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# Standing Committee on Justice and Human Rights

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## Tuesday, November 25, 2014

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## Chair

**Mr. Mike Wallace**

# Standing Committee on Justice and Human Rights

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● (1535)

[*English*]

**The Chair (Mr. Mike Wallace (Burlington, CPC)):** Ladies and gentlemen, I am going to call this meeting to order. We are the Standing Committee on Justice and Human Rights. This is meeting number 54. As orders of the day, we are going to deal with Bill C-32, and we are going to do the clause-by-clause study.

We usually do committee business at the end, but we're going to do it first. We're going to distribute it. Just so you know, there is a new version of the subcommittee on agenda that's coming up, because we had a request at that committee for an attempt to get the minister to come earlier than December 4. I will profusely thank the minister, as he rearranged his schedule, and he is actually coming on Thursday. We have a new report that's out, so committee business on Thursday, we'll be dealing with supplementary estimates (B), and we'll have the minister for the first hour and departmental officials for the second hour. We've invited the departmental officials whose estimates are affected.

Depending on what we do today, if we get through everything today, we'll be done with the bill today, but if clause-by-clause needs to be extended, we will do that the following Tuesday. We will also do Bill S-221, which is a private member's bill dealing with public transit operators. Based on the discussions that I've had, my understanding is that we'll have the sponsor of the bill from the Senate and from the House here. If you have any suggestions for witnesses, let us know. It was unanimous in the House, so I think just a discussion with them is likely all we need. Then we'll go back to clause-by-clause study on Bill C-32 if we're not done.

On the Thursday we'll start a review of Bill S-2 and we'll just continue on with Bill S-2 until we're done with it. Then we'll see what happens.

Is somebody willing to move that? It's so moved.

(Motion agreed to)

**The Chair:** We're going to go now to a motion coming from the government side on clause 2. It's at the beginning, so I need to wait for it. We're just getting it photocopied. I think it's on your desks already, but the mover of the motion doesn't have a copy of it.

Today, as per the order of reference of June 20 on Bill C-32, we are going to do the clause-by-clause study on the victims bill of rights. We are joined here today by witnesses from both the Department of Justice and the Department of Public Safety and Emergency Preparedness. They are here only to answer questions that come up on any specific clause.

As you know, the short title is postponed until the end, so as chair I will call clause 2.

(On clause 2—*Enactment of Act*)

**The Chair:** Mr. Goguen, your hand is up, and you'd like to propose something.

**Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC):** Mr. Chair, with your indulgence, one of the amendments that we proposed was omitted, and it has to do with the testimony that Sharon Rosenfeldt gave. You will remember that Sharon Rosenfeldt is a pioneer in victims' rights with 33 years of work in the field of victims' rights. In her testimony, she had proposed that we amend clause 2 by adding at the very end “including respect for their dignity”, in regard to the victims. This whole bill is about making the criminal law field more dignified and treating the victims with dignity, so it's certainly in keeping with the very spirit of the bill.

With your indulgence, I would make that amendment. I've circulated it to the members.

**The Chair:** Okay, you've circulated it. I understand apologies were sent that they didn't come on Friday, so we're doing it today.

**Mr. Robert Goguen:** It was an oversight.

**The Chair:** Any questions to the mover on that particular item?

**Ms. Françoise Boivin (Gatineau, NDP):** I have a quick one. The French will be reviewed because I'm not sure that “including respect for their dignity” is translated by

[*Translation*]

“notamment celui de leur dignité”.

[*English*]

I am listening to the English, and we have a proper translation of the expression.

[*Translation*]

The wording, “incluant le respect de leur dignité”, would be a better translation.

[*English*]

**The Chair:** Ms. Arnott, did you have your hand up? Do you really want to become involved in a French-English discussion?

**Ms. Pamela Arnott (Director and Senior Counsel, Policy Centre for Victim Issues, Department of Justice):** I can simply indicate to the committee that the French and English drafters reviewed the text, as did their respective editors, and they provided us assurances that those two meanings were consistent.

**Ms. Françoise Boivin:** Actually what you're telling me is that "including respect for their dignity" is *notamment, celui de leur dignité* are exactly the same. Is that what you just told me?

**Ms. Pamela Arnott:** Yes, that's the advice from the drafting section.

**Ms. Françoise Boivin:** Honestly, I am surprised. Not to start on the wrong foot, but after doing what we did on this package of proposals to change the quality of French, please check this again before we.... We have two hours.

**The Chair:** We'll double-check to make sure that the French and English, as with all legislation, is reviewed to make sure that it matches correctly. If you have a suggestion, you can bring it forward.

With that, all those in favour of, we'll call it amendment government A, please signify.

(Amendment agreed to [See *Minutes of Proceedings*])

**The Chair:** The next one we have on our list is an amendment to clause 2 from the Liberals. I am making a ruling on it.

Mr. Casey, I'm assuming you're moving it.

**Mr. Sean Casey (Charlottetown, Lib.):** Yes. May I speak to it?

**The Chair:** Well, let me tell you what my ruling is, and then you decide. I'll give you a few minutes to speak to it afterwards.

The ruling is this. The amendment to the bill as referred to the committee after second reading is out of order, as it is beyond the scope and the principle of the bill. Basically, because the amendment deals with issues outside of Canada, it is outside the scope of the bill. That is the ruling, based on the information from our legislative clerk on that.

That is the ruling. I'm ruling it out of order, but I'll let you speak to it for a few minutes.

**Mr. Sean Casey:** I would call this the 9/11 amendment. You will all remember the very powerful testimony of Maureen Basnicki, the unwilling member of the victims of crime club. This amendment was specifically targeted to accommodate her wishes, so it's extremely unfortunate that the chair has ruled it out of order.

It is also unfortunate that no amendment came forward from anyone else to try to find something that is in order and that would allow this group of victims to be included in this legislation. I would urge my colleagues opposite to go back to the drawing board so that they can perhaps come up with some sort of explanation for Maureen Basnicki.

With that, Mr. Chair, I'd like to challenge the ruling of the chair and ask for a recorded division.

● (1540)

**The Chair:** Absolutely.

The chair has been challenged, so we'll have a recorded vote. You're voting on the motion that the chair's ruling be sustained.

(Ruling of the chair sustained: yeas 5; nays 4 [See *Minutes of Proceedings*])

**The Chair:** The chair's ruling is sustained, so the amendment stays out of order. Thank you very much for that, and my feelings aren't hurt at all.

**Some hon. members:** Oh, oh!

**The Chair:** Anyway, our next item.... As we know, we have our guest from the Green Party here today, who has a number of amendments.

I assume you would like to move amendment PV-1.

**Ms. Elizabeth May (Saanich—Gulf Islands, GP):** I'm not allowed to move it, Mr. Chair.

**The Chair:** It is deemed moved.

**Ms. Elizabeth May:** It is deemed moved. I know I'm your guest, but I'm also here, and it's in response to a motion passed by this committee, identical to motions passed by other—

**The Chair:** You have one minute, and your time is clicking.

**Ms. Elizabeth May:** This motion, as we know, is deemed moved because I'm not a member of this committee, but I'm not allowed to present amendments at report stage any longer because this opportunity has been made available to me. It's not the fault of any of you that I feel coerced, but there you are.

The amendment I'm suggesting, while not endorsed by the Federal Ombudsman for Victims of Crime, certainly Sue O'Sullivan's testimony and evidence to this committee was that the ambit of people who can be considered victims as a result of a crime should be expanded.

What Green Party amendment PV-1 attempts to do is merely change paragraph (b) of proposed section 3 on page 2 by removing the words "in a conjugal relationship". It would read that you were "cohabiting" and therefore would be someone who has access to the redress that is made available to victims under this bill.

Thank you.

**The Chair:** Thank you very much.

Is there any other discussion on PV-1?

(Amendment negatived)

**The Chair:** Amendment PV-2, Madam May.

**Ms. Elizabeth May:** Mr. Chair, just to refresh memories of the document "A Cornerstone for Change – A Response to Bill C-32, the Victims Bill of Rights Act, from the Federal Ombudsman for Victims of Crime", what the ombudsman put forward there is:

> The definition of who can exercise rights on behalf of a victim does not include partners who do not cohabit with the victim or close friends of the victim. [...] This can be overly restrictive for victims who may be disconnected from family or who have chosen not to live with their partners. This definition should be expanded to allow victims who may not be in contact with family or living in nontraditional arrangements to be represented.

That comes directly from the ombudsman's evidence and testimony. As you can see, consistent with what I was also attempting to do in the first amendment, in the second amendment you'll find on page 3 just after line 7 that we would add:

> (j) any other individual who a court has, on application by that individual, determined to be an appropriate individual to exercise the victim's rights on behalf of the victim.

We create an opportunity for judicial discretion to assess on a case-by-case basis whether somebody has a close enough relationship with somebody who has been a victim to have access to the rights that are being created under this legislation.

Thank you.

**The Chair:** Thank you very much.

Madam Boivin, on PV-2.

**Ms. Françoise Boivin:** Ms. May was talking about paragraph (j), but she means (f) I guess.

● (1545)

**Ms. Elizabeth May:** Sorry, did I not say (f)?

**The Chair:** You said (j) and it is (f).

[*Translation*]

**Ms. Françoise Boivin:** I see no issues with that paragraph, which reads as follows:

> (f) any other individual who a court has, on application by that individual, determined to be an appropriate individual to exercise the victim's rights on behalf of the victim.

That may be why I did not think it would be necessary to change paragraph (b). Paragraph (f) seems to cover any other circumstances not covered in clause 3. I think this amendment is very good and logical.

[*English*]

**The Chair:** Okay.

Mr. Goguen.

**Mr. Robert Goguen:** This amendment would cause us to have further judicial resources, and would cause further delays. It introduces a court-based appointment process and we feel that's not necessary. We'll be voting against it.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Now we are on amendment NDP-1.

Madam Boivin.

[*Translation*]

**Mme Françoise Boivin:** Everyone can read. This is probably the simplest amendment in terms of wording. The amendment simply aims to remove the words “on request” from clause 6. You can see that we did the same thing for clauses 7 and 8.

We are proposing this amendment in response to what victims groups have told us. One of the criticisms against the Canadian Charter of Rights and Freedoms is that it contains a number of grey areas. It contains a number of clauses that make us wonder whether they would be applicable in practice and how.

Once again, this is a basic principle. I think these are probably the most important provisions of the bill, as they set out victims' rights. Victims have certain rights, but they have access to them only on request. However, I feel that we should not have to ask for our rights.

There are enough other provisions that provide guidance on how things should or should not be done. With my Conservative friends reaffirming that basic principle, I would say the following to them:

[*English*]

put your money where your mouth is.

[*Translation*]

These are probably the key provisions of his bill. Victims should have that right without any limitations.

[*English*]

**The Chair:** Thank you, Madam.

Mr. Goguen.

**Mr. Robert Goguen:** Individuals should have the right as to whether they want the information. We respect their privacy by giving them choices and making this mandatory would overburden the provincial and territorial criminal justice systems and that is certainly not needed. We will be voting against it.

**The Chair:** Madam Boivin.

**Ms. Françoise Boivin:** I find with all due respect that is an easy cop-out because the fact that we award them the right doesn't mean they will necessarily exercise it. It is a fundamental right or a quasi-judicial right that the government seems so strong to state on every tribune.... The argument of saying their privacy.... If they don't want to exercise it, they won't. To tell them that they have this right.... What the government is saying is that you won't get the right if you don't ask for it. I find this utterly sad and maybe just re-think. It's nothing nasty. It doesn't give them more rights. It just states a fact.

**The Chair:** Okay, thank you.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** On amendment PV-3, Madam May.

**Ms. Elizabeth May:** Mr. Chair, I must say I wish I could have voted, because Madam Boivin's motion was so important. It's terribly sad that people don't really have the right.

But moving on to my third amendment, this is an attempt to expand on request the kinds of information that the victim would be informed, in terms of the specificity of what's available to them.

Currently under proposed section 6 under paragraph (b), the victim “has the right, on request, to information...about services and programs available to them as a victim,” but the only specific mention is of a restorative program. My amendment would expand that to include “relevant restorative justice, social services, family services and mental health programs as recommended by a needs assessment performed by an appropriate professional”.

That would allow the information rights of the victim to be based also on advice from appropriate professionals to tailor the information and the needs of that victim and give them greater information about existing services.

Thank you.

● (1550)

**The Chair:** Thank you.

Madam Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I like this amendment. A victims bill of rights allows victims to participate in the justice system. We know that many groups view the justice system in a very negative light. Over the course of testimony by various victims groups that have appeared before us, we felt that they were happy to feel somewhat important.

This bill is a solid guide. It will be useful for the provinces enforcing it and criminal justice stakeholders, who will be able to know what kind of information they have to provide.

It will be difficult to apply this bill if only empty rhetoric is used. We will have to flesh out this bill from the beginning in two or three years because we have failed to do so throughout this debate.

**The Chair:** Thank you, Ms. Boivin.

[*English*]

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** On amendment PV-4, Madam May.

**Ms. Elizabeth May:** Mr. Chair, thank you for the floor again.

I'll give you an overview of amendments PV-4 and PV-5, although I'll come back to PV-5.

Both of these deal with trying to inject into this legislation something that had been part of the initial recommendations, even before this bill was first drafted, from the Ombudsman for Victims of Crime and that is to provide in Canada the equivalent of what's available in California. The California Victims' Bill of Rights of 2008 created something which I think you're all familiar with, Marsy's Law, and the card that's presented.

The Marsy's card gives a victim a very clear and concise statement of what kind of rights they'll receive under the act. As I said, this goes back to recommendations that go back to June 2013 as well in the Department of Justice submission from the ombudsman. It would read very simply. This would create a subsection 6.1 following from the sections we've just reviewed that:

> Every victim has the right to receive, free of charge, a written statement summarizing all of their rights under this Act.

Thank you.

**The Chair:** Thank you.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Amendment PV-5 I think is similar to what you just said, Madam, but the floor is yours.

**Ms. Elizabeth May:** Thank you.

I'm sorry we're not able to get into a dialogue about why the ombudsman's recommendations in this area have been rejected by the committee. Again, this is a specific attempt to further delineate in a written form Marsy's card type of information so that victims are aware of their rights.

It would inject after line 36 on page 3, the following:

> 6.1(I) Every victim has the right to receive, free of charge, a written statement summarizing all of their rights under this Act.

There's a proposed subsection (2) this time which says:

> (2) Every law enforcement agency investigating an offence and every prosecutor involved in the prosecution of an offence must, at the time of initial contact with a victim, during the follow-up investigation or as soon as is considered appropriate by the investigating officers or the prosecutor, as the case may be, provide or make readily available to the victim, free of charge, a written statement summarizing all of the victim's rights under this Act.

This also goes to Madam Boivin's point in trying to amend the notion of request or right. This way at least, if this amendment can possibly be accepted and I would urge my friends across the way to consider it, it's straightforward, and merely makes sure that every victim...and I know it's the rights of victims that the Conservative administration, in this case, wants to protect. The whole point of this bill and the information about it is to protect victims' rights. If they don't know of those rights, they can't request them and they can't make use of them.

In this fashion, very quickly and easily and without additional burden to anyone, a victim could be made aware of all of their rights in a simple piece of information. If California can do it, Canada can do it.

**The Chair:** Okay. Thank you, Madam.

Monsieur Goguen.

**Mr. Robert Goguen:** This would force every investigating officer or prosecutor to provide a sheet with the rights outlined, even though the person or the victim didn't want them, so we don't feel it is necessary. We'll be voting against it.

● (1555)

**The Chair:** Okay.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** We're on to NDP-2 under clause 2.

Madam Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I feel that the same government logic will be followed. I am starting to understand the bill a bit better. The fact is that victims have rights, but they do not know exactly what those rights are. They will not be provided with any sort of a written list. We can already see what types of problems will arise.

All victims have the right to obtain certain information. I am not the one calling for this. This is something victims have told when they testified. By telling them that they have to request the information, the government is imposing a burden on those individuals. It is argued that this approach would infringe on victims' right to privacy or their right to choose to make this request or not. The right to obtain information about the status and outcome of the investigation into the offence is not a problem. Victims may consult the crown prosecutor—or the investigator, depending on the procedure used in the region in question—and decide they don't need to obtain the information.

We have some lawyers around this table.

Regardless of your area of practice, the client is no longer the number one priority. Cases in which victims are informed of their rights and know what is happening are much easier to navigate.

Rights are supposedly being granted, but those rights are available only on request. Once again, I think the government should be consistent. It says it wants to refocus victims' rights and provide victims with a bill or rights, but those individuals should not have to ask for those rights. I don't think that makes any sense.

[*English*]

**The Chair:** Thank you.

Madam Péclet.

[*Translation*]

**Ms. Ève Péclet (La Pointe-de-l'Île, NDP):** It is redundant to add the words "on request". As I was saying, a right either does or doesn't exist. In other words, a right on request does not legally exist. So that wording is redundant.

I would just like to ask the officials who are here whether removing the words "on request" would have an actual impact. For instance, the parliamentary secretary said that this approach would cause delays.

What repercussions would the removal of those words have on the enforcement of the legislation?

[*English*]

**The Chair:** That is a question for the officials.

Ms. Arnott, your light is on so you have the floor.

[*Translation*]

**Ms. Pamela Arnott:** Thank you.

As you say, the right would be available on request. So the right would clearly consist in providing that information. The information would not be provided on the victim's request, but it would be an obligation of the Crown, police officers and other stakeholders to provide the information, whether the victim desires it or not.

[*English*]

**The Chair:** Mr. Casey, and then we'll come back to you, Madam Boivin.

[*Translation*]

**Mr. Sean Casey:** Thank you, Mr. Chair.

I don't have the Privacy Commissioner's letter on hand, but I remember that he had some concerns in this regard. I would like to give Ms. Boivin an opportunity to respond to the commissioner's comments.

[*English*]

**The Chair:** Madam Boivin, the floor is yours. You don't have to answer questions.

[*Translation*]

**Ms. Françoise Boivin:** I would like him to tell me what part of the letter he is talking about.

What was the commissioner saying?

[*English*]

Let him find it. He's the one criticizing it.

I'll try to answer Mr. Casey when I find something that relates to his question maybe, but I have a question for Ms. Arnott.

[*Translation*]

Am I right to think that the current wording of that provision, namely, "Every victim has the right, on request, to information...", means that, legally, if the victim does not request information, they will not obtain it? The provision says that a victim has the right to obtain information, and I understand that this means the burden is on the investigator or the crown prosecutor, instead of on the victim. This has to do with the burden.

We understand each other. Finally, the government prefers to place the burden on the victim, rather than on the crown prosecutor or the investigator in charge of the case, who would have to share the information.

I think what Mr. Casey meant to say is that certain types of information in an investigation file, such as someone's address or similar information, cannot be provided to a victim.

I'm not sure what his point was regarding the letter. However, I must say that the words, "has the right...to information", "the status and outcome of the investigation into the offence", and "the location of proceedings in relation to the offence, when they will take place" are fairly clear. There is no potentially damaging information there. They do not have to provide any privileged information on the status and outcome of the investigation into the offence.

In any case, I think that clause 20 sets out the type of information that can be provided without jeopardizing the investigation. So victims have a right, but that right is limited by other provisions.

Clause 7 should specify who has the burden to provide information. That is what my amendment is about. Is the information provided because the victim makes a request or because the crown prosecutor or investigator has to provide it?

● (1600)

**Ms. Pamela Arnott:** I completely agree with this being a matter of the burden. I think that the information from the investigation is covered in another amendment we will discuss later.

[*English*]

**The Chair:** Mr. Casey.

**Mr. Sean Casey:** I now have the letter. At the top of page two in his letter of November 12 to the chair of the committee, the Privacy Commissioner said:

> Bill C-32 further provides that "every victim has the right, **on request**, to information about …the services and programs available to them as a victim, including restorative justice programs." I would draw the Committee's attention to the phrase "on request" which provides me with some reassurance that victims will only be provided with information or contacted by victims services organizations (VSOs) in accordance with their wishes.

That's what I was asking about.

**Ms. Françoise Boivin:** Okay, thank you.

**The Chair:** Would you like to respond to that before we move on?

**Ms. Françoise Boivin:** Yes, I would.

I understand that, but that was not the case in proposed section 7. Proposed section 7 is not the fact that they would distribute the information to

[*Translation*]

victims services organizations.

The commissioner was rightfully worried about the Royal Canadian Mounted Police potentially sharing information on the victim.

Clause 7 stipulates that it is up to the victim to request information, which will not be provided to anyone but them.

I understand my colleague's concern, but I don't think this has to do with clause 7. We are all very touchy when it comes to information sharing. We would not want any information on victims to be shared with various organizations without their consent.

That's not what is at issue in clause 7, which rather talks about the status and outcome of the investigation, and the time and location of the proceedings in relation to the investigation. This is a matter of knowing who will have the burden to provide information. Will the information be provided because the victim requests it or because they have a right to obtain it? I think victims should have a statutory right to that information.

[*English*]

**The Chair:** Thank you very much.

As a reminder, it is not cross-debate at this point. We're dealing with clause-by-clause consideration.

(Amendment negatived See [*Minutes of Proceedings*])

**The Chair:** We're now on amendment LIB-2. I need to let the committee know that if LIB-2 is moved, which I'm assuming it will be, PV-6 will then be inadmissible because it is absolutely identical.

Mr. Casey, I'm assuming you're moving LIB-2.

**Mr. Sean Casey:** Thank you, Mr. Chair.

This amendment essentially adopts the recommendation provided to this committee by the Canadian Bar Association. The concern of the Canadian Bar Association was to explicitly indicate that investigative materials were not to be included in what victims had a right to, and to remove any lack of clarity about that exclusion.

The concern, of course, is potential contamination of a witness' testimony if there was disclosure of investigative materials, intruding on third party rights, or hampering the use of effective informants. Mr. Wilks would understand this very well.

Failure to adopt this provision could alienate victims who feel disappointed because absent this they may well feel that they have the right to this type of information, which could not lawfully be delivered.

It's to provide clarity around that, and it's directly in keeping with what was recommended to us by the Canadian Bar Association.

● (1605)

**The Chair:** Madam Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I tend to agree with this amendment proposal, even though I find that clause 20 tempers matters by stating the following:

> 20. This Act is to be construed and applied in a manner that is reasonable in the circumstances, and in a manner that is not likely to
>
> (*a*)...
>
> (i) by causing interference...compromising or hindering the investigation of any offence...

This may be a smokescreen, but there's no harm in being extra careful. So it's not a bad idea to specify that again. This should not extend to information from investigation files that are still active.

[*English*]

**The Chair:** Monsieur Goguen.

**Mr. Robert Goguen:** The proposed section as it's currently framed basically permits the victims to receive the information about the status of an investigation or about its outcome on request. Neither the status nor the outcome include what this motion seeks to exclude, so we'd be voting against this.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** That means PV-6 has been removed.

We're moving to amendment NDP-3.

Madam Boivin.

[*Translation*]

**Ms. Françoise Boivin:** Dear God, this is like talking into a void!

Clause 8 reads as follows:

> 8. Every victim has the right, on request, to information about
>
> (a) reviews under the *Corrections and Conditional Release Act*...;
>
> (b) hearings held for the purpose of making dispositions, as defined in subsection 672.1(1)...

I repeat that the goal of my amendment is to release victims from the burden of having to request information. The statement of principle is currently limited to clauses 6, 7 and 8. In terms of information, this is the very essence of the Canadian Victims Bill of Rights.

The further we go in clauses 6, 7 and 8, the more we realize that this right is not very binding for anyone. I hope that victims will know that they have this right, although I don't know how exactly they will find out. They better know about it, as they will not have this right unless they ask for it.

My amendment simply aims to remove the words “on request”, so as to release victims from this burden, as they already have to deal with the stress caused by a trial and their financial and psychological issues.

**The Chair:** Thank you.

[*English*]

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** We are now on amendment PV-7.

Madam May.

**Ms. Elizabeth May:** Amendment PV-7 is looking at every stage in the criminal process. We know that the Canadian victims bill of rights is attempting to ensure that victims feel secure and have an enhanced sense of safety and security throughout the process. They may be encountering the person who victimized them.

The addition in PV-7 that I've made is at page 4, line 21 and basically inserts the words “including parole hearings”.

This was a recommendation directly from the testimony of the Ombudsman for Victims of Crime.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Next we have LIB-3.

Mr. Casey, the floor is yours, assuming you're moving it.

**Mr. Sean Casey:** Thank you, Mr. Chair.

This amendment deals with aboriginal victims. It is in front of you because of the testimony we heard from the Chiefs of Ontario.

As you know, aboriginal offenders are specifically recognized within the Criminal Code under the Gladue principles that are contained in the sentencing provisions of the code, so there is a consideration in our criminal law of the unique and historical circumstances that our aboriginal community find themselves in. This amendment, of course, does not deal with offenders, but aboriginal victims. It uses the same principles, as was urged upon us by the Chiefs of Ontario, to consider the unique and historic circumstances that aboriginal victims have.

In particular, the amendment is to clarify that a prosecutor or a judge in a criminal justice matter involving an aboriginal victim or an aboriginal community, must consider recourse to a restorative justice program or component.

I would suggest that the committee ought to respect the principles articulated by the Supreme Court of Canada decision in Gladue, and extend special consideration for aboriginal circumstances to the victim side of the equation.

The victims bill of rights must recognize the serious problem of over-representation of aboriginal people in prisons, and the committee should encourage prosecutors and judges to have recourse to a restorative approach to sentencing, in keeping with the evidence we heard from the Chiefs of Ontario

Thank you.

● (1610)

**The Chair:** Madam Boivin.

[*Translation*]

**Ms. Françoise Boivin:** My question is probably mainly for the officials from the Department of Justice.

I understand the idea underlying clause 17.1, and I agree with its content, but I'm wondering whether it's related to the “Restitution” section, which includes clauses 16 and 17. Clause 16, which has to do with the basic principle, states the following:

> 16. Every victim has the right to have the court consider making a restitution order against the offender.

In the cases that Mr. Casey mentioned, it is possible for the judge to decide to proceed differently and use restorative justice. One does not preclude the other. Clause 17 states that this will become an enforceable order against the offender if payment is not made.

I am simply trying to see whether it is relevant to table clause 17.1 here. I saw this more as the civil side of the criminal case. That said, I could be mistaken.

[*English*]

**The Chair:** Who would like to answer that?

Ms. Arnott.

[*Translation*]

**Ms. Pamela Arnott:** I agree with you, Ms. Boivin. There might be some inconsistency if this clause was placed following clause 17. It might create confusion in the courts. We might wonder whether restorative justice should be used only when dealing with restitution or if it is more general. Indeed, I agree with you.

**Ms. Françoise Boivin:** In other words, there might be confusion. Victims rights include the right to information, protection, participation and restitution. But I thought we would talk here about restitution in the civil sense. The clauses that follow will make it possible to better determine the quantifiable damages and to impose a fine in addition to the sentence. A restitution order could be issued for an amount that, if it isn't paid, would become enforceable in a court of law. That avoids civil proceedings.

My concern is that the meaning of the phrase “restitution order”, which covers clauses 16 and 17, be changed.

[*English*]

**The Chair:** Is there anything further to LIB-3?

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Okay, we're on to LIB-4. If LIB-4 is moved, which I'm assuming it will be, that means PV-8 will be removed as it's identical.

The floor is yours, Mr. Casey.

**Mr. Sean Casey:** Thank you very much, Mr. Chair.

Yes, I'd like to move the amendment that you have before you.

The motivation for this amendment, as I expect you know, is the advice provided to this committee by the Canadian Bar Association, and more particularly, in recommendation two of their brief.

This amendment is targeted to allow foreign victims of crimes that occurred in Canada—so it's a little different from the 9/11 amendment that I moved from the outset, which you didn't like—to claim restitution and file victim impact statements without being present in Canada. The requirement for foreign victims of crime in Canada to be present in Canada in order to file for restitution or to make a victim impact statement in Canada is, I submit, unfair and unnecessary. These victims should not have to incur the expense of returning to Canada and should be able to make such a statement by video link. That's the advice we got from the Canadian Bar Association and that's what this amendment attempts to do.

● (1615)

**The Chair:** Thank you.

Monsieur Goguen.

**Mr. Robert Goguen:** This motion would require Canada to fully implement these rights under the charter, even though a foreign national returned home, and irrespective of lack of jurisdiction to do so in another country. We'll be voting again this amendment.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** PV-8 is removed. We're on to NDP-4.

Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** We are still on the same clause.

The amendment reads as follows:

> That Bill C-32, in Clause 2, be amended by replacing lines 10 and 11 on page 6 with the following:
>
> "under this Act only if they are a Canadian citizen or a permanent"

I understood from the comments made by some witnesses that requiring the person to be present was perhaps the weakest point.

Including the words "under this Act only if they are a Canadian citizen or a permanent" would certainly respond to that concern.

[*English*]

**The Chair:** Monsieur Goguen.

**Mr. Robert Goguen:** We can't support this as it's inconsistent with one of the main objectives of the bill, namely to provide victims of crime committed in Canada with certain rights while they are still in Canada.

**The Chair:** Is there anything further?

I'm sorry, Ms. May, but the answer is, no, you don't have the right to ask a question or talk, only to your motion.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Amendment LIB-5 is next.

Mr. Casey.

**Mr. Sean Casey:** Mr. Chair, I move Liberal amendment number 5 which you have before you.

Once again, over on this side, we think that the advice of the Canadian Bar Association is worthy of merit and attention, and it is reflected in this amendment, more particularly, in recommendation number three. Recommendation number three deals with section 19 (2) and it is in order to avoid unnecessary delays, and to allow for an application to be made at a pretrial stage so that counsel could be in place by the trial date. If the crown is bound by the present restriction under 19(2), the application would have to wait until a witness was physically brought to Canada to testify, resulting in additional expense and delay.

This deals with the crown's role in exercising rights on a victim's behalf. If a foreign witness under the age of 18 were outside of Canada, the crown could make a pretrial application for an order that he not be personally cross-examined as a witness. The purpose of this amendment is simply to allow for that to take place in the course of the proceedings, which would allow for the witness to be outside of the jurisdiction, and for the proceedings not to be delayed, in accordance with the advice that we've received from the Canadian Bar Association.

**The Chair:** Thank you, Mr. Casey.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Members, make sure you speak into the microphone. There was one comment that was difficult to hear so make sure you are clear, but not always as loud as I am.

We're on amendment PV-9.

Madam May, the floor is yours.

● (1620)

**Ms. Elizabeth May:** Mr. Chair, that was, in fact, why I was attempting to get the microphone last time; I didn't understand a thing Mr. Goguen said. I know that perhaps this exercise is somewhat farcical as a real exchange of ideas, but I'd like to at least go through the motions.

On this amendment, the concern that this amendment addresses is that we do make a lot of information available in the course of creating victims' rights, and that is appropriate. But one of the appropriate restrictions on that kind of information is the infringement on the right of privacy. Green Party amendment PV-9 attempts to insert a simple paragraph between (c) and (d) in the listed concerns about not causing an interference with police discretion interfering with ministerial discretion. One of the other limitations would be as follows:

> infringe upon the right to privacy of any person;

[*Translation*]

Thank you.

[*English*]

**The Chair:** Madame Boivin.

**Ms. Françoise Boivin:** Maybe Ms. May will be able to remove any worries I have with that pretty vast phrase.

[*Translation*]

My concern is that we say "infringe upon the right to privacy of any person". Obviously, this also concerns the words "any person".

[*English*]

The phrase "of any person" will also concern the person who would have been found guilty of something. Does that cover photos, pictures? That was something the victims said, that sometimes to know what the person looked like.... I'm just a bit afraid that the right to privacy is a very vast topic and it might create some.... I don't know; I just find it's a bit, maybe, too broad as an expression. I don't know how I could circumvent it.

[*Translation*]

I understand that we do not want to give rise to unreasonable infringement. It may involve an infringement of privacy under the bill, but be considered reasonable in the context of a free and democratic society. Here, however, it seems really quite broad and vast.

I do not think that anyone would object to someone knowing what a person looks like upon being released from prison, 15 years later, if only so that they are not shocked when they find themselves face-to-face with the person.

[*English*]

**The Chair:** A brief answer, Madam May.

**Ms. Elizabeth May:** I hear you.

[*Translation*]

That is a legitimate concern, and I share it, but we also need to protect the rights of the persons who committed the crime.

[*English*]

Quickly, what this amendment hopes to do is ensure that someone's ability to rehabilitate is not.... We have to balance the rights. Of course, we all want to protect the rights of victims, absolutely. That's the purpose of the law. We're trying to make it stronger here through most of the amendments the Green Party' is putting forward. We do have a concern about tilting the balance in a direction that would impede on rehabilitation rights for somebody who has been convicted but wants to return to society, having paid their debt to society.

**The Chair:** Thank you very much.

Is there anything further on PV-9?

On the item, and not a question of the member.

**Ms. Françoise Boivin:** To the item, I wonder if the mover would agree to maybe a subamendment just to say:

[*Translation*]

…"de porter atteinte au droit à la vie privée de quiconque de façon déraisonnable".

I think that is more sensible. Moreover, it respects the essence of what my colleague said. I think it also covers cases where it would be reasonable to share private information in a limited context.

I don't know whether she would agree to use this wording: "de porter atteinte au droit à la vie privée de quiconque de façon déraisonnable".

[*English*]

**The Chair:** Are you moving that subamendment?

[*Translation*]

**Ms. Françoise Boivin:** Yes.

[*English*]

**The Chair:** Could you do it slowly in English or in French?

[*Translation*]

**Ms. Françoise Boivin:** We would say, "de porter atteinte au droit à la vie privée de quiconque de façon déraisonnable".

[*English*]

**The Chair:** What's your amendment?

**Ms. Françoise Boivin:** At the end:

[*Translation*]

…"de façon déraisonnable".

[*English*]

**The Chair:** Oh, "unreasonable". I didn't catch that. Sorry. Thank you.

We have an amendment to the amendment.

Are there any discussions on the amendment to the amendment?

Madam May, do you want to comment on the subamendment?

**Ms. Elizabeth May:** I think under the bizarre procedures in which I'm not really here, but my motion is deemed to have been moved, if I were allowed to speak to it, I'd be grateful to Madam Boivin for an amendment that I would be happy to accept as a friendly amendment.

● (1625)

**The Chair:** There's no such thing as friendly amendments.

**Ms. Elizabeth May:** Well....

**The Chair:** Really, there's a subamendment to the amendment. Are you saying you're okay with her subamendment?

**Ms. Elizabeth May:** Yes, absolutely.

**The Chair:** All right, now we're dealing with the subamendment.

(Subamendment negatived)

**The Chair:** Now to PV-9 as presented.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** We are now on amendment PV-10.

[*Translation*]

Ms. May, you have the floor for one minute.

[*English*]

**Ms. Elizabeth May:** Mr. Chair, this is an attempt to create an additional sub-category that would constrain the ways in which the act is construed. One would be that the act should not be construed in a way that will impose an unreasonable financial burden on the provincial criminal justice system. I've heard members opposite invoke additional costs to the criminal justice system as a reason to reject some opposition amendments so far. This is one to ensure the act itself does not impose additional costs.

You may have noticed there was an article in the *Calgary Herald* in August that pointed out the cost to the Government of Alberta of Bill C-10 that was passed in the fall of 2012. The so-called Safe Streets and Communities Act was expected to put a cost of $18 million a year on the Province of Alberta's coffers. This is a check as we go through the implementation of this act that it's not creating an unfair burden on provincial governments.

Thank you.

**The Chair:** All right.

Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I understand exactly what my colleague wants to do, but I will explain why I'll be voting against this amendment.

This is the heart of the bill, and that is the problem for our friends across the way. It's one thing to put a bill into practice or on paper, but the reality will be different.

I agree, and it is clear that the provinces will find that the cost will have an impact on the administration of justice. At least two ministers have said that, and I would certainly have liked to hear many more say the same thing. However, victims also told us that it was time to help them. If there is a cost attached, I would say to the government:

[*English*]

put your money where your mouth is.

[*Translation*]

This must be put into practice. Budgets will have to be allocated for this.

I don't want to start off by being defeatist, but my colleague will note that, under our other proposed amendments, changing the implementation of this bill will certainly be grist for the mill, meaning that a lot more money will be needed for the justice system.

I'm afraid the unreasonable financial burden on the criminal justice system will be a way out for the provinces. It will mean that they will be able to withdraw from applying the bill. We want this to work. They will put pressure on the federal government, which wants to implement this kind of system. Good for them, but the government will have to allocate money for this to work. Still, I don't want to defeat this straight away.

**The Chair:** Thank you, madam.

[*English*]

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** We're on amendment PV-11, but just so the committee knows, if PV-11 is adopted, G-1 will not be able to be moved because you cannot amend the same lines twice.

The floor is yours, Madam May.

**Ms. Elizabeth May:** Oh, Mr. Chair, the tension, the suspense. If my amendment is accepted, then a government amendment doesn't go through. This is an exciting moment for the Green Party.

**The Chair:** I wouldn't hold your breath.

**Ms. Elizabeth May:** I don't want to, either. I need my breath.

I'll make this quick. This amendment is to ensure something that was recommended by our Ombudsman for Victims of Crime, noting that this bill does make progress in permitting victims enhanced access to proceedings in a parole hearing. I'll just read what was said in the the ombudsman's brief:

> It does not provide victims with a presumptive right to attend a parole hearing. As it stands, a victim must continue to apply to attend a hearing just like any other member of the public.

The Green Party's amendment PV-11 makes an attempt to create that presumptive right to attend a parole hearing for a victim of crime.

Thank you.

● (1630)

**The Chair:** Thank you very much.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** There you go. We are on amendment G-1 from the government.

Monsieur Goguen.

**Mr. Robert Goguen:** This amendment proposes to amend proposed section 27 of the victims bill of rights, as introduced. It states:

> Nothing in this Act is to be construed as granting any victim or individual acting on behalf of a victim the status as a party, intervenor or observer in any proceedings.

This amendment would make a minor change to proposed section 27 to ensure that it is clear that the Canadian victims bill of rights does not provide or remove any status provided to the victim under law.

**The Chair:** Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** This is for the witnesses from the Department of Justice.

Could you please explain the logic behind this amendment and what it actually means? “Provide” and “remove” are completely contradictory concepts.

Basically, the government amendment seeks to indicate that if there are situations in which a person can play the role of the party or of the observer, that would be fine, as well. In fact, this doesn't mean a thing. I am trying to understand how something can be provided and taken away at the same time. Could you explain it to us from a legal perspective?

[*English*]

**The Chair:** Madame Arnott.

[*Translation*]

**Ms. Pamela Arnott:** Ms. Boivin, you are correct to say that the intent of the clause is to specify that when observer status is granted by another act—take the conditional release act, for example—that status or regime is in no way affected by this clause.

[*English*]

**The Chair:** Is there anything further on G-1?

(Amendment agreed to [See *Minutes of Proceedings*])

**The Chair:** We're now on amendment NDP-5.

Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** If I could get down on my knees—something I've never done in my life—I would now. If there is one amendment that is important, it is this one. If we truly want to be able to study what we are implementing, we need to adopt it. All the victims groups that we met with, including groups of legal experts and others, have told us that this is a good first step, but that something else will have to be done.

Representatives from two provinces appeared to tell us that this will have a huge impact on the administration of justice. I am convinced that if we had spoken to representatives from the other eight provinces, they would have said the same thing.

This is a reasonable amendment that would add this clause 30, which will go like this:

> The Minister of Justice and Attorney General of Canada must prepare and cause to be laid before each House of Parliament an annual report for the previous year on the operation of this Act that contains the following information:
>
> (a) the number of restitution orders made under section 16;
>
> (b) the number of requests for information made under sections 7 and 8; and
>
> (c) the number of complaints filed under sections 25 and 26.

The purpose of this amendment is not so that Canada's Parliament can retain control, but rather it is to see how the bill is applied concretely on the ground. This bill still has some practical aspects. It would be reasonable to proceed in this way.

[*English*]

**The Chair:** Mr. Goguen.

**Mr. Robert Goguen:** Basically, regarding victims of crime, there's a shared responsibility between the federal government and the provincial and territorial governments. This amendment would create an obligation on the federal government to report on requests and complaints made to provincial and territorial agencies.

The federal government does not have control over that sphere of activity, and therefore, we cannot support it.

● (1635)

**The Chair:** Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I understand that this can be difficult. There are other cases. For example, this was done in the case of the official language of accused individuals. We can get proceedings in French. We can get the information. It isn't an obligation of result, but an obligation to inform Parliament of what is going on and what might have happened. If we don't get a response, we won't go after the government. We can write that a given province did not respond, but at least we could see what is going on. We can't just draft legislation, throw it at the provinces, and tell them to handle it, then not care about what happens. We need to be a little more responsible and reasonable.

[*English*]

**The Chair:** Madame Péclet.

[*Translation*]

**Ms. Ève Péclet:** I would just like to add to my colleague's comments.

In the "Remedies" section on page 7 of the bill, there is a duplication of mechanisms. The following has been proposed:

> 25.(1) Every victim who is of the opinion that any of their rights under this Act have been infringed or denied by a federal department, agency or body has the right to file a complaint in accordance with its complaints mechanism.

It then states:

> 25.(2) Every victim who has exhausted their recourse under the complaints mechanism and who is not satisfied with the response of the federal department, agency or body may file a complaint with any authority that has jurisdiction to review complaints in relation to that department, agency or body.

So there are two processes here. One was created for the federal departments and agencies that have an obligation to apply this bill, but there is also a provincial side.

The parliamentary secretary is saying that we do not have to tell the provinces how to apply this bill, but it remains that a large part of this application will fall to the federal departments. So we could at least look at how the Canadian Victims Bill of Rights will apply at the federal level. That is part of our role, as Canadian parliamentarians.

We could ask the minister to review his position. It is true that we cannot tell the provinces what to do, but it is our responsibility to consider what will happen in the federal departments and institutions.

[*English*]

**The Chair:** Mr. Casey.

**Mr. Sean Casey:** I just want to chime in on this. I'm having some trouble understanding the logic on the government side where we have a bill here that imposes some pretty serious obligations on the provinces, which are responsible for the administration of justice. Admittedly, it does that.

We have talked about whether or not that's going to be adequately funded. That's been a topic that's come up a lot.

There seems to be no problem imposing obligations on the administration of justice within the provinces, but when it comes to measuring it, they don't want to go there. It seems to me to be completely inconsistent. You can't manage it if you don't measure it.

To say that this proposal would be difficult to enforce, I fundamentally disagree. If the provinces are going to carry out the obligations that are imposed upon them, they're going to have to receive some funding from the feds and that funding can be tied to cooperation with a reporting mechanism. It's pretty simple and workable.

I find it troubling how willing the government is to impose obligations on other levels of government, but does not require some accountability.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** That is the end of the amendments on clause 2.

Shall clause 2 as amended carry?

(Clause 2 as amended agreed to)

**The Chair:** There is a new clause being proposed and we're calling it clause 2.1. It's being proposed through amendment NDP-6.

Madam Boivin.

● (1640)

**Ms. Françoise Boivin:** If at first you don't succeed, try, try again.

[*Translation*]

In terms of parliamentary review, what we are suggesting is to do something similar to what we have recently done with the language of the accused in this committee. Therefore, I move the following:

PARLIAMENTARY REVIEW

2.1 Two years after section 2 comes into force, a committee of the House of Commons, of the Senate or of both Houses of Parliament is to be designated or established for the purpose of reviewing the Canadian Victims Bill of Rights enacted by that section.

It is a basic amendment that allows us to follow up on this bill in order to make adjustments. As victims and the victims' ombudsman have told us, this is a first step. It remains to be seen how it will be applied on the ground. One of the witnesses told us that the provinces are responsible for enforcing 95% of the bill. Under those circumstances, we will need to at least undertake a study to fully consider the rights of victims, not just to oversee the process.

The government could propose a five- or seven-year period, the way it did with prostitution. I don't think it has to be done as quickly as possible. I am aware that the bill needs time to evolve. I think two years would be an adequate timeframe to either address shortcomings or to realize that the work is good and everyone is very happy with the Canadian Victims Bill of Rights.

In my view, this review is a no-brainer, considering the important obligations that it will entail. In addition, a change in culture will be needed in some provinces. I am not saying that it will be the case everywhere. In fact, witnesses have shown us that some provinces were taking very seriously their role of informing and supporting victims along the way. Some provinces are already significantly ahead with their victim assistance programs. Canadian victims deserve the Parliament of Canada to review this new bill to ensure improved follow-up.

[*English*]

**The Chair:** Okay, Monsieur Goguen.

[*Translation*]

**Mr. Robert Goguen:** Two years go by quickly. I therefore move a subamendment.

[*English*]

**The Chair:** Do you want to propose an amendment?

**Mr. Robert Goguen:** Yes, I'd like to propose a subamendment. Instead of saying “Two years after section 2 comes into force”, I'd say, “Five years after section 2 comes into force, a committee” take out “of the House of Commons, of the Senate or of both Houses is to be designated” and insert “a committee of Parliament is to be designated...”.

[*Translation*]

In French, we would say five years of course and we would take out the words “du Sénat ou des deux chambres” from the third line.

[*English*]

**The Chair:** A subamendment has been moved to proposed clause 2.1 which makes it from two years to five years, if I'm reading this right, and that it is a committee of Parliament. So it could be of either House or both Houses.

Are there any questions?

**Ms. Françoise Boivin:** Can we discuss the—

**The Chair:** Yes, the floor is open on the subamendment.

Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** Two years may be a short time, but five years is a long time. If there are any weaknesses and changes need to be made, I think five years is a long time, especially if we keep the victims in mind. Throughout the debates, the government has talked about how seriously it is taking all this. However, if we recognize that the objective has not been achieved, I think it would be in our interest to make adjustments as soon as possible.

I think five years is a really long time. When we know that, for many people, a week in politics can be a lifetime, imagine what a five-year wait could feel like. If the government had said three years, I would have found that a little more appropriate. I would have thought that its intent was really to follow up on the legislation. However, in five years, there could be three different governments.

● (1645)

[*English*]

**The Chair:** Is there anything further to the subamendment?

(Subamendment agreed to)

(Amendment as amended agreed to)

**The Chair:** All right.

Clauses 3 through 13 have no amendments, so I would like to group them.

**Some hon. members:** Agreed.

(Clauses 3 to 13 inclusive agreed to)

(On clause 14)

**The Chair:** We're on amendment G-2. If G-2 carries, G-3 and G-4 carry as well. We don't need to debate them. They are assumed passed also.

Monsieur Goguen, on amendment G-2.

**Mr. Robert Goguen:** Currently, only the trial judge can make orders enabling witnesses to testify in the presence of a support person. The proposed amendment would enable another judge of the same court to make such an order where the trial judge has not yet been determined. This amendment would also help provide victims greater certainty by enabling such orders to be made early in the trial process. It would also improve the efficiency because it would mean that a trial time is not being used to consider such applications, although the trial judge will continue to have authority to review such orders throughout the proceeding. T

his amendment has the support of a number of the provinces that have raised the issue with senior federal justice officials and urged the government to consider such a reform.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 14 as amended agreed to)

(On clause 15)

**The Chair:** We're on clause 15 and because of what just passed, we don't need to deal with G-3.

We're on LIB-6. The floor is yours, Mr. Casey.

**Mr. Sean Casey:** Mr. Chair, this is an amendment that seeks to give voice to the wishes of the Chiefs of Ontario and to take account of the unique position that our aboriginal communities have in this country.

In particular, this amendment adds the aboriginal identity of victims, witnesses, or accused as a consideration for a prosecution application for testimony behind a screen or other device. It's my submission that the committee should respect the principles articulated by the Supreme Court of Canada decision in Gladue and extend special consideration for aboriginal circumstances to the victim's side of the equation. The court should be granted the discretion to keep an open mind about special testimony circumstances in aboriginal contexts as requested by the Chiefs of Ontario.

(Amendment negatived)

**The Chair:** Clause 15 was amended because G-2 carried.

(Clause 15 as amended agreed to)

(On clause 16)

**The Chair:** Due to G-2 passing, G-4 is no longer needed, except for a small change. G-4 says “replacing lines 38 and 40”. It should be “replacing lines 38 to 40”. It's not those two lines, 38 and 40; it's lines 38 to 40. Is that okay with everybody? Consequentially, let's vote on that.

(Amendment agreed to)

(Clause 16 as amended agreed to)

(On clause 17)

**The Chair:** There's a little bit of verbiage I need to read here.

The next amendment we're going to deal with is LIB-7. The vote on LIB-7 applies to LIB-8, LIB-9, and LIB-10, as they're all consequential. I'm assuming if LIB-7 passes, we don't need to deal with them. They would be adopted automatically. If LIB-7 is adopted, PV-12 and PV-13 cannot be moved because they amend the same lines. As I mentioned before, you can't amend lines more than once. If LIB-7 is adopted, PV-14 cannot be moved and the section amended by PV-14 would no longer exist.

There we go. That's the information for everybody.

On amendment LIB-7, Mr. Casey, the floor is yours.

● (1650)

**Mr. Sean Casey:** Mr. Chair, this amendment is to remove a part of clause 17. The subsequent amendments that would follow from that propose to delete the rest of clause 17.

We heard significant testimony before the committee from the crown prosecutors, from the defence bar, from the Canadian Bar Association, and from those who practise criminal law that we are headed for a likely successful constitutional challenge of clause 17 if it remains.

This is to avoid another loss before the courts when this is challenged on the basis of constitutionality. It respects the evidence we heard from those who practise in the area. Unless we want to end up back before the court and have another section of the code struck out as being unconstitutional, we can save everyone the trouble now by adopting this amendment or by defeating this clause.

**The Chair:** Monsieur Goguen.

**Mr. Robert Goguen:** Allowing witnesses to testify using a pseudonym in appropriate cases in which a court has determined that it's in the best interest of the proper administration of justice will encourage more witnesses to come forward and will enable them to testify in a manner that doesn't jeopardize their safety.

This will not be taken lightly and will only be used very sparingly in cases, and only when the facts warrant it.

**The Chair:** Thank you, sir.

Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** Mr. Goguen, that is the least persuasive argument. I say that with all due respect.

I don't think my interpretation is the same, but that is the beauty of having so many lawyers around the table and among the witnesses. Section 486.31, which was just added through clause 17 of the bill, has so many nuances that the court will be able to proceed in a reasonable and constitutional way.

I agree with other proposed amendments. There are actually cases where that may be necessary. However, I am trying to figure out when that would help victims and people to testify. The most representative case of what you are saying is perhaps organized crime, where an individual might be too afraid, for their own safety and that of their family, to appear in court or have their name released. Amendments will therefore be introduced in that sense.

I don't see clause 17 in the same way as my colleague Mr. Casey. If we establish a good framework and the courts do their job in terms of all the factors listed under paragraphs 483.31(3)(a) to (j), things will go well. I am aware that this does not eliminate the risk of slippage, but we must think of safety and the fact that someone cannot decide not to disclose their name on a whim. At any rate, I don't think courts would accept that a person does not testify without knowing who the person is in such a context. Our courts and our judges are more serious than that in Canada.

There are certainly specific cases to which this might apply and for which section 486.31 will be necessary under the described circumstances. If we repealed the entire subsection, we would deprive ourselves of a tool that might turn out to be important in some cases, but the scope is very limited and limiting.

[*English*]

**The Chair:** Thank you very much.

Mr. Casey.

**Mr. Sean Casey:** We're about to pass a clause that allows for a witness's identity to be withheld from the accused. If there is anything that would offend the right to a fair trial, it is that, and this is what we've consistently heard. It's about the charter.

● (1655)

**The Chair:** Thank you very much.

Is there anything further on amendment LIB-7?

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** The amendment has failed, which means that amendment PV-12 is in order.

Madam May, the floor is yours.

**Ms. Elizabeth May:** Thank you, Mr. Chair.

I will reiterate what Sean Casey just said. It's a fundamental aspect of the right to a fair trial to know your accusers. I note that in an earlier response, Mr. Goguen referred to it as using a pseudonym, but that's not what proposed section 486.31 contemplates. It says the judge can "make an order directing that any information that could identify the witness not be disclosed". That's going far beyond using a pseudonym.

It's not clear from the testimony of Mr. Krongold, of the Criminal Lawyers' Association, who said:

> I'm not sure if I'm reading the provision right. I hope I'm not reading it right. But it's hard to imagine a more fundamental change to Canadian law, one less consistent with Canadians' visions of open, fair justice, where everybody has a chance to a fair trial, where they can make full answer and defence and confront the witnesses against them.

A similar point was made by the Canadian Bar Association, that this clause "contemplates at least the possibility"—and I'm now quoting from Mr. Gottardi from the CBA:

> that the accused and counsel for the accused and the crown might have to cross-examine or direct examine a witness when they have no idea who the witness is. I haven't found a single case that talks about that, and I can't imagine a scenario, short of life and death and someone essentially amounting to a confidential informer, where that kind of process would pass constitutional muster.

Drawing from that evidence, and frankly preferring the deletion approach, I have crafted a series of amendments that attempt to at least circumscribe the opportunities for such application of the judge's discretion to those cases in which there is in fact a life and death situation. The first of a series of amendments that all work to this purpose is Green Party amendment PV-12, which amends it to read:

> that establishes that the disclosure of the witness' identity could endanger their life

So the amendment is that in the application of the currently proposed section 486.31, the application of this anonymity provision for a witness be very much circumscribed to a life and death situation.

I'm still not sure whether that would be constitutional, but it would be better.

**The Chair:** Thank you very much.

Mr. Goguen.

**Mr. Robert Goguen:** I wonder what the officials' views of this section would be. I understand that the test here is the interest of the proper administering of justice, and it's well understood by the judges. It gives them the ability to exercise their discretion while considering the relevant factors and considering the safety of the witness.

What are the views of our witnesses?

**Ms. Carole Morency (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice):** Drawing on a few things, the test is well established, including within the various testimonial aid provisions within the Criminal Code. This is very well established, as Madame Boivin pointed out. Proposed subsection 486.31(3) articulates the different criteria that a court will be guided by in making its determination.

When we appeared initially on this, the question was asked, and I made reference to some case law that had already proceeded with this; courts have made the order using a common law power. The example given was that the victim didn't want the name or identity known to the accused. The name of the person who was testifying, the complainant, was still written down; the court knew. The court could set whatever criteria are important based on the facts of the case. Should the name be disclosed to the lawyer for the accused but not disclosed to the accused? Again, the court has the tools, as proposed by this provision, using a well-established test, to set conditions that would be appropriate and that will safeguard the open principle—the accused's rights—in the circumstances.

**The Chair:** Is there anything further?

Monsieur Goguen?

**Mr. Robert Goguen:** There is not from me.

**The Chair:** Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I would like to come back to Mr. Goguen's question specifically.

I think Ms. May's amendment fits in nicely with what you just said. There is no harm in specifying in the proceedings against the accused that the judge or justice may, on application of the prosecutor in respect of a witness, make an order.

I cannot see any other reasons in this context, unless you tell me that there are considerations for the safety of the individual or their family for instance, or that the case law you are referring to listed other cases. That is the only reason why Mr. Casey's amendment seemed too broad perhaps.

I can understand because I know there is case law and there have been very specific and limited cases, but I don't think we want to open Pandora's box. We simply want to put on paper what you so well determined when you appeared before us the first time. That has been done before, but not on a large scale. It is good to have it written, because that will help the courts avoid an issue of common law power. They will actually be able to use a specific piece of legislation to make an analysis in a certain light.

I think it makes sense to clarify it further, as proposed in amendment PV-12.

● (1700)

[*English*]

**Ms. Carole Morency:** There's no question that the safety of the witness might be the most common consideration, but it might not be the only one. Even in the case that I believe Mr. Krongold referred to and that we would refer to, the Named Person v. The Vancouver Sun case, the Supreme Court said there could be an issue for a confidential source as well.

At the end of the day, the proposal before the committee seeks to provide a framework for a court to make a decision based on the facts and circumstances of that case as appropriate, using a test that is well established. As Madame Boivin has indicated, these are not decisions the courts take lightly, and they're not made on a frequent basis. It's to provide another tool so that the evidence can be brought before the court. If a witness testifies using a pseudonym, the court still has to assess the weight to be given to that evidence. The accused will still have the right, through counsel, to cross-examine the witness. So it is being proposed within the context of what exists now.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** We are on amendment PV-13.

Madam May.

**Ms. Elizabeth May:** Thank you, Mr. Chair.

Well, again, I'm thanking the expert guidance we have here from Justice. This amendment again is attempting to circumscribe very specifically the only kinds of instances where this rare opportunity should be used. I again draw the attention of everyone to the fact that the way section 486.31 is drafted, it is not limited to a pseudonym. If it were limited to a pseudonym, that would be something very different. We're much more used to that in criminal law. Although I haven't practised law in some time, I do know pseudonyms can be used, but this says to make an order that directs that any information that could identify the witness not be disclosed. I think this goes beyond what we've done up to this point. In this second attempt, Green Party amendment PV-13 seeks to expand the ambit of those who could be at risk from a life and death situation affecting the witness to one that establishes that disclosure of the witness's identity could endanger their life or the life of anyone known to the witness.

I think that should satisfy the concern. I would love to think we would not be wanting to take this notion of secret witnesses any farther than a life and death situation.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Amendment LIB-8 is no longer available to us. LIB-9 is no longer...as LIB-7 has been defeated.

We're on amendment PV-14.

Madam May.

**Ms. Elizabeth May:** Thank you.

Having moved on from an attempt to fix 486.31(1), this attempts to insert a new subsection 486.31(3.1) after the listed directed considerations for the judge's discretion, which reads:

> For greater certainty, the paramount consideration to guide the court under this section is whether the disclosure of the witness' identity could endanger their life, with the factors set out in subsection (3), in all cases, being subordinate to this consideration.

In other words, one of the considerations here, Mr. Chair, is the importance of the witness's testimony to the case. If you're really, really wanting to convict somebody, then you're going to say, “Well, on the balance of things, their right to a fair trial is going to go down because we really want to convict them.”

I think this is a very slippery slope for criminal justice in Canada, and I hope that proposed subsection 486.31(3.1) at least can be accepted to mitigate the risk.

● (1705)

**The Chair:** Madame Boivin, on PV-14.

**Ms. Françoise Boivin:** Yes, on PV-14, I have a comment and a subamendment.

[*Translation*]

Since I agree, I am not going to repeat what my colleague just said.

I really liked that, in her previous amendment, PV-13, she was trying to include anyone known to the witness.

I would like to suggest the following subamendment:

> For greater certainty, the paramount consideration to guide the court under this section is whether the disclosure of the witness' identity could endanger their life or the life of anyone close to the witness...

It makes sense to clarify that.

[*English*]

**The Chair:** Is there any comment to the subamendment?

(Subamendment negatived)

(Amendment negatived)

(Clause 17 agreed to)

(Clause 18 agreed to)

(On clause 19)

**The Chair:** We have amendment G-5.

The floor is yours, Mr. Goguen.

**Mr. Robert Goguen:** The government is making a technical amendment resulting from the Parliament's recent enactment of private member's Bill C-394, which created a new offence of recruiting to join a criminal organization.

This amendment ensures that the justice system participants can apply for a publication ban in respect of the new recruitment offence in the same way that the justice system participants can in other organized crime prosecutions. This amendment ensures that consistency in the treatment of organized crime offences for the purpose of publication bans. A failure to make this amendment would result in an inconsistent approach to organized crime offences in the Criminal Code.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 19 as amended agreed to)

(Clause 20 agreed to)

(On clause 21)

**The Chair:** We have two amendments.

We have Liberal amendment 11, and just so you know, Ms. May, amendment PV-15 will not be able to be put if the Liberal amendment is, so don't be mad at Mr. Casey for beating you to the punch.

Mr. Casey, the floors is yours.

**Mr. Sean Casey:** Mr. Chair, this amendment deals with the notification for victims of plea bargains. The proposal I'm putting forward is one that you first saw in the brief of the Canadian Bar Association, that is, to limit the circumstances under which victims are to be notified of plea bargains to those circumstances under which there is a joint submission on sentencing in return for a guilty plea.

The argument is based on having the system grind to a halt, which we heard not only from the Canadian Bar Association, but also from the Canadian Association of Crown Counsel. The rationale is that informing a victim of any plea deal for a serious offence could cause unnecessary delays in prosecutions and would further strain already thinly stretched resources.

This bill would not provide resources to balance this requirement, as we heard quite clearly from the Association of Crown Counsel. This would impede a victim's interest in the fair and speedy administration of justice and undermine the system generally; however, where a prosecutor will be making a joint submission on sentencing, a victim has a reasonable interest in hearing in advance what the crown will submit as a just outcome.

I also would like to remind you of a specific instance that the Canadian Bar Association brought to our attention and which I think really drives home the point. I'm citing from their brief. They indicated that a typical experience for front-line crown counsel dealing with this proposed legislative change might go like this:

> A Crown Counsel is dealing with 100 cases on a particular morning where the accused is scheduled to enter a plea. Lawyers for ten of the accused inform the Crown only that morning of a guilty plea.
>
> The Crown has no time to contact victims of the ten accused to tell them of the proposed pleas. When the Court asks the Crown if victims have been informed, the Crown says no in regard to the ten cases. The Court adjourns those cases, so the guilty pleas are not accepted. By the next appearance, four of the ten accused change their minds about pleading guilty and want a trial. Victims are then required to testify when they otherwise would have been spared the trauma of reliving their experience through vigorous cross-examination.

Where that notification is necessary, this would limit the circumstances to those where there is a joint submission on sentence. That is one of the two parts of the recommendation that we received from the Canadian Bar Association with respect to this clause.

Thank you.

● (1710)

**The Chair:** Thank you, sir.

Is there anything further on this amendment?

[*Translation*]

Ms. Boivin, the floor is yours.

**Ms. Françoise Boivin:** I am trying to understand how this will have the effect you are looking for. Will this prevent a case like the one you just mentioned from happening? I am not sure of that, because amendment LIB-11 reads as follows:

> an included offence—and the prosecutor and the accused will submit a joint submission on sentencing, the court shall, after

Does that remain as is or does it end after the words “the court shall, after”? Does the subsection continue? What does that change in relation to the case mentioned by the lawyer from the Canadian Bar Association? The same case can happen again. That is my understanding of the new subsection 4.1. When it says that the accused and the prosecutor enter into an agreement, I think it usually means that there is also an agreement on the sentence. I stand to be corrected by the department officials, but an agreement is not reached for a plea alone. Usually, when there is an agreement, the individual does not just plead guilty. The person pleads guilty and there is an agreement on the sentence. I don't know which defence lawyer would tell a client to plead guilty without knowing what the sentence would be. As a general rule, in court, the defence tells the Crown that the client is ready to plead guilty if the sentence is such and such, and that is what happens.

I fully understand the argument and that we should not hold things up, but I think things will stay the same in the circumstances. I am trying to understand what will change.

Could you tell me whether “agreement” refers to “agreement on sentence”.

[*English*]

**The Chair:** Okay, we'll have the officials answer.

Do you want to comment on her comments?

[*Translation*]

**Ms. Pamela Arnott:** You are absolutely right, Ms. Boivin. The current practice is to plead guilty to an offence in exchange for a submission of sentence.

**Ms. Françoise Boivin:** Mr. Casey, how would the addition of the four lines prevent a judge from saying that they did not contact the people? I don't understand.

[*English*]

**The Chair:** I'll put Mr. Casey back on the list.

You can respond to her in your turn.

Monsieur Goguen.

**Mr. Robert Goguen:** Basically, in the case of most serious offences, the government believes that an effort should be made to inform the victims of all plea bargaining, not just those who are involved in joint sentencing submissions. We're concerned that this amendment would lead to delays, and would place an undue burden on the crown prosecutor. The system has to function, and for that reason, we can't support this amendment.

**The Chair:** Mr. Casey.

● (1715)

**Mr. Sean Casey:** If I understand the question correctly it is, what difference does it make to simply call for notification of the victims in circumstances of a joint submission on sentence? What does that add? The answer I would give is, a joint submission on sentence is something that you know before you arrive at the court. It affords an easier opportunity to notify the accused, because it isn't a deal that's made on the courthouse steps.

A joint submission is almost always the result of prior negotiations, and something that you know when you get there. Therefore, the circumstance that I described where a deal is made on the courthouse steps, and then the whole thing has to be ground to a halt with the attendant delays and the attendant injustice on victims, is less likely to occur where the arrangement between the crown and the defence has resulted in them agreeing on the sentencing proposal. It's asking for half the loaf, quite frankly.

**The Chair:** Thank you very much.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Amendment PV-15 has been removed.

(Clause 21 agreed to)

(On clause 22)

**The Chair:** We have Liberal amendment 12.

The floor is yours, Mr. Casey.

**Mr. Sean Casey:** Thank you, Mr. Chair.

My submissions on this will sound familiar, so I won't repeat them. This is quite simply an attempt to implement the wishes of, and to show respect for, our aboriginal communities, the same sort of respect that was manifest in the Supreme Court decision in Gladue and has been codified in the Criminal Code. It is what the Chiefs of Ontario have asked for.

This amendment specifically adds changes to victim impact statements such that, in weighing the statement of court, a review board should consider a victim or offender's aboriginal circumstances. The rationale for that is the same rationale that I offered when I put forth the other amendments that were recommended by the chiefs of Ontario, which I'm sure you don't need to hear again.

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 22 agreed to)

**The Chair:** There's a new clause being proposed through amendment G-6 which I, as chair, am ruling inadmissible as it amends a section of the parent act which is actually not in this act. It refers to a section of the Criminal Code which isn't referred to directly in this legislation, so I'm ruling it out of order.

**Mr. Robert Goguen:** I'm shattered.

**The Chair:** He's shattered.

We're skipping proposed clause 22.1, thank you very much.

(On clause 23)

**The Chair:** We have Liberal amendment LIB-13, and if it is moved, amendment PV-16 cannot be moved.

Mr. Casey.

**Mr. Sean Casey:** Mr. Chair, once again I'm seeking to incorporate into this piece of legislation the good advice that we received from the Canadian Bar Association.

This amendment would delete the first clause of the change in principles of sentencing because it's redundant. This is the deletion of the proposed changes to the sentencing principles that would denounce unlawful conduct and the harm done to victims or the community that is caused by unlawful conduct. The sentencing principles already list harms done to victims and to the community. This change would be redundant.

Furthermore, additional changes mentioning responsibility and victims are similarly redundant, since harms are already included. This change would arguably throw off other key considerations, such as proportionality, rehabilitation, and reintegration.

This was the tenor of the testimony to us by the Canadian Bar Association that is encapsulated in recommendation number five of their brief.

● (1720)

**The Chair:** Thank you, sir.

Is there anything further to Liberal amendment LIB-13?

Mr. Goguen.

**Mr. Robert Goguen:** This motion is inconsistent with the intent of the bill, which is to increase the consideration of the victim's perspective at all points of the criminal justice system.

Clause 23 proposes to codify how sentencing courts currently interpret the fundamental purpose of a sentence, namely to protect society. It also seeks to expand the current list of sentencing objectives to include denunciation of the harm caused to victims or the community by unlawful conduct.

We will be voting against this amendment.

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Amendment PV-16 is removed. We go to amendment LIB-14, which will also affect amendment PV-17.

Mr. Casey.

**Mr. Sean Casey:** The comments that I just made with respect to amendment LIB-13 are equally applicable, and I don't intend to repeat them. The exact same representations apply.

**The Chair:** Okay.

(Amendment negatived [See *Minutes of Proceedings*] )

**The Chair:** Amendment PV-17 is removed.

(Clause 23 agreed to)

(Clause 24 agreed to)

(On clause 25)

**The Chair:** We have an amendment proposed, amendment G-7. If it passes, the result applies to amendment G-8 as well.

The floor is yours on amendment G-7, Mr. Goguen.

**Mr. Robert Goguen:** This motion proposes to amend the wording proposed for subsection 722(4) of the Criminal Code, which requires that a victim's impact statement be prepared in accordance with the procedures established by a program designated for that purpose by the province or territory.

The right to present a victim's impact statement is enshrined in the Canadian victims bill of rights and is an important avenue for victim participation in the Canadian justice system. Victims have benefited greatly from the assistance provided by provincially and territorially designated victim impact statement programs when preparing their statements, and you know that we like to cooperate with the provinces and territories, of course.

Victims should continue to benefit from the assistance provided by designated victim impact statement programs when using the newly created Form 34.2. This amendment would ensure that victims receive the assistance they require in completing the victim impact statement form for presentation.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 25 as amended agreed to)

(On clause 26)

**The Chair:** We're now on clause 26 and amendment LIB-15.

The floor is yours, Mr. Casey.

**Mr. Sean Casey:** This is yet another attempt to incorporate the advice from the Canadian Bar Association. This time it is their recommendation number seven. They're not having a very good day here today.

This amendment proposes to allow judicial discretion, something we're very fond of over on this side, in allowing the introduction of a community impact statement, since the bill provides no definition of a community or criteria for its representatives' selection. The bill currently permits one individual to file a community impact statement without defining "community" or explaining how an individual should be determined. Accordingly, a judge should have discretion, because we trust judges, to allow or disallow a community impact statement.

This is simply to restore judicial discretion along the lines of the advice we received from the Canadian Bar Association.

**The Chair:** Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I have a question for the department officials.

I may have misread the proposed subsection 722.2(1), which states that "the court shall consider any statement...". This does not mean that the court is required to consider it from A to Z. It means that it can give consideration to the statement without giving it much weight. The court can still exercise its discretion. At least that is how I see it.

It is not a bad thing that the court considers the statement. I would not want anyone to think that I am not in favour of the court considering the statement. However, I want the court to be able to exercise its discretion. In my view, subsection 722.2(1) still gives this discretionary power to the court.

Am I missing something?

● (1725)

**The Chair:** The floor is yours, Ms. Arnott.

**Ms. Pamela Arnott:** No. Once again, you are absolutely right, Ms. Boivin. The court is required to hear and consider the statement in its decision. However, it has the discretion to give it less or more weight.

**Ms. Françoise Boivin:** So that goes back to saying "may consider".

What is the difference between "shall consider" and "may consider"? Is the first version not more respectful to victims? My only concern with the second version is that it takes a little away from the rights of the victims, although section 722.2, which I just read, maintains the discretionary power.

**Ms. Pamela Arnott:** The distinction between the two wordings is that the court must consider the statement in its decision-making. That is the obligation that the provision imposes.

[*English*]

**The Chair:** Is there anything further on amendment LIB-15?

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** Now we have amendment G-8.

Mr. Goguen, the floor is yours.

**Mr. Robert Goguen:** Mr. Chair, this motion proposes to amend the wording of proposed subsection 722.2(2) of the Criminal Code to require that community impact statements be prepared in accordance with a procedure established by a program designated for that purpose by the Lieutenant Governor in Council of a province or territory, similar to the case with the previous amendment.

Victim impact statements and community impact statements are an important avenue for participation in the Canadian criminal justice system, and victims have greatly benefited from the assistance provided by the provincially and territorially designated victim impact statement programs when they are preparing their statements. A community representative should be able to benefit from the assistance provided by the designated victim impact statement programs when preparing a community impact statement on a new community impact statement form, which will be Form 34.3. This amendment would ensure the community representatives will receive the assistance they require in completing the community impact statement form for presentation.

**The Chair:** This technically is passed already because amendment G-7 passed. We'll be voting on clause 26 as amended.

(Clause 26 as amended agreed to [See *Minutes of Proceedings*])

(Clauses 27 and 28 agreed to)

(On clause 29)

**The Chair:** We have amendment PV-18.

Madam May, the floor is yours.

**Ms. Elizabeth May:** Thank you very much.

This takes us to clause 29 at page 25. This proposed amendment flows from the testimony of Catherine Latimer from the John Howard Society. I'll just quote from her:

> While normally judges are required to assure themselves that the offender is capable of paying a fine before imposing it, the Victims Bill of Rights specifically provides that the offender's financial means or ability to pay does not prevent the court from ordering restitution. Far too many accused are poor, marginalized, battling mental health and addictions and without the lawful means to provide financial compensation to others.

This is why my amendment attempts to take that consideration into account by suggesting that a restitution order is to be issued "unless the court is of the opinion that such an order would impede the successful reintegration of the offender into society".

The effort is still there to make sure that the court considers the restitution order, but we give the judge the discretion and reminder that in achieving balance in the rights of the victim, we also want to see people reintegrated into society and become productive, tax-paying, responsible citizens wherever we can. That is why a restitution order might not be appropriate in every circumstance.

Thank you.

● (1730)

**The Chair:** Thank you.

Monsieur Goguen.

**Mr. Robert Goguen:** Mr. Chair, rehabilitation of the offender is already included in the principles to be applied by the court in determining the sentence—and that's in section 718 of the Criminal Code—so this motion is inconsistent with the objective of the bill, and that's to create a right to have restitution orders considered by the court in all cases.

**The Chair:** Thank you very much.

Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I find the proposed amendment to be restrictive. It says that the court "shall consider" making a restitution. The wording could not be any weaker. The court's decision could even be based on factors other than the offender's reintegration into society. In fact, many other factors could be considered by the court. At least that is how I see it. The court will decide. There is no obligation. Since the provision says "shall consider", that is what the court will do. But it could also consider a series of other factors besides social reintegration.

Ms. May, I am worried that your amendment will put all the focus on a single consideration. That could give rise to problems I am sure you would not want to happen.

[*English*]

**The Chair:** Okay. Is there anything further on PV-18?

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 29 agreed to)

(On clause 30)

**The Chair:** We have amendment LIB-16. Since it's likely going to be moved, PV-19 will no longer be available.

The floor is yours, Mr. Casey.

**Mr. Sean Casey:** Thank you, Mr. Chair, for allowing me to make another plea that we should trust our judges.

This clause seeks to preserve judicial discretion in the timing of restitution payments, as was recommended to us by what I thought was a highly respected organization, the Canadian Bar Association.

The bill requires a court to specify the dates that restitution payments shall be made and whether that's in one payment or in installments. However, a victim cannot enforce a civil order as long as the offender is under the restitution order. This could have the effect of potentially delaying compensation. The specificity of this provision could also offer false hope, and there is absolutely no good reason to limit the discretion of our judges in this respect.

This amendment would simply preserve judicial discretion and adopt the advice we received from the Canadian Bar Association in their testimony before us.

**The Chair:** Mr. Goguen.

**Mr. Robert Goguen:** I'm just wondering how this amendment, by striking this out, would help victims get their restitution orders. Isn't it enough to have the judges have a schedule of payments? Doesn't that give them the needed flexibility versus striking it out completely?

**Mr. Sean Casey:** The language that's contained is mandatory.

**Mr. Robert Goguen:** Sure. If it's mandatory—

**The Chair:** We're not on debate. Make your point, and then if Mr. Casey wants to get back on the—

**Mr. Robert Goguen:** The point is that the flexibility is incorporated. Although it's mandatory to make the order, the flexibility is in the payment schedule to accommodate both parties.

**The Chair:** Mr. Casey, do you want to go back on the speakers list to comment on that?

Okay, the floor is yours, and Madam Boivin will be next.

**Mr. Sean Casey:** If the court is able to retain some discretion over the timing of the payments, that could very well put the victim in a position whereby they would be able to enforce a civil order, because that right is suspended as long as there is a restitution order. The mandatory language indicates that a restitution order would have to be put in effect, and that could conceivably, in some circumstances, result in the victim's rights being delayed by the very presence of an order where the judge has no choice but to impose it.

● (1735)

**The Chair:** Madam Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I may have been having trouble understanding where my colleague saw that because I was reading the French version and not the English version, but now I think I understand. In English, it is a lot more like an obligation than it is in French. I did not see what the problem was in French because it says, “Lorsqu'il rend une ordonnance. . . .” In other words, the court will not necessarily make an order. The French goes on to say, “le tribunal enjoint au délinquant de payer la totalité de la somme indiquée dans l’ordonnance au plus tard à la date qu’il précise ou, s’il l’estime indiqué. . .”—so again, it is left entirely to the court's discretion—“de la payer en versements échelonnés, selon le calendrier qu’il précise”.

I really thought that the provision was giving the court full discretion and describing how the court would make an order if it deemed doing so appropriate. It is true, though, that it reads a bit differently in the English version, which says:

[*English*]

It says, “In making an order under section...”, here's what may....

[*Translation*]

I think it is perfectly fine in French. But the English wording may need to be revisited.

[*English*]

**The Chair:** Is there anything further on amendment LIB-16?

(Amendment negatived [See *Minutes of Proceedings*])

**The Chair:** We have amendment G-9, Monsieur Goguen, for clause 30, and then I'll have a comment.

**Mr. Robert Goguen:** This motion proposes to amend proposed subsection 739.4(2) of the Criminal Code to allow a public authority responsible for enforcing a restitution order to be designated by a provincial or territorial order in council or a minister's order. The amendment encourages, but does not require, the provinces and territories to undertake greater measures to increase the payment of restitution orders.

Allowing a public authority responsible for restitution order enforcement to be designated by the order in council will allow such biases to be designated more quickly and efficiently by provinces and territories. This amendment may avoid lengthy delays that may result from the proposed requirement for the creation of regulations. This will assist the provinces and territories with speedy implementation of the bill.

This amendment will also ensure that victims receive the assistance they require in enforcing a restitution order as quickly as possible. The creation of provincial or territorial enforcement programs may improve collection efforts for victims of crime.

**The Chair:** Is there anything else to amendment G-9?

**Ms. Françoise Boivin:** I have a quick question for the officials.

[*Translation*]

You're going to have to enlighten me. The word “regulation” is being replaced by the word “order”. I understand what was just read, but what is the idea behind it? What will change?

**Ms. Pamela Arnott:** The difference lies in the procedure that will be used. Rather than relying on a regulatory procedure, the provinces and territories will be able to use an order in council, which is much easier.

**Ms. Françoise Boivin:** In that case, would it not be a better idea to say “may, by regulation or by order”?

I am trying to understand the rationale. An order is a very specific type of government action, whereas a regulatory procedure takes a different form. If the idea is to give the provinces a certain degree of flexibility—and if I understand you correctly, that is indeed the objective—I have a subamendment whereby the provision would read “may, by regulation or by order”. That seems to be consistent with the objective of giving the provinces flexibility.

**Ms. Pamela Arnott:** I can tell the committee that, when the bill's implementation was being discussed with the provinces and territories, they were the ones who asked us to put that in, precisely because it would be faster and easier for them.

● (1740)

**Ms. Françoise Boivin:** Then there would be nothing wrong with saying “may, by regulation or by order”. It gives the provinces and territories what they want. My understanding is that that is what the government would like to do. One province may want to use a regulatory procedure and another may wish to proceed by order. As I see it, the wording I am suggesting would be even better and give the provinces even more flexibility. I see Ms. Arnott is agreeing with me.

Do you have any objections to that?

**Mr. Robert Goguen:** We are satisfied with the proposed amendment.

**Ms. Françoise Boivin:** Do you mean the subamendment whereby it would read “may, by regulation or by order”?

**Mr. Robert Goguen:** No, we want to keep what we had proposed.

[*English*]

**The Chair:** Amendment G-9 is on the table.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 30 as amended agreed to)

**Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP):** We're nine minutes over. I'm sorry, but we need to stop this.

**The Chair:** I'm just finishing—

**Mr. Philip Toone:** I'm glad you're finishing, but I have to go, so let's leave it for another time.

**The Chair:** I need a motion to adjourn, but here's what I want to let the committee know. That was number 50. We have 14 left, and two are going to be ruled...because the Liberals have moved, the PV ones won't.... We have 12 amendments left. If somebody moves adjournment, we'll adjourn, but what I'm saying is that if we're doing it next Tuesday, we should be able to finish it within an hour for 12 amendments, I would say.

**Mr. Philip Toone:** So let's adjourn.

**Ms. Françoise Boivin:** That's okay. Actually, we should be adjourned since it's 5:30.

Why do you need a motion to adjourn when we're supposed to be adjourned?

**The Chair:** That's not actually the rule. You do accept the motion to adjourn.

**Mr. Philip Toone:** Regardless, we move to adjourn.

**The Chair:** I always ask if we're adjourning.

I think we're moving to adjourn.

(Motion agreed to)

**The Chair:** That's carried.

The meeting is adjourned.