wilfully and without lawful justification or excuse, collects property or pro-".

The reason we've done this is that we've asked the sector and they have recommended that we insert this wording, which reflects the lawful justification of performing humanitarian activities as per international humanitarian law in territories that have been controlled by a terrorist group and which would allow for coherence and uniformity with the other the provisions of the terrorism section of the Criminal Code.

Basically, what we are doing is inserting that language.

The Chair: Shall amendment NDP-1 carry?

(Amendment agreed to)

The Chair: For NDP-2, I believe a new version was circulated earlier today with the reference number 12356266, which is the version the committee will now consider.

If NDP-2 is adopted, several instances of the words "terrorist group" in the bill would be changed to "listed entity". Members may want to remember this when considering subsequent amendments that use either term to ensure consistency throughout Bill C-41.

Go ahead, Ms. Damoff.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): This is directed to officials.

Can you please give us the difference between a listed entity and a terrorist group? Why is it defined as a terrorist group and not just a listed entity?

Mr. Richard Bilodeau (Director General, Department of Public Safety and Emergency Preparedness): Thank you for that question. Maybe I'll start and give an opportunity to my colleagues to weigh in.

“Terrorist group” is defined in the Criminal Code. A listed terrorist entity is a terrorist group that has been listed as per the Criminal Code and has gone through the listing process through the government. A way to put it is that a listed entity is a terrorist group, but a terrorist group isn't necessarily a listed entity.

One of the things to consider here is that the use of the “terrorist group” in the amendment is intentional to capture the correct offence that currently exists in the Criminal Code, where it is a criminal offence to knowingly provide benefit to a terrorist group. Therefore, in changing it to “listed entity”, one of the considerations is how that would potentially significantly restrict the scope of the offence just to focus on listed entities as opposed to a terrorist group, which is currently what is in the Criminal Code.

Robert, do you want to weigh in on that?

Mr. Robert Brookfield (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): I would like to briefly elaborate.

The two definitions of terrorist group are “a listed entity” or “an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity”. For example, if there were a hateful group, a white power group, that does a terrorist act but is fundraising for various purposes, including perhaps its publications, the day after the terrorist act, it would probably not have been listed yet, because there would not have been time to do so.

Right now, as the law stands, it would be against the Criminal Code, potentially, to give money to that organization because it is a terrorist group, albeit unlisted. The effect of this amendment would be to remove that potential liability.

Ms. Pam Damoff: It would then severely restrict what would fall under the umbrella of this bill. It would only be those that are listed entities and not the second group you described.

Is there a reason we didn't use that particular wording in the bill, a listed entity, or the second part you used, which is in the Criminal Code?

• (1605)

Mr. Robert Brookfield: To clarify, the first part of the amendment doesn't just amend the ability to issue authorization. It also amends the crime itself. The crime itself would essentially be more limited, such that, whether in Canada or abroad, an individual who gives money to an organization that carries out terrorist activities would not be prohibited, as long as it's only giving it to the organization and not knowingly for a terrorist purpose. That's in proposed subsection 83.03(1) as the present Bill C-41 will provide, and that stays in.

Ms. Pam Damoff: I may have another question, but I'll leave it for now.

The Chair: Ms. McPherson.

Ms. Heather McPherson: My concern with this, of course, is that basically what I'm hearing, and correct me if I'm wrong here, is that we are expecting that the government can't move fast enough to necessarily add an organization as a listed entity, but we are expecting CSOs or organizations to be able to respond to that without

being able.... I guess what I am hearing is that we're expecting them to be faster and more mobile.

How on earth would organizations know if they were breaking the law if there is no way for...? One of the things I'm really concerned about with this whole legislation is that we're making some assumptions about who's involved in international development and who's involved in projects abroad. They are not all large organizations. They're following along with every single thing that the government does. They are not organizations that necessarily even interact with the federal government, but would still be held accountable to this law.

How on earth would they know if their organizations are at risk of breaking the law?

Mr. Richard Bilodeau: I can take that in two parts.

The amendment that's being discussed right now would very much restrict the scope of the offence, so that's the first thing. Leaving aside the authorization regime, the amendment to the offence would take the offence from financing terrorist activities to a terrorist group, and limit that offence to listed terrorist entities.

Even if we could do it within a matter of weeks, there would still be a period of time where there would currently be an offence, but no longer if the amendment was made to the provisions. A lot of NGOs that are operating in this space know the areas in which they operate, and they have information about that.

Ms. Heather McPherson: That's not the case for all of them.

Mr. Richard Bilodeau: Absolutely. I concur that there are larger ones that are more familiar with some areas, but to that extent, there are resources out there that are available. We are as a government able to provide information if asked, and people engage with us as well.

Ms. Heather McPherson: What resources are available out there for this particular thing, if this legislation hasn't been passed yet?

Mr. Richard Bilodeau: I will turn that over to my colleague, because she is the counterterrorism expert.

Ms. Jennifer Loten (Director General, Bureau for International Crime and Terrorism, Department of Foreign Affairs, Trade and Development): You're quite correct. The legislation has not yet been passed. We certainly hope to be able to provide some guidance in its applicability. We need to see how this is going to play out.

I'd like to point out that one of the challenges in restricting this applicability to just organizations that are listed means there is no protection from liability if you are engaging with an organization that, for a variety of reasons, can't be listed under the Canadian Criminal Code, and there are some organizations out there.

I take your point that this could be difficult for smaller organizations, but I expect they would be in contact with us by virtue of the application process. I hope we would be able to provide them.... They'll have to apply. We've talked about this before. There's going to be a Government of Canada website, and they would have to apply and they would notify. There's going to be a single-window application process, and we spoke about this last time.

Ms. Heather McPherson: However, they won't know when to apply, because they won't know which areas are being run by a terrorist group.

Let's say Nicaragua, and I'm picking a name totally at random. One day to the next, it changes within the mind of the Government of Canada. Any organizations working in Nicaragua aren't going to know that, so how are they possibly going to understand they are now breaking the law? The onus has now been put on small and medium-sized organizations, when the onus rightly belongs on the government to provide that information.

Ms. Jennifer Loten: Right. I think what we're doing here is constructing this as broadly and as flexibly as we can, so that we can respond to those sorts of evolving situations. Organizations bear a certain amount of responsibility for where they operate. I think we can all agree that's sensible. We're encouraging organizations to operate internationally where they can handle themselves. Where they need support, we help to provide it.

They will have to be able to respond to changing circumstances. I think we all do that. If the situation changes—and Nicaragua is a great example because it's a volatile place at the moment—I think they would need to be able to look at what they're doing and where they're engaging and seek guidance where we can provide it.

• (1610)

Ms. Heather McPherson: Monday they're allowed to work, and Thursday they're not allowed to work. However, there's no way the government has an obligation there. It's an obligation on the organization to continually keep track of what the government is thinking, not through a way that will be publicly expressed in any way but just sort of by sensing it.

Ms. Jennifer Loten: The government is not the one requiring them to seek a licence. We're providing this as an opportunity to allow them to continue operating in an area where they may encounter liability. They would need to make that decision, and they would need to seek independent legal advice. We can't provide legal advice, and we're not requiring organizations to seek this licence. It would be something that they would be able to pursue should they deem it necessary.

[Translation]

Mr. Alexis Brunelle-Duceppe (Lac-Saint-Jean, BQ): On a quick point of order, Mr. Chair.

I didn't hear the interpretation of two of Ms. McPherson's questions. I only heard the answers. I know we're all intensely engaged in this discussion, but I would ask my colleagues to be mindful of how fast they are talking, so that our esteemed interpreters can do their job. That way, the francophones watching us can also hear everything that's going on.

[English]

The Chair: Thank you, Mr. Brunelle-Duceppe.

Now we have Mr. Genuis.

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): Thank you, Mr. Chair.

I'm listening to the discussion, and I'm sympathetic to both sides of it insofar as I think we do need to look at amendments that create an obligation for the government to provide information to humanitarian organizations either by publishing that information publicly or at least by making that information available to those organizations in some way so that they're not guessing about what areas or what organizations and they can have some good, reasonable guidance around that.

My view of NDP-2 is that it makes changes to our terrorist-financing framework that go substantially beyond just the issue of humanitarian organizations. My reading of it is that it, in fact, changes our terrorist-financing framework such that you can only be charged with terrorist-financing offences if you are financing a listed entity, which is a change from the current law, where you could be charged for financing a terrorist group that's not a terrorist entity.

I see some of the officials nodding, which suggests that maybe I'm on the right track here.

We're not just talking about humanitarian organizations. We're talking about this: If a new organization that the Government of Canada is not aware of emerges on the scene and is involved in explicitly terrorist activity, and somebody in Canada is intentionally organizing fundraisers for that organization, they cannot be convicted of terrorist-financing offences if that organization is not yet listed.

My concern is just that we should try to limit the impacts of our amendments on terrorist-financing laws today to apply to the things that are necessary to enable humanitarian organizations to do their work, and not do things in the context of this bill that are going to make broader, more dramatic reforms to terrorist-financing law.

There may be an argument for saying that the government should list every terrorist organization, that it shouldn't be convicting people for terrorist financing if they're funding groups that are not listed and that the government should do the work of listing. I don't personally agree with that argument. I think maybe there's an argument to be made, and that's an issue that can be studied. However, I would just say that we limit our deliberations.... My suggestion would be to have this bill deal, as precisely as possible, with the circumstances of humanitarian organizations.

On that basis, I agree with some aspects of the intention. I don't support NDP-2, but I think we do need to look at later amendments that would create obligations for the government to provide information to development organizations that would help them do their work.

The Chair: Thank you, Mr. Genuis.

Now we have Mr. Brunelle-Duceppe.

[*Translation*]

Mr. Alexis Brunelle-Duceppe: I've already spoken, Mr. Chair. It was about our interpreters.

Thank you.

[*English*]

The Chair: Thank you.

Ms. McPherson.

Ms. Heather McPherson: From my perspective, I'm wondering what amendments the government or the Conservative Party would be willing to bring forward to deal with this, because this is a concern.

• (1615)

Mr. Garnett Genuis: We have CPC-2, which is later on in the package, and we've been discussing informally some possible changes that address the concerns the government may have with CPC-2. I think it's good for us to try to work toward a consensus.

CPC-2, in its current form, requires the Minister of Public Safety to publish information on the website of the government that would indicate the organizations the government views as terrorist groups for the purposes of these provisions around humanitarian assistance, as well as the areas where they believe this is happening. It says that no person shall be convicted of an offence under the subsection "if they establish that, in good faith, they provided or supported the provision of international development assistance on the basis of information published under" the previous subsection.

Certainly, we're open to some wordsmithing around that amendment, but this amendment tries to create an obligation on the government to provide information, without making the root and branch changes to terrorist-financing law that I think would result from the adoption of NDP-2.

The Chair: Ms. McPherson, do you want to move your NDP-2? It's already been moved.

Shall NDP-2 carry?

(Amendment negatived: nays 9; yeas 2)

The Chair: Ms. McPherson, would you like to move NDP-3?

Ms. Heather McPherson: Yes. I believe they've all been moved.

Mr. Chair, NDP-3 is something that we have all heard from the testimony as being very needed to make this bill useful. This is the humanitarian carve-out that we had hoped the entire bill would be. I think all of the opposition parties have been asking for a very long time—for over 18 months now—to have this legislation in place. When the legislation was tabled and Bill C-41 was brought forward, that carve-out was not in this legislation.

This is an attempt. I think we've heard enough testimony from enough different groups that I have.... All parties want to find a solution to ensure that there is a humanitarian carve-out for organizations. We would be asking the committee to consider adding the following:

(4) Subsections (1) and (2) do not apply to a person who carries out any of the acts referred to in those subsections for the sole purpose of carrying out humanitarian assistance activities conducted under the auspices of impartial humanitarian organizations in accordance with international humanitarian law."

It would also delete lines 15 to 19 on page 2.

Mr. Garnett Genuis: Chair, we are directionally very supportive of this. I would like to propose a subamendment that I think will find support. It—

The Chair: Mr. Genuis, I actually have to make a ruling first. I thought you were making comments.

The ruling is that Bill C-41 amends the Criminal Code to create a regime under which the Minister of Public Safety and Emergency Preparedness may authorize an eligible person to carry out, in a geographic area that is controlled by a terrorist group and for certain purposes, certain activities that would otherwise be prohibited. The amendment proposes to allow a person to carry out such activities in a geographic area that is controlled by a terrorist group without authorization from the minister.

As House of Commons Procedure and Practice, third edition, states on page 770, "An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill."

In the opinion of the chair, the amendment proposes an exception to both proposed subsections 83.03(1) and 83.03(2) that would not require the minister's authorization, which is contrary to the principle of the bill. Therefore, the amendment is inadmissible.

It's a non-debatable issue, unless you want to challenge the chair.

Mr. Brunelle-Duceppe.

• (1620)

[*Translation*]

Mr. Alexis Brunelle-Duceppe: I'd like to challenge the Chair's ruling.

[*English*]

Mr. Garnett Genuis: I think you'll find agreement to defeat the chair's ruling, on division.

The Chair: Shall the chair's ruling be sustained?

Ms. Damoff.

Ms. Pam Damoff: We would vote to support your decision.

(Ruling of the chair overturned on division)

The Chair: Now NDP-3 is debatable.

Mr. Genuis, you're more than welcome to speak.

Mr. Garnett Genuis: Thank you, Chair.

I'm now moving the subamendment, which is simply to add this to the end of the text in the new proposed subsection 83.03(4), "while using reasonable efforts to minimize any benefit to terrorist groups."

I think that provides clarity that, in the process of providing this assistance, the organizations involved should make reasonable efforts to do all they can to absolutely minimize flows or benefits to terrorist groups. I think that's fairly obvious. It may already be implied by the existing language, but I think it is a good point to underline very clearly. Certainly, the organizations that we deal with seek to do this anyway, and I don't think they would have any objection to the added clarity in the law around that expectation.

The Chair: Mr. Genuis, we'll have to have your amendment in writing.

Mr. Garnett Genuis: You do.

The Chair: Mr. Clerk, do you have it in writing?

Do you want to read the amendment while he searches—

Mr. Garnett Genuis: It's just adding the words, "while using reasonable efforts to minimize any benefit to terrorist groups."

The whole thing would read:

(4) Subsections (1) and (2) do not apply to a person who carries out any of the acts referred to in those subsections for the sole purpose of carrying out humanitarian assistance activities conducted under the auspices of impartial humanitarian organizations in accordance with international humanitarian law while using reasonable efforts to minimize any benefit to terrorist groups.

The Chair: Ms. Damoff...

No, it's Ms. McPherson—my apologies.

Ms. Heather McPherson: I could be everybody at the table if you want.

• (1625)

The Chair: I have called you Ms. Thomas, Ms. Damoff, Ms. Taylor. I think I've called you everything today.

Go ahead, Ms. McPherson.

Ms. Heather McPherson: Thank you, Mr. Chair.

I wanted to say that I am supportive of the subamendment to our amendment.

I believe we have heard from MSF, the International Red Cross, Leah West and the Aid for Afghanistan coalition, and there is quite a lot of support within the sector for this.

As I mentioned before, this is something that I believe should have been part of the legislation at the beginning.

I would like a recorded vote on it, please.

The Chair: If everyone has the text, shall we vote on the subamendment? Does anybody need time to read it? No?

(Subamendment agreed to)

(Amendment as amended agreed to: yeas 11; nays 0)

The Chair: That was unanimously carried. Thank you.

Next we have Bloc amendment 0.1.

This amendment is not in the package. It was circulated in a separate document, along with version 2 of the package, by email before the meeting.

Monsieur Brunelle-Duceppe, do you want to move this forward?

[*Translation*]

Mr. Alexis Brunelle-Duceppe: I feel that it just makes sense. It's what the humanitarian organizations we heard from at committee asked for. They work on the ground and they need information. I think it's quite clear and simple. I even think it's almost the same thing as amendment NDP-4, except we're adding an item b). Ours is just a little more fleshed out.

I think that everyone should vote in favour of it.

[*English*]

The Chair: If you're referring to the right amendment, it should be 12349530.

Is that the one you're referring to?

[*Translation*]

Mr. Alexis Brunelle-Duceppe: I'm talking about amendment BQ-1.

[*English*]

The Chair: It's BQ-0.1.

[*Translation*]

Mr. Alexis Brunelle-Duceppe: Are you talking about the one I sent right before the meeting?

I'm sorry, we're not talking about the same amendment. That one I'm going to withdraw. We've consulted with each other and we'll withdraw it.

[*English*]

The Chair: He's withdrawing it.

[*Translation*]

Mr. Alexis Brunelle-Duceppe: It was the same thing we just voted on.

I thought we were talking about amendment BQ-1. I apologize.

• (1630)

[*English*]

The Chair: Now we will speak about NDP-3.1.

This amendment is not in the package. It was circulated in a separate document, along with version 2 of the package, by email before our meeting. I want to make sure that everyone has it.

The reference number is 12356028.

Ms. Pam Damoff: Chair, just on a point of order, I didn't see any of these in a new package.

The Chair: I'll just give a quick minute for everyone to read it.

• (1630) _____ (Pause) _____

• (1630)

The Chair: Go ahead, Ms. McPherson.

Ms. Heather McPherson: Thank you.

Basically, this is something that's been asked for by the Aid for Afghanistan coalition. What we've done here is added in "substantially controlled". I do have to say that, from the way that this has all gone, I have to subamend this amendment because listed entities are of course.... That amendment didn't pass earlier.

The only thing we're really adding in there is the "substantially controlled", and we would change the cases of "listed entity" back to "terrorist group".

The Chair: Ms. McPherson, you can't amend your own amendment, so somebody else will have to amend that.

I'll go to Mr. Genuis and also see if he's the one who's going to be doing that.

Ms. Heather McPherson: It's simply because it's impossible to write an amendment based on....

Mr. Garnett Genuis: I do think a member is able to move an amendment that's different from the one they submitted. For simplicity, I have submitted a draft subamendment to this amendment just now to the clerk, depending on how fast the Internet is working today. It proposes to replace "listed entity" with "terrorist group" in all three places.

Ms. Heather McPherson: We're going to go through this a few more times.

Mr. Garnett Genuis: The effect of that would be to align with the proposal of the Aid for Afghanistan coalition by clarifying that we're talking about substantial control, which is, from our perspective, reasonable, but preserving the reference to a "terrorist group" not just a "listed entity".

With that subamendment, we would be supportive of the amendment.

The Chair: Maybe, as chair, I can ask if one of the officials can speak on this or share some comments on what they think of this amendment—not the subamendment but the amendment—as it is.

Mr. Robert Brookfield: Mr. Chair, I may, if you would like, clarify that proposed subsection 83.032(1) is the power to issue an authorization. Therefore, the provision on obligations, the potential criminal liability, remains for providing support to a terrorist group whether it is listed or it meets the requirements.

This amendment would limit the ability to ask for an authorization to situations where there is substantial control. In principle at least, a terrorist group that has less than substantial control, which an entity has to deal with unavoidably, would not be able to apply for an authorization.

• (1635)

Ms. Pam Damoff: I need some clarity on what you just said. By adding the words "substantially controlled" they would not be able to apply, or they would be...? What is changing for an aid organization?

Mr. Robert Brookfield: The obligations, as in the existing law as we formulated in BillC-41, are in proposed subsections 83.03(1) and 83.03(2), for knowingly supporting terrorist purposes and knowingly supporting terrorist organizations. Proposed subsection 83.032(1) is the power given to the Minister of Public Safety to issue an authorization.

This amendment limits the power to issue that authorization. The existing law would remain and a potential liability, but the ability to apply under a situation that does not meet the requirement of substantial control would be removed.

Ms. Pam Damoff: You're saying that if you're an aid organization working in a country, it would still be at risk of criminal liability, but the minister is unable to grant the authorization because of the wording of this. Is that what you're saying?

Mr. Robert Brookfield: In principle, at least, yes. It's possible that, factually, if there's no substantial control there would be no liability. I can't speak to the application of law in specific facts, but in principle, at least from a legal scope perspective, this would be reducing the scope of the minister to provide authorizations for those who wish to apply for them.

Ms. Pam Damoff: It's not actually giving them more ability. I'm looking at it from the aid organization's perspective, because my colleague is correct that this is something that was asked for by the coalition of aid agencies. From what you're saying, though, it would put them more at risk rather than less at risk.

Mr. Robert Brookfield: I'd defer to them to assess their risk, particularly in light of the new amendment that carves out humanitarian assistance, but yes, it does reduce the scope of the ability of the Minister of Public Safety to issue authorizations.

Ms. Pam Damoff: They could be working in an area and unable to get an authorization. We're only talking about development assistance now, because the humanitarian assistance has been carved out.

For development assistance, somebody is building a school somewhere. What you're saying is that this would mean the organization would not be able to get an authorization where they would be currently?

Mr. Robert Brookfield: That's correct for any of the purposes of proposed paragraphs 83.032(1)(b) through (g) of that provision, including not just non-governmental organizations but also, for example, the Canadian government and Canadian government officials.

• (1640)

The Chair: Ms. McPherson.

Ms. Heather McPherson: Perhaps I'm incorrect on this, but my understanding is that the authorization would not be required, because, frankly, if it is not substantially controlled by terrorism, the organizations wouldn't be at risk of being charged with this. Otherwise, what you're saying is that we won't have a list and we won't know anywhere, but if there is any terrorist activity at all in a country, then they have to apply for an exemption. However, that's impossible because that's every country that international development works in.

I can't really even think of a country where people are doing development work that doesn't have a terrorist bit to it, however small. Realistically, we wouldn't have to have the authorization, because it is not substantially run by that.

Of course, it limits the minister, but he shouldn't have a role in this anyway. He should be limited.

Mr. Robert Brookfield: I take your point, and I'm certain there are some organizations and their legal advisers who take the view that this authorization would not be required. If Parliament chooses to pass the legislation, then that is its prerogative.

My point would be that, if you are an organization or a government entity that wishes to secure protection for yourself from the potential liability of existing provisions, specifically proposed subsection 83.03(2), because you are concerned that you are giving, indirectly or directly, property to a person who is, let's say, a terrorist group.... In other words, you know that the organization might use "in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity".

In other words, you know the organization is doing terrorist events, and you're concerned that you're somehow giving funds to them that could violate the substantive provision, which is proposed subsection 83.03(2), then the scope under which you could apply would be more limited. Perhaps you don't need to. Perhaps there is consensus amongst relevant organizations, including the Canadian government, that you're not required to do that. You'll be safe from doing so, whether in Canada or abroad.

I'm simply pointing out that that is the effect of the amendment.

Mr. Garnett Genuis: I appreciate your point, Mr. Brookfield. I'm open to reconsidering what I said previously.

I think this is a challenge with all of these amendments. As I understand it—and you can please jump in afterwards—there's certain activity right now that is permitted and certain activity that is prohibited. This introduces a third category, which is activity that is permitted if authorized.

If we narrow that authorization regime, we're only helping these humanitarian organizations if in the process of doing so we clarify that activity that no longer requires authorization is permitted. However, if we narrow it in a way that says activity that no longer requires authorization is necessarily prohibited, then we're not making anyone better off. I think if we're putting forward amendments that have the effect of narrowing the authorization regime, we also have to have language that clarifies what happens in cases where that authorization is no longer available.

Is it necessarily permitted or necessarily prohibited?

I think we have to be very careful about that. That is why, again, we've put forward language that says that the government has to provide guidance about areas where this applies, and that the organizations who, in good faith, follow that guidance won't be prosecuted. I think without clarifying that people won't be prosecuted if they listen to the direction they are given, we may create more problems than we solve.

I would welcome your feedback on that.

Mr. Robert Brookfield: I would just say that I agree with your point. I think from a legal perspective it does narrow the ability to authorize. I think part of the argument—and I don't want to speak for others—may be that, in highlighting the risk, the authorization regime might create greater concerns. I think some organizations have said that.

From a purely legal perspective I will say this does narrow the ability to issue exceptions to the existing law. It does not affect the existing law, the existing obligations.

Mr. Garnett Genuis: Right. It doesn't permit anything that's currently prohibited. It just narrows the ability of the minister to issue authorizations.

To the point that they shouldn't need authorizations if something should be permitted, that's why we supported the humanitarian exemption. It was because we wanted to say that certain activities shouldn't require authorization; they should just be permitted. If the effect of an amendment is to leave open the question of when it's no longer authorized if it will therefore potentially remain prohibited, that doesn't help the problem. That's the dilemma.

The Chair: Ms. Damoff, go ahead.

Ms. Pam Damoff: Yes, I apologize that I didn't have this before to be able to go through it.

Just based on what you're saying—and I'm not a lawyer—the terrorist-financing law does not change. This amendment, though, would limit the number of authorizations. It would theoretically limit the ability of the minister to issue authorizations. The group would be in limbo, basically, outside of the law. A group would be outside of the existing terrorist-financing law while, at the same time, unable to apply for the authorization for development assistance.

Am I getting that correct?

● (1645)

Mr. Robert Brookfield: Potentially you are, although I believe my colleague has more to add from a practical perspective.

Mr. Richard Bilodeau: I guess it depends on the delta between "control" and "substantially control" and how that is interpreted on a case-by-case basis.

Ms. Jennifer Loten: I just want to jump in and clarify one thing. Ms. McPherson is 100% correct. None of these activities is prohibited. Humanitarian assistance, development assistance and all of that can continue and should. The law against terrorist financing remains in place. Channelling funds to a terrorist organization will always be illegal.

The intention of this amendment is that, where an organization or a government actor finds themselves in a situation where payment to a terrorist organization cannot be avoided—airport fees, taxation, other service fees because an organization is substantially or fully in control, and I absolutely defer to my colleague from Justice on the use of the word "substantially"—they will not be held liable for payments they cannot avoid.

It's not about saying what someone can and cannot do in a country. It simply says we will protect them. For that reason, I would suggest that it's in everyone's interest to make this as broad and applicable as possible so that cases can be assessed, and there's enough scope to provide authorizations as broadly as we possible can.

The Chair: Go ahead, Ms. McPherson.

Ms. Heather McPherson: My big problem with this.... We've gone down a road that I think is not correct. I think the reason for that is that we are making providing international development a crime that we need an exemption from.

We are saying that international development organizations require an exemption, when they shouldn't require an exemption to do their work. They should get to do their work and, in very strange circumstances—like with the Taliban in Afghanistan—they should require an exemption. I would suggest that, in almost all cases, organizations should not have to apply to do the work that they do.

What we're doing here is saying that this narrows the scope of when you need to apply. Absolutely. I don't think any organization should have to apply. I think they should be exempt. Every one of these organizations is, in fact, trying to do life-saving work around the world. From my perspective, we're thinking about this the wrong way. We're thinking about how to protect against funding terrorists, and we're not thinking about the fact that these organizations.... Not every organization has to prove that it is going into these communities for the right reasons and doing the right thing.

I will give you another example. I was thinking. I literally can't think of a country where international development happens where there isn't some terrorist activity.

Let's use Mozambique. It's one of the biggest recipients of Canadian aid. It's one of the biggest recipients of Global Affairs aid. There is terrorist activity happening right now in Mozambique. That means any organization that wants to work in Mozambique now needs to apply for this.

That is not what this bill was intended for. This bill was intended for situations like Afghanistan's, where we have a terrorist organization running the country and substantially controlling the country. If we start applying this to every country where terrorism is happening, we can't have development work in Canada because we have Canadian organizations that are involved in terrorism in this country. It's absurd.

We're thinking about this the wrong way, I think. We're weaponizing it and making it a crime to provide international development. That's not what this bill was intended to do.

The Chair: Go ahead, Mr. Genuis.

Mr. Garnett Genuis: I'm trying to work through this. I see things a bit differently, insofar as I think this legislation as currently written applies to cases where areas are controlled by terrorist organizations, such that international development organizations must inevitably deal with them in some way before delivering that aid. It's not about whether a terrorist organization is operating in the country.

In the example of Mozambique, if there is a particular locality where it is impossible to deliver development assistance without in some way interacting with or paying tolls to a terrorist organization, that would be the case where an authorization would be required. It's not just because they're present in the country.

I think the point from officials is that, if we say that the authorization regime is only available in cases where there is substantial control by terrorist organizations, it may mean that an organization that wants to deliver development assistance to that narrow locality in Mozambique can't even apply for authorization. It may mean that they just can't do the work, period, because they have to interact with terrorist organizations to do the work. They can't apply for authorization, so they can't do the work.

My argument would be let's create an obligation for the government to provide information for organizations to use, but let's also create broad parameters in which the authorization regime can be used, while trying to provide as much clarity as possible to development organizations about when they do and don't need it. The point is that you don't need authorization to work in a country where there's a terrorist organization or terrorist activity. My sense is that you need authorization outside of the humanitarian exemption if you're going to a place....

I think Nigeria is a logical example. Nigeria has certain spaces which are, unfortunately, not under the effective control of the central government, but the country is substantially controlled by the central government. If you're trying to deliver development assistance to two areas that require some interaction with a terrorist organization, you would need the authorization regime in order to do that. If the authorization regime was not available to you, you just couldn't do it.

Our goal should be to offer more space for development organizations and not less.

I hear in Ms. McPherson's comments a broader critique of the bill, which I'm sympathetic to. In the spirit of trying to work with what we have, upon reflection, I don't think that this amendment actually makes the existing bill better. I think it may narrow its usability by humanitarian organizations.

• (1650)

The Chair: Mr. Genuis, are you withdrawing your subamendment then?

Mr. Garnett Genuis: No, I can't withdraw it anyways, and I'm happy to leave my subamendment on the table. I think the subamendment improves the amendment, but I still don't think I'll support the amendment.

The Chair: Shall we go to a vote?

Go ahead, Ms. McPherson.

Ms. Heather McPherson: Thank you.

I would just like to point out that this is something that the sector has asked for writ large. Aid for Afghanistan has asked for this. They are the experts in this field. They are the experts in providing international development around the world. We are not the experts. In fact, we are being given a public safety argument, and I would just suggest that this is why we need to listen to experts. This is why this amendment is here.

The Chair: Shall Mr. Genuis' subamendment to NDP-3.1 carry?

(Subamendment agreed to on division)

(Amendment as amended negated: nays 9; yeas 2)

The Chair: Mr. Genuis, do you want to move CPC-1?

• (1655)

Mr. Garnett Genuis: I will move CPC-1.

Unless there is a ruling from the chair, I will proceed.

The Chair: There is a ruling. Bill C-41 amends the Criminal Code to create a regime under which the Minister of Public Safety and Emergency Preparedness may authorize an eligible person to carry out, in a geographic area that is controlled by a terrorist group and for certain purposes, activities that otherwise would be prohibited.

The prohibited activities within the scope of the bill are set out in existing paragraph 83.03(b), which becomes new subsection 83.03(2), of the code and specifically concern the collection or provision of property or services for use by a terrorist group.

The amendment proposes to allow the minister to authorize an eligible person to carry out activities that would otherwise be prohibited under the other provisions of part II.1 of the Criminal Code in a geographic area that is controlled by a terrorist group.

As *House of Commons Procedure and Practice*, third edition, states on page 70, "An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill." In the opinion of the chair, allowing exceptions to prohibited activities under the whole of part II.1 of the Criminal Code is beyond the scope of the bill; therefore, I rule the amendment inadmissible.

Mr. Garnett Genuis: I will challenge the chair.

The Chair: You're challenging the—

Ms. Pam Damoff: Mr. Chair, could we suspend for just a minute?

The Chair: Sure. We are suspended.

• (1655)

(Pause)

• (1705)

The Chair: I call this meeting back to order.

We were suspended, so there are still discussions going on. I'm going to adjourn for the day, as I think the vote is at 5:35. The bells are ringing and I don't believe that we have unanimous consent to sit longer.

We shall adjourn until Wednesday.

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