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Chair

Mr. Garry Breitkreuz

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• (1105)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I now bring to order the 35th meeting of the Standing Committee on Public Safety and National Security.

Today we are considering Bill C-34, An Act to amend the Criminal Code and other Acts.

We welcome to our committee the Honourable Peter Van Loan, the Minister of Public Safety, and Ms. Mary Campbell, director general of the corrections and criminal justice directorate.

Welcome. We appreciate you appearing before the committee today. You've been waiting patiently for more than 10 minutes already.

I'd remind the committee that this is a televised meeting. The usual practice is to allow the minister an opening statement of approximately 10 minutes or so, and then we will go to questions and comments.

Mr. Minister, anytime you are ready, we welcome your comments.

Hon. Peter Van Loan (Minister of Public Safety): Thank you very much, Mr. Chairman, for the invitation to appear before this committee to assist with your deliberations on Bill C-34.

I have with me today, as you heard from the chair, Mary Campbell, who is the director general of the corrections and criminal justice directorate at the public safety department.

[Translation]

The Bill before you today is important. It fulfils the commitment I believe all of us share to protect the safety and security of Canadians and in particular to protect the safety and security of Canada's most valuable asset — our youth.

[English]

This is the type of important work that all of us who undertake to become elected officials would like to see us working on. We want to make a difference in people's lives, to make sure that men, women, and children who we represent are safe and secure in their day-to-day lives. That's exactly what this kind of bill does.

[Translation]

The bill introduces much needed reform to strengthen the National Sex Offender Registry and the DNA Databank. It is based on extensive consultations with law enforcement officials, provincial and territorial officials and victims' rights organizations.

[English]

We do have, in dealing with this legislation, the opportunity to benefit from the track record of the existing registry, of course, and the track records of registries in various provinces.

In particular, I look at my province of Ontario, where David Turnbull, the Solicitor General, brought in a sex offender registry well before the federal one, and it in fact includes some of the changes we are proposing here, including mandatory inclusion. That has worked well in practice, so that gives us an opportunity to have seen some of these provisions in practice. That helps us out in our considerations even though, of course, that registry predates the federal registry.

I know we can work together here in a spirit of cooperation and common purpose to make sure that the registry is truly an effective tool for the police in investigating and preventing serious sexual crimes. That's what the amendments in front of us seek to do. As honourable members of the committee are aware, the sex offender identification registry act proposes several fundamental reforms to the present legislation.

These include, firstly, the automatic inclusion in the registry of all individuals found guilty of sex offences. Right now, as you know, it's necessary for a judge to order, on application by the crown, the inclusion of someone into the registry.

There may be debates about the range of numbers of those who are not included, but what is indisputable is that a significant number of people are not included. There are different reasons for that. Sometimes it's the result of a plea bargain. Often, we're told, it's simply a question of oversight. Busy crowns who are working through their stacks of files on a particular day omit, or forget, or don't think about the notion of actually asking for inclusion when they get the order from the judge.

That is something that would be addressed. As I said, it would be as it is in the Ontario legislation, where inclusion is automatic with conviction, so that problem will be solved with this legislation.

Another element is that mandatory DNA sampling will occur for convicted sex offenders who receive an automatic order to register on the national sex offender registry.

Another area is one that police and victims groups have asked for, and that is to permit the proactive use of the registry by the police to prevent, not just investigate, sexual offences.

Some of you know that there is a substantial element in the community out there that lobbies me, and perhaps many of you, on the notion that the sex offender registry should also include public access, not just police access. I have determined and the government has determined that this is perhaps not wise.

We believe the current protections, which leave the decision on the public release of information up to local police in those circumstances, are the appropriate approach. So we are not proposing that change, although some have asked for it.

As for the registration of offenders returning to Canada under the International Transfer of Offenders Act, we are now going to have it result in automatic registration if they are convicted abroad of sex offences and are returning to Canada at the end of their sentence or to complete their sentence in Canada. In either context, if they are returning, we're going to capture them.

The problem is, of course, that right now this is not the case. As we know with the changes in the world, some countries have a higher incidence of child sex offences. We're seeing child sex industries abroad. We're seeing increased tourism for that purpose. Some think they can escape the consequences of committing those kinds of offences abroad. We want to make sure that those consequences aren't escaped here and that the community is protected from people who represent that kind of risk.

In terms of the transfer, the legislation proposes that their inclusion would be automatic. It can be automatic because a decision on the transfer of an offender is one that is made by the Minister of Public Safety. That decision is obviously one that has a record, so there can be effective automatic inclusion.

The more challenging scenario is, of course, that of someone who is never transferred and never seeks a transfer, someone who completes their sentence in another country and who has a conviction that we may not even know about. Of course, the answer in this legislation is to create a requirement that they register and an offence for failure to register on their return to Canada. Obviously this will not be 100% foolproof, but it certainly creates a law that must be complied with, just like any other law, and it creates an opportunity to prosecute those individuals who don't comply.

•(1110)

Internationally, we have very good information-sharing with many of our partners in law enforcement, like Interpol and others. There is a vast degree of information-sharing that will help police to enforce this law if it comes into force. Certainly, I know that law enforcement is very supportive of this amendment.

An additional change that's being proposed is in the same vein but reciprocal: to require police notification to foreign or other Canadian police jurisdictions when high-risk registered sex offenders are travelling to another area. This speaks to our concern about sex tourism. Someone who's convicted here may decide to travel to another location to engage in the same unacceptable behaviour. This will create an obligation and an opportunity to protect young people abroad. We should be concerned not just with the consequences here in Canada, but also with the welfare of young people throughout the world.

Amendments to the National Defence Act are also included to ensure that the reforms apply to the military justice system, to those who are convicted of sex offences at court martial.

I believe the bill before us sends a strong message to all Canadians that their voices are being heard. Canadians want individuals who are found guilty of crimes to serve a sentence that reflects the severity of those crimes. They want to know that individuals who are guilty of serious sex crimes are properly identified in the community, because they realize that knowledge affords protection. It's important for the police to have all the tools they need to assist in assuring the community is protected. They know it's not enough to investigate crimes after they happen—they want to be able to assure community protection.

This will give Canadians a greater sense of safety in their homes, their streets, and their communities. They want to know that somebody is making an effort to keep their children safe, and they're looking to us to take action on this now. That's why I'm glad we're bringing this bill forward.

Since 2006 our government has taken action in a number of areas to tackle crime and make communities safer for everyone. We've cracked down on gangs and organized crime. We've come up with tough new sentencing rules, mandatory prison sentences for gun crimes, and the like. We've given police more tools and resources to do their jobs, and we're continuing to do that. We've introduced measures to tackle drug dealers and help our youth stay out of trouble with the law. We've increased funding for crime prevention. Prevention, crime reduction, increased enforcement, serious consequences—all these are essential elements of a comprehensive approach to making our communities safer and addressing crime.

We've taken steps to ensure that young people stay safe online. I know that members of this committee support these efforts to protect the safety and security of Canadians, and I'm confident that the provisions of Bill C-34 also have your support.

I look forward to working with members of this committee to see that this bill gets the speedy passage I believe it warrants.

I'm happy to take any questions—and let Mary answer all the hard ones.

•(1115)

The Chair: Thank you very much, sir. We appreciate your comments.

According to the usual practice of this committee, we will begin with the official opposition, the Liberal Party.

Mr. Kania.

Mr. Andrew Kania (Brampton West, Lib.): Thank you, Mr. Chair.

Thank you, Minister, for being here.

Briefly, so that you understand my frame of reference, I support the bill. I've already spoken in the House to that effect. Specifically, I have stated that I don't think it's strong enough. So that's my frame of reference.

The first question is this: were you aware that we had already held three days of hearings on April 21 and 23 and May 12 of this year?

Hon. Peter Van Loan: Yes, I was well aware of that. In the preparation of this legislation, the government had the benefit of the testimony that was before the committee in those hearings. I think what you want to know is why the legislation was brought forward before you completed your study. The reason is plain: it was long overdue; the bill was required. We had the benefit of the evidence that was before you, and that's why we thought it was appropriate to proceed without further delay.

Mr. Andrew Kania: We had not yet prepared a report; in fact, that's something we're still working on.

So you agree with me that you actually did not have the benefit of the opinion of this committee, with its recommendations, in terms of what should be included in the bill, before you introduced your bill. Correct?

Hon. Peter Van Loan: Well, not having prepared your report, obviously we don't have the benefit of your report. I also don't think we should wait. I think it would have been a bad thing if we had delayed another year to get these changes made.

I will point out that the review that was required of this committee under the legislation was required a number of years ago. You were written to by my predecessor on November 13, 2007—that's almost two years ago—asking you to get on with the study so that it could be dealt with, so that we could bring forward changes. I know the parliamentary secretary, David MacKenzie, I believe a week later, spoke at this committee about the urgency of getting on with doing that study.

I make no apologies for not having waited for that process to bring into place amendments that are very, very important. You have an opportunity through this process, through the bill itself, through the clause-by-clause process, to give real life to real changes in a far more weighty way than simply doing a report and study.

We did have the benefit of it—

• (1120)

Mr. Andrew Kania: Could I interrupt there? I only have seven minutes.

Hon. Peter Van Loan: —but I do think the notion that we have to leave people vulnerable for a longer period of time so that parliamentarians can take an extra year to prepare a report, while they're busy chasing down issues....

I can't remember, but there were all kinds of trivial issues that were before this committee. They had to do with, I don't know, Mulroney-Schreiber or other stuff, I can't remember—

Mr. Andrew Kania: Can I ask more questions, please?

Hon. Peter Van Loan: Well, I'm explaining to you. You asked—

Mr. Andrew Kania: I think I have the answer.

Hon. Peter Van Loan: I'm explaining to you why I felt it was important to move forward with legislation without further delay. That's why it's important.

I know the committee had been taken hold of by all kinds of other political issues that were partisanly motivated in a pre-election context. We have an obligation. I have an obligation as public safety minister to make sure that Canadians are kept safe—

Mr. Andrew Kania: Minister, I would like to ask some more questions, please.

Hon. Peter Van Loan: —and that's why I brought forward the legislation at the time I did.

Mr. Andrew Kania: Okay. You had your 10 minutes. I really want to ask some questions.

I understand what you're saying. You think it should have been done before you had the benefit of the recommendations of the committee, which I don't agree with. The reason I don't agree with it is because there are glaring errors in the bill, which would have been addressed in advance if you had waited for the report of the committee.

So that's what I want to go through now, the errors that this committee...and when you eventually read the report, you'll understand.

An example is licence plates. You say you had the benefit of all the evidence of these various groups. But all the evidence indicated that licence plates and the description of the vehicles that these offenders have should be included in the registry. It's not in your bill. You indicated that you had the benefit of all of this evidence. Why, even though this was one of the strongest points that was made by these various groups, did you omit that clear improvement that should have been made?

Hon. Peter Van Loan: On the issue of vehicle licence plate inclusion in the registry of vehicle descriptions, there are two legitimate perspectives. I think they're both legitimate. One is what you referred to, which addresses inclusion that the police say would be an aid to them. The other is the concern that by doing it through vehicle registration, you're casting the net potentially too wide.

Vehicle registration is not limited, and vehicle driving, as you know, is not limited, to the individual who's registered. Ownership is not limited to that. We are asking through these amendments to allow a more proactive use of the registry to prevent crimes from happening, meaning people may be stopped, asked what they're doing and the like, as part of police efforts to keep a community safe. You are extending that to potentially capture, in effect, people who are not the owners of vehicles.

Additionally, you are flagging for offenders that they have to register their vehicle and their vehicle description on a regular basis. So if somebody is a calculating sex offender, they may choose to ensure that their vehicle is, on paper, owned and registered by their mother or another family member, and thereby avoid the capture under the registration. Police already have access to drivers through licence information and to the sex offender registry in general. So that's the argument on the one side.

The legitimate argument on the other side, that you hear from law enforcement and others, is that the availability of that information consolidated in one place can be very helpful to them, that it may be able to, at the same time, in certain circumstances, allow them to deal with a situation quickly, while it develops.

I believe both of those arguments have merit. The decision I took in preparing the bill, having heard that evidence, being aware of it, being aware of those arguments on all sides, was not to include it. I understand that others on the committee may have a different view. I know that certainly the Conservative members of the committee have spoken to me strongly about their desire to have an amendment that would include vehicle information like that.

I'm quite fine with that. One of the roles of a parliamentary committee is to do that. This opportunity to deal with the bill clause-by-clause creates that opportunity, as I told those members, to bring forward an amendment like that if they believe it is important. The government is quite happy to have an amendment like that, if that is the will of the members of the committee. As I said, I know the government members, Ms. Glover, Mr. MacKenzie, Mr. Norlock, have all been very proactive on advancing those issues with me, and have advanced that process.

That's available to you. That's how a parliamentary committee works. I don't think we should have waited another year to have that go into law, because you still haven't finished your report.

• (1125)

The Chair: Briefly, please.

Mr. Andrew Kania: I'd like to know what evidence—since you say you had the benefit of the evidence—you relied upon, what testimony from anybody saying that vehicle licence plates should not be included. Because I recall everybody strongly recommending that this take place. I can't believe you would have formed the opinion, since you said you did and you decided not to include it, that you would have done that in contravention of all of the evidence that was uniform in saying it should be included.

Hon. Peter Van Loan: As you know, and I know you're a lawyer and very knowledgeable about the law, you do not have to be the owner of a vehicle to be allowed to drive that vehicle. I think that's self-evident. I think that's something that a decision-maker would take into account.

The Chair: Your time is up. We'll come back.

For the Bloc Québécois, Ms. Mourani, please.

[Translation]

Mrs. Maria Mourani (Ahuntsic, BQ): Thank you, Mr. Chairman.

Good morning, Minister. Good morning, Ms. Campbell. Thank you for being here with us today.

We are in agreement with the principle underlying this bill. We are obviously in favour of the protection of children. However, I would like you to clarify a few points for me.

Were your bill to become law, could a young man aged 18 having had sexual contact with a 15 and a half year-old-girl see his name added to this registry, if a parent lodged a complaint and the young man were found guilty? Consent not being a ground of defence, could this young man's name appear for several years in the Sex Offender Registry?

[English]

Hon. Peter Van Loan: It of course would depend on the nature of the act in which the individual had engaged. If it was an act prohibited under the Criminal Code, yes, they would be included. If it was consensual sex, they would not. As you know, a consenting sexual act between someone aged 15 and someone aged 18 is not a prohibited act for which you can be convicted. Sixteen is the age of consent under the law now, but there is also a close-in-age exemption. So if there was a three-year difference between the individuals, there is an exemption for someone who is under that age.

[Translation]

Mrs. Maria Mourani: Yes, but if the parent were to lodge a complaint...

[English]

Hon. Peter Van Loan: So they would not be captured for it, they could not be convicted of a sexual offence in most circumstances, and as a result they could not be included in the registry.

[Translation]

Mrs. Maria Mourani: I believe you did not understand my question. I am saying that following the lodging of a complaint by a parent, the young man is found guilty of sexual contact. In your view, given that consent is not a ground for defence, should the name of this young 18-year-old man found guilty of having sexual contact with a 15-year-old girl be filed with the Sexual Offender Registry for two, five or ten years, according to the sentence handed down?

[English]

Hon. Peter Van Loan: To be convicted it would not have to be consensual sex in your scenario, because under the statute, even with the age of consent being raised to 16, the close-in-age exemption protects consensual sex if there is only a three-year age gap between them. For him to be convicted of a sexual offence it would have to be genuinely non-consensual sex. It would have to be forcible. It would have to be using date rape drugs or something like that. In those circumstances, yes, they would be included.

[Translation]

Mrs. Maria Mourani: I understand your point of view, but your bill does not allow the judge to deal with exceptional cases. Everything is automatic, neither the judge nor counsel can say that, despite there having been sexual contact, there is no reason to list the person's name in the Sex Offender Registry. We are not talking about the same thing. You are talking about consensual sexual relations between an adolescent girl and an 18-year-old boy, whereas I am talking about conviction of sexual contact without any possibility for the judge to give his opinion as to the listing of the person's name in the Sex Offender Registry.

• (1130)

[English]

Hon. Peter Van Loan: You are correct; if it was non-consenting sex—a rape, in your scenario—or if it was sexual intercourse using a date rape drug, for example, yes, there is no judge discretion. If they are convicted of that offence, they are included in the registry.

[Translation]

Mrs. Maria Mourani: I believe we are talking about different things, but it does not matter.

I will move on to another question. DNA registration is automatically carried out as soon as a person is convicted of a sexual crime. I believe this is a very good idea, that will facilitate investigations.

However, I am wondering if this will be possible. Witnesses have told us that, at present, it is impossible for them to supply all of the results for the Registry as it now exists, because they do not have the necessary resources. Several lab representatives appeared before us. What are you going to do, concretely? What human and financial resources are you going to invest in order for these people to be able to do their work? If they are not even able to carry out the analyses on time, as is now the case, do you think it is realistic to believe that they will be able to do it if there is a much greater number of DNA samples? What is your opinion? Do you have monies to provide?

[English]

Money talks.

Hon. Peter Van Loan: There are a couple of different questions there.

I don't believe there is a capacity issue for taking the DNA samples and including them in the data bank. I don't think that is a challenge. I don't think anybody would suggest that it is. There is, of course, a different question about the demands or the requests by police for DNA sampling of evidence they have in the field, and we do spend a fair bit of time on that.

As you know, in our budgets we have significantly increased the funding available for DNA sampling and analysis. The difficulty is, of course, that it is a judgment call in terms of a cutoff point, where you draw the line, and what is the appropriate level of support to provide. If you actually get into a police investigation, there could be an almost limitless amount of DNA sampling that you could look for. You could sample the clothing, swabs off a plastic bag you found the clothing in, in a particular crime, or a car door. You could just keep sending pieces of DNA to be analyzed in a kind of fishing

expedition to hope you find a match with somebody somewhere to solve an unsolved crime. On a particular case, you could end up sampling literally hundreds of pieces of evidence—

[Translation]

Mrs. Maria Mourani: I understand all of that. How much money are you going to provide? I do not have much time.

[English]

Hon. Peter Van Loan: If I could continue—

The Chair: Briefly wrap up, Minister.

Hon. Peter Van Loan: So you could end up sampling hundred of pieces without getting a conclusive find.

I have found in my discussions with the police that they're pretty happy with the cooperation they're getting from the national lab. When they have important pieces of evidence, they're getting results and they're getting them quickly, but there is a resource issue there. We've provided significant funding to try to assist with that.

The Chair: Thank you very much.

Mr. Davies—

[Translation]

Mrs. Maria Mourani: In the end, you have not answered my question. Thank you, Mr. Chairman, but I am still waiting for the amounts. I would like to know how much money you are going to devote to this area.

[English]

The Chair: We'll have another round. You'll have to ask that on the next round.

Mr. Davies, go ahead.

Mr. Don Davies (Vancouver Kingsway, NDP): Thank you, Mr. Minister, for being here.

The New Democrats also support this registry. We think it's important to protect our communities. We think helping police investigate crimes of a sexual nature is a profoundly important thing, and having a registry of known sex offenders is helpful in this regard. But I want to pick up some questions about proper policy-making.

Minister, this act came into force on December 15, 2004. Section 21.1 of the act says, The administration of this Act shall, two years after the coming into force of this Act, be reviewed by the parliamentary committee that may be designated or established by Parliament for that purpose.

It goes on to say that the committee “shall” issue a report within six months.

By my math, that means that by December 15, 2006, the two years were up. Your party was in government from 2006. Can you tell us why you didn't begin undertaking this review until April 2009?

• (1135)

Hon. Peter Van Loan: Well, it was a parliamentary review, not a ministerial review. That's the first point I'd like to make.

Second, as I indicated, my predecessor actually wrote to this committee asking that the review take place. That letter was dated November 13, 2007. I have right here what he said:

We are writing to request that the Standing Committee on Public Safety and National Security undertake a review of two important pieces of legislation: the Sex Offender Information Registration Act (SOIRA), and the DNA Identification Act.

So at this point it's already overdue. The minister is writing to remind the committee of its obligations, asking that the study take place.

As I said, on November 20, as a follow-up, Dave MacKenzie said at this committee,

Mr. Chair, I would just say to the member that we would like to have that as one of the couple of things we'd like to put forward to the committee. One is the DNA databank and the other is the sex offender information registry.

So you've got that right there as efforts by the government, through the parliamentary secretary, through the minister, to get this committee to do its work.

As for the management of affairs by the committee, as you know, the priorities are set by all members of the committee. The government is only a minority of those members. I know the government members were pushing for that study to happen sooner.

So I suggest you ask your predecessor on the committee and the other opposition members why other matters were studied.

Mr. Don Davies: Minister, did you take any steps personally to get this study undertaken before April 2009?

Hon. Peter Van Loan: Did I personally think it was under way when I...? I believe, when I became minister, that process was under way, but not—

Mr. Don Davies: My question is did you take any steps to get this study under way?

Hon. Peter Van Loan: I believe you guys were already doing it by the time I became minister.

Mr. Don Davies: You believe that. I take that answer as no.

Now—

Hon. Peter Van Loan: Certainly we made it a priority. I discussed it when....

Perhaps I can paraphrase that. When we became government and we set out the priorities, I sat down with the parliamentary secretary and said, "Here are the things we want advanced for study." This was at the top of the list. I believe it was proposed. I wasn't at your meetings. They're in camera, I understand, when you set your agenda initially, so you guys would know better than I how well that was advanced. But I did see that the study was taking place finally.

Mr. Don Davies: I think I have your answer.

The act says that the committee has to "submit a report to Parliament thereon including a statement of any changes to this Act or its administration that the committee would recommend". I want to pick up on this. One of the things the committee did recommend was this idea of vehicle information. I want to come back to this. Every witness who appeared before this committee including police officers, every member of this committee including members of your own party, agreed that the registry needs to have not just vehicle

registration but also the make, the model, the year, the colour, and the licence plate.

This is obvious. If a call comes in, Minister, that there is a car prowling around a school, the police told us it's helpful for them to be able to check the registry and find out if that is a vehicle that has in any way been associated with a sex offender.

Everybody was unanimous on this, and yet you came back with a bill that specifically looked at that and rejected that. I'm not clear on exactly why that is the case when everybody who has anything to do with this issue in this country thinks that's a logical idea. But your bill doesn't have that.

Hon. Peter Van Loan: Well, let's make it clear: the government has not rejected that notion. I think I've indicated to this committee that we're quite open to an amendment that has that.

We took the decision not to include it in the bill, but we also don't consider that the parliamentary process is meaningless. We think it's meaningful. We think you have something to offer. As I've indicated, the government would accept amendments such as that coming from this committee.

That's how Parliament is supposed to work. I thought you'd be happy with that.

Mr. Don Davies: Well, I am happy with that, Mr. Minister, and happy to hear you say that. But Mrs. Mary Donaghy appeared before this committee and I asked her that very question. She said the following:

Let me say, in terms of the discussions that went into the work preparing the bill, that of course the question of vehicle registration was one that was considered. There were a number of options, obviously, that the government looked at in coming to the final form of the bill. The decision was taken that at this time it would not be appropriate to proceed with amendments to the legislation that would include or allow for vehicle registration.

And she later on said this:

There was a decision taken by the government at this time not to include vehicle registration information in the registry.

Would you not agree with me, sir, that it was a bad decision on the government's part?

Hon. Peter Van Loan: As I say, I think there are two very legitimate perspectives here. There are very good arguments on both of those sides, and in putting forward our bill, we chose not to take that step. We believe that perspective in taking that step is also very legitimate. If having the benefit of the knowledge you have and the expertise you have as a committee—and I know, as I said, that Conservative members of the committee have said very much that they wish to bring forward an amendment to that effect—that's acceptable to the government.

• (1140)

Mr. Don Davies: I'm happy to hear that.

I might also point out that further testimony said that in the case of a national sex offender registry where they're missing vehicle data, that was a problem because they're "not allowed to record that", and also, "Oftentimes in a case of sexual assault, that's basically all you have to go on". That was the testimony of Inspector Pierre Nezan.

The point I would make, Mr. Minister, is that it may have been helpful for you to have waited until this committee gave you the benefit of the report after it did a lot of work listening to witnesses. I think it's a big deficiency for you to proceed without waiting for that.

I want to move to another question. It's on the constitutionality of automatic registration. Mr. Douglas Hoover, who appeared before this committee, said that from the Dyck case in Ontario there is an issue as to whether the registry that was automatic is constitutional. He said that the matter has still not been settled—

The Chair: You'll have to wrap it up, Mr. Davies, very quickly.

Mr. Don Davies: Thank you, Mr. Chairman.

He said that the matter has still not been settled by the Supreme Court of Canada, so if we do go automatic it will be an issue.

Do you have any comment on the constitutionality? That might strike down the entire registry if it's deemed unconstitutional in your haste to go automatic.

Hon. Peter Van Loan: As I have indicated, we've had examples where you've had automatic inclusion. In the case of the Ontario registry, that's now been in operation for almost a decade, really, and it has not been struck down in the Ontario situation.

I'm optimistic that automatic inclusion will be upheld. It's easily and clearly the case.... I would almost make an analogy to a criminal record. Criminal records exist and there's nothing unconstitutional about police having access to criminal records, because we are not putting it in the public realm. That's a different matter.

These are registries that are available to the police for their use. I would say that I am optimistic that it would withstand a constitutional challenge.

The Chair: Thank you very much.

Mr. McColeman, please.

Mr. Phil McColeman (Brant, CPC): Thank you, Mr. Chair.

If there is any time left over, I'd like it to go to Mr. MacKenzie.

Thank you, Minister, for being here, and thanks to you and Ms. Campbell for taking time out of your busy schedules.

I had the occasion of serving on a local police services board as a civilian. Prior to that, like many in the public, I think, I didn't know about the kind of culture there is out there or about the effect it has on the victims of these heinous crimes and on their families.

I reflect back on two of our witnesses that appeared before the committee, the parents of Christopher, who were ultimately advocates and courageous people who put themselves forward. I believe that Christopher's Law was in large part due to their testimony and their courageous battle to defend victims.

So my question is how does this protect the victims of sex-based crimes?

Hon. Peter Van Loan: The hope and theory of a sex offender registry is that it does a number of things. It allows police to be aware of where individuals who pose a potential risk of repeat offending may be. As you know, perhaps the best predictor of whether you will commit an offence in the future is whether you've committed an offence in the past, and in a whole range of crimes, unfortunately.

We hope that our rehabilitation and other interventions reduce that risk and that our community integration is effective, but you cannot always be sure of that. This provides another measure for police awareness when someone represents a risk.

In our most dangerous cases when people have served time, under our system they get released into the community eventually, even if they are considered at a high risk of reoffending. There are people like that. This provides an opportunity for the police to monitor them and to be aware of their presence. In exceptional cases—it does happen occasionally and only in exceptional cases—there is an opportunity to provide public notice to the community itself so the community can be aware of the risks that exist.

That is the objective. Where were there gaps before? Well, if someone managed to avoid registration through a plea bargain or oversight, when they were eventually released into the community they were not subject to that kind of oversight. This bill seeks to address that. Those who have deliberately or just by happenstance committed their offences outside of this country would potentially at present escape that kind of oversight. This seeks to solve that kind of problem.

This bill is really aimed at making the device that we put in place to achieve that purpose more effective at filling in the gaps that exist.

● (1145)

Mr. Phil McColeman: Thank you.

I noted in your opening remarks that you commented that we heard from many witnesses that sex offenders are not automatically included in the database. For my second question, could you elaborate on the mandatory inclusion provisions within the amendments?

Hon. Peter Van Loan: I think you already heard my comments to some extent. I think it is something that makes sense. Without it, what is the rationale for non-inclusion? As we know, courts are busy, they're trying to get convictions. There's significant advantage to having a guilty plea over a lengthy trial, and this became an easy marker for some to trade.

I'm not going to say that practice was practised by all, but there were certainly some crowns who did that, and of course the simple oversights that occurred. There's not a rational basis there.

A rational basis would be if everybody were required to apply and then the judges would say whether a case is exceptional or not. It wasn't even that. Here we didn't even have that. The automatic inclusion overcomes that gap, overcomes that problem, so that people won't be slipping through the cracks through advertence or inadvertence, or people following the easiest path at the courtroom door.

Mr. Phil McColeman: Thank you.

The Chair: Mr. MacKenzie.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair.

Thank you to the minister and the officials for being here today.

This is an important piece of legislation. I'd like to concur with the minister that on more than one occasion this side did ask that this study be conducted, because we were well aware of the review period that was in the original legislation, not only in this bill but also on the DNA data bank.

Some of us on this side have been here a little bit longer, but we also dealt with other issues that were mandated by time, including the security certificates and so on.

The committee, for whatever reason, made its own decisions not to do this in a timely fashion, and I certainly wouldn't quarrel with that, but it has obviously resulted in some finger-pointing, which is not necessarily accurate.

Having said that, we do have the bill. I think it's a good bill and I think the minister has been very clear that amendments to the bill would, perhaps, be expected and would be accepted, coming from the committee. So I think what all of us need to do going forward is to make sure we have a very good bill that goes to the House.

I'd like to follow up a little bit on Mr. McColeman's comment about the automatic inclusion. Some of us on this side have perhaps had more dealings...but not only this side; I think Mr. Kania has had some dealings with folks in these incidents, both the victims and the perpetrators of the crime. I think most of us would agree that the automatic inclusion is so important, and in a broad sense, that the criminals who are sex offenders don't start at the top. They start at the bottom and work their way up. Some folks think that these are less than serious crimes, but they are the precursors to the more serious crimes. So automatic inclusion as a tool in the toolbox of the investigators is extremely important.

I'm wondering, Minister, if you could expand on any of those issues with respect to the importance of the automatic inclusion of the offences that are listed.

• (1150)

The Chair: Okay, but as quickly as possible.

Hon. Peter Van Loan: I'll spend a little time very quickly on the constitutional question that was raised on automatic inclusion, because that's one that I think is of legitimate concern.

As I say, my analogy is to a criminal record, but you could, for example, look at the gun registry. I know some here are not fans of

the gun registry, but the gun registry has been upheld as valid under the criminal law competence of the federal government.

Well, you're dealing here with people who aren't criminals, who haven't committed any criminal act, and they're required to register themselves and property. That hasn't been tossed out. It's been upheld.

In a case like this, you're dealing with people who *are* criminals and have a criminal record. So the threshold, you'd think, would be a lot easier to cross here, so I'm not particularly concerned about the constitutionality when you put it in that context.

The Chair: Thank you very much.

Mr. Oliphant, please, on a five-minute round.

Mr. Robert Oliphant (Don Valley West, Lib.): Thank you, Mr. Chair.

Mr. Minister, you're the Minister of Public Safety and you said that some of the work our committee has undertaken, since this review that you felt should have been done, is trivial and of a partisan nature. I'm wondering which work our committee has dealt with in the last two and one-half years that you would consider trivial. Is it Bill C-3, to amend the Immigration and Refugee Protection Act? Is it our work on contraband tobacco, the witness protection program, the study of security issues concerning the Minister of Foreign Affairs, our taser study, agri-chemicals and agri-retail, arming of the CBSA officers? Is it Bill C-12, regarding emergency management? Is it Bill C-279, DNA identification? I could go on.

It has been significant work that this parliamentary committee has dealt with, none of which has been trivial, all of which may be partisan to some degree. But I would argue that it is unfair for you to assess this committee's work as either trivial or partisan.

Because I know you can run out the clock with that statement I want to ask you: were you aware that our committee was in the final process of finishing our report, and actually we changed our agenda, when you introduced this legislation on June 1 so you would not take advantage of our interest and expertise in this area?

It was not one year away, as you just suggested in your testimony.

Hon. Peter Van Loan: Firstly, on the issue of trivial studies, the somewhat weighty-sounding "Study of Security Issues Concerning the Former Minister of Foreign Affairs" was the Bernier matter. It was narrow, it was partisan, it was designed for electoral advantage. There was no legitimate public interest being pursued here. It was all pursued elsewhere.

That this was put ahead of dealing with the sex offender registry is something that any member who was involved in advancing that should be accountable to Canadians for. You had a legal obligation under the law to conduct a parliamentary review in the sex offender registry.

Mr. Robert Oliphant: And we did.

Hon. Peter Van Loan: You're saying it's all-important, and you're telling me, "Why did you come forward so fast? We had to do more important things than the sex offender registry and protecting young victims of sex crimes. We had to look into Maxime Bernier's private life."

Mr. Robert Oliphant: And the Iacobucci commission—

Hon. Peter Van Loan: That's what you were doing, and frankly, I don't think—

Mr. Robert Oliphant: —or the O'Connor commission, or the DNA registry, or the CBSA.

Hon. Peter Van Loan: I gave you the chance to finish your question.

The Chair: One at a time, please.

Hon. Peter Van Loan: I believe that is a classic example of what I was talking about. Canadians out there are looking at that and this is what they're saying: Parliament isn't protecting my interests, they're just playing games. These guys don't care about sex victims. They don't care about children. They don't care about that. They care about winning partisan gain at the next election. And then, after the fact, they don't even see that they did something wrong. Once things have faded into the distance and they have the benefit of a little perspective, they want to go on picking on people for partisan reasons instead of saying we should get on with protecting children and get on with the important business.

I find it even more shocking that you would say, too, we deliberately decided not to do our report because we weren't going to give you the benefit of our knowledge.

Mr. Robert Oliphant: That isn't what I said, Minister.

Hon. Peter Van Loan: You have a chance with this bill now to do something constructive to help Canadians. Embrace it. Celebrate it. Don't complain about it. If you have knowledge and expertise, make the amendments and put them forward, but stop whining that you're being asked to do some work.

Mr. Robert Oliphant: My next point is with respect to this. You indicate as though, by taking away judicial discretion, all sex offenders are now mandatorily placed on the list. You have actually not done that in this legislation. There are two separate lists of offences.

So everything you have said to the committee to this point indicates that all sex offenders will be placed on the sex offender registry. What was exactly your thinking, your study, and your evidence that excluded certain offenders and put some on? I don't actually think this bill is tough enough. Our committee was actually going to suggest stronger mandatory registration.

• (1155)

The Chair: Unfortunately, time is up.

Hon. Peter Van Loan: As you know, there are two lists of offences. There are those that are directly sexual offences. We know what those are. They're things like sexual interference, invitation to sexual touching, sexual exploitation. Those are the ones for automatic inclusion and they go on. It's quite a long list.

Then there's the list of offences where you can apply for inclusion, if you can establish to a court that there was an underlying sexual intent to the act. Those are things like kidnapping, criminal harassment, manslaughter. I don't think anybody believes that criminal harassment or manslaughter should result in automatic inclusion in the sex offender registry; that's not its purpose. But if there were a sexual content to that offence, then there will be an opportunity to apply. That is not automatic, because that is a judgment call. That requires judgment, and judges are there to provide their judgment.

That's why we have that list of secondary offences where you look at the question of whether or not there was an intent that is sufficient to result in inclusion in the registry.

The Chair: You are actually over by half a minute.

Thank you very much.

We'll move to the Conservative side with Mrs. Glover, for five minutes.

Mrs. Shelly Glover (Saint Boniface, CPC): Thank you, Mr. Chair.

Thank you, Ms. Campbell and Minister, for appearing today.

To preface my question, Minister Van Loan, I have been on this committee for a very short period of time, and I am so pleased that we are getting down to business. I have to say that several of the original meetings that I was present for dealt with travel schedules. I am just thrilled that we are talking about the safety and security of Canadians once again. That is, as you've stated very clearly, what this committee ought to be doing.

The Chair: Yes, Ms. Mourani, on a point of order.

[*Translation*]

Mrs. Maria Mourani: I find unacceptable what our colleague has just said. We are not discussing travel, we are discussing doing a study on Federal Corrections: Mental Health and Addiction.

[*English*]

The Chair: Okay.

I won't count that time against you. Go ahead, Mrs. Glover.

Mrs. Shelly Glover: Thank you.

In any event, I know that your time is short here. I know that you have a lot to share with the committee. I'm going to open this up to you, Minister Van Loan, to share with us whatever it is that you feel is important for us know, it being that we don't get to see you very often. I would welcome any comments you have for this committee.

Hon. Peter Van Loan: I will say this: I welcome the fact that there appears to be broad consensus in support of the notion of expanding the sex offender registry. I would hope the result of that consensus is that it will move out of this committee quickly and that you'll work with colleagues to ensure rapid passage through report stage and third reading, and for those of you who have colleagues in the Senate, that you'll do the same there. I do think time is of the essence. Time has been a bit of a theme here.

The worst thing that can happen for any parliamentarian, and all of us bear this burden, is to have some offence happen because of a gap that exists here and to have people say that it's your fault because you're sitting around debating, taking too long in getting this change into law, and it was in front of you. I don't think any of us want to answer for that to the community.

Since we have a broad consensus and everybody seems to support it, I hope that we'll all go back to our respective caucuses, House leaders, and Senate leaders and say that this is a priority, let's make it go. Let's make it happen quickly so we can put in place protections that we all agree are good things.

Mrs. Shelly Glover: Thank you, Mr. Minister.

To address Ms. Mourani's comments, I meant absolutely no disrespect to the initiative at hand. We absolutely want to study what's about to be studied in this committee; however, we need to get on with the business at hand. I don't believe we can just pretend that the committee doesn't have business that sometimes is trivial in nature. It's part and parcel of being part of a committee.

So I want to be very clear that I absolutely agree with the study and I believe we ought to do the study, but at one point or another we have to do the work and not just discuss the trivialities of scheduling.

Thank you very much, Mr. Minister. I appreciate the hard work that you've put into this bill.

The Chair: Thank you.

We have two minutes left.

Ms. Mourani, do you have any questions?

• (1200)

[Translation]

Mrs. Maria Mourani: Thank you, Mr. Chairman.

How much time do I have?

[English]

The Chair: You have two minutes.

[Translation]

Mrs. Maria Mourani: Mr. Minister, you stated earlier that you were very concerned with the protection of children. I can tell you that this is a concern that is dear to my heart also, both as a citizen and as a mother. We are in complete agreement on that.

I cannot help but ask you a question I put to your colleague, Mr. Day, a few years ago; it was in 2007, if my memory serves me right. Why is it that there continue to be pedophiles welcomed in the halfway house that is just two steps away from my primary school and my day-care centre? We talk about registries, we talk about protecting children, but there is a minimum. When I am sent pedophiles such as Mr. Bégin, a well-known pedophile who found himself in my riding, at Martineau CCC, I find that unacceptable. To date, your government has done nothing, your department of Public Safety has done nothing. I met with representatives from Martineau CCC a few days ago, and they confirmed to me that they are continuing to be sent pedophiles.

Are you, please, going to do something in this regard? I no longer want pedophiles next door to my day-care centre that cares for 90 children. It is really like setting the fox to mind the geese.

[English]

Hon. Peter Van Loan: I was unaware of that particular case until you raised it.

I know we've had other situations like that where there was an unacceptable relationship with a parole office or a community residential facility or a CCC, as they call them in English, the ones run by Correctional Service of Canada. We have taken steps to make sure that the location is changed or that the offender mix is carefully selected with regard to that consideration.

I'd be very happy to look into that and pursue it further for you.

[Translation]

Mrs. Maria Mourani: Thank you, I will be following what happens.

[English]

The Chair: Thank you very much, Mr. Minister. We appreciate your time.

Mr. Don Davies: Mr. Chairman, I have a point of order.

The Chair: Yes.

Mr. Don Davies: We had scheduled the minister to appear before us for one hour and we didn't start this meeting until well after 11:10, largely because members on the other side were not here on time. We were here sitting on the opposition side ready to go at 11:00, and we did not start this. I would ask, since the minister does not appear before us very often, that we have the full hour that we scheduled.

The Chair: By the way, we started at 11:05, and I have to have a quorum. The minister was here for five minutes or eight minutes. He was waiting for us. It is not his fault that we did not start on time.

Mr. Don Davies: Mr. Chairman, I'm not saying in any way that it was the minister's fault.

The Chair: I was here as well, okay? So my apologies.

Mr. Don Davies: Let's have the hour, then. It's not the minister's fault, but he's here—

The Chair: Mr. MacKenzie.

Mr. Dave MacKenzie: Quorum doesn't mean that the government side all has to be here. In fact, I believe that there were enough government members here, and there was a quorum. If the meeting wasn't called, it is not the minister's fault. His schedule is busy. He committed to being here until 12 o'clock. He was here at 10:55. This is an issue that happens with lots of committees, and I don't think the minister should change his schedule because this started five minutes late.

There was a quorum here.

Hon. Peter Van Loan: Mr. Chair, not to interrupt my good friend Mr. MacKenzie, but I'm happy, if it makes Mr. Davies happy, to just step out of the process and have him ask another question or two. He's had one round. Everybody else has had two.

The Chair: I would have to have the unanimous consent of the committee for Mr. Davies to ask a question, because Ms. Mourani has three more minutes on her time, and then we would go over to the Conservative Party.

With unanimous consent—unless Ms. Mourani wants to give Mr. Davies....

[Translation]

Mrs. Maria Mourani: Mr. Chairman, I could give him my three minutes. I have no problem with that.

[English]

The Chair: Okay.

You have three minutes, sir.

Mr. Don Davies: Thank you.

Thank you to the committee.

I meant no disrespect to the minister. He was here well in time.

Mr. Minister, you made reference to the current problem of prosecutors pleading away or sometimes forgetting to ask for registration. I think it's important to understand that the current system is that when that application is made, it is virtually automatic, by virtue of the very heavy test that is made.

I think we all agree that this is a mischief we ought to fix. I think I heard you say that you were open to this suggestion—namely, that if the request was automatic, and then it was the judge who was saying yes or no, that might be something that you might consider.

I'd like to ask whether you might consider going to a model whereby upon conviction the request is automatic, and the prosecutor doesn't have to make it or trade it, but it still leaves some discretion in the hands of the judge as to whether the order is appropriate.

Is that something you would consider?

• (1205)

Hon. Peter Van Loan: I mentioned it in passing not as something I supported but rather as something that would be an improvement on the existing condition. But I believe that the amendments before you are the right way to go; they are what I would support. I really meant to point a contrast: that the gaps that existed were not considered, thought-out gaps by judges applying judgment; that the gaps that existed right now were through either plea bargains or

oversights. To me, this situation does not offer a good reason to keep those gaps.

The automatic inclusion model has worked in Ontario. It is a good model. I think it should be applied here, and that's what is in the proposal in front of you.

Mr. Don Davies: Minister, here is my supplemental question. The thing about the Ontario model, of course, is that the list of offences for which inclusion is automatic is much shorter than the list federally. One of the concerns that has been expressed here is that one of the offences.... Let's say it's sexual assault, which is included under the federal list but not under the Ontario list. While all sexual assaults are serious, it can be proceeded with by summary indictment or by indictment. It is conceivable that there are some summary conviction offences of simple sexual assault for which it may not be appropriate to have someone registered for 10 years as a sex offender.

Would you be amenable to cutting down the list of crimes that are under the federal list to the same list that is in Ontario for that kind of concept?

Hon. Peter Van Loan: No, my preference is the list that is in front of you. I suppose you as a committee can make other recommendations, if you feel it fit, but I think the list that is there right now is appropriate.

I'll just leave it at that. I think it is an appropriate list right now.

Mr. Don Davies: The issue is, of course, that the act also makes reference to the important principles of helping offenders reintegrate into society and not reoffend, so there is a balance in the act at present between registration to protect the community and also society's interest—our public interest—in making sure that offenders don't have their rehabilitation unduly interfered with. The concern is that registration of certain types of people may be inconsistent with their rehabilitation and that we might be making society less safe by forcing registrations of people that aren't proper. That is the reasoning behind having some discretion.

Your act would take away all discretion. Do you think that is the proper way to go, in light of those comments?

Hon. Peter Van Loan: I have difficulty with the argument that registration would interfere with someone's rehabilitation. I'm not sure how that prevents their reintegration into society. It may mean they have obligations a little more than others, but those are obligations that have been earned through conduct. All kinds of different people have different obligations in society.

We have to keep our eye focused, as policy-makers, on the overall outcome of public safety and the safety of the community. That's my view of the principal priority here, and I think that principal priority is best served by automatic inclusion of sex offenders in the registry.

The Chair: Thank you.

Thank you very much, Mr. Minister. Our time has expired. I want to thank you and Ms. Campbell for appearing before the committee.

We will suspend for a brief moment and clear the room as we go in camera. [Proceedings continue in camera]

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