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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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● (1605)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): I call this meeting of the Standing Committee on Justice and Human Rights to order. I'd like to welcome everyone to the meeting.

Given the number of votes that we have today and the times that those votes are taking place, I think all of us would agree that we want to work quickly and diligently and do our best to move through this. If we don't finish by 7:30 p.m., I'll ask everyone's indulgence. Perhaps we might want to continue a bit later to finish today, so we don't have to come back tomorrow morning.

Hon. Rob Nicholson (Niagara Falls, CPC): Yes, that would be better.

The Chair: I hope we will finish but with all the votes, we just don't know. So, I will just ask everyone to get their documents and we're going to start our clause-by-clause consideration of Bill C-46, an act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other acts.

From the Department of Justice today, I'd like to welcome Ms. Carole Morency, who is the director general and senior general counsel of the criminal law policy section; Mr. Greg Yost, who is counsel in the criminal law policy section; and Ms. Joanna Wells, who is also counsel in the criminal law policy section. Welcome.

Pursuant to Standing Order 75(1), consideration of the preamble is postponed. We have a proposed amendment to the preamble that we will treat at the end of the clauses.

(Clause 1 agreed to)

(Clause 2 agreed to)

(On clause 3)

The Chair: We have NDP-1.

Mr. Julian.

Mr. Peter Julian (New Westminster—Burnaby, NDP): Thank you very much, Mr. Chair. I'm bringing greetings from Alistair MacGregor, who is our critic and is not here, obviously, but is looking on with a lot of interest at the discussion today.

I'll take just a little more time with the first amendment and the third amendment than I might with the others. I wanted to start off by saying that of course the NDP supports the principle of the bill. We believe very strongly that we need to ensure that our highways are safe.

That being said, you'll know, Mr. Chair, that there were concerns raised by some of the witnesses about some of the constitutional aspects. There was a concern that the bill in certain areas might be considered unconstitutional. Having gone through, in the previous Parliament, at least a half a dozen cases where committees approved bills that were subsequently thrown out by the courts, it would seem to me to be very important, though we have a lot of work to do, to work through and make these adjustments to the bill so that we can ensure that this balance is there, that there are no elements that could be considered unconstitutional, and at the same time, making sure we're getting a bill through that will stand the test of any challenges.

We entirely support the principle of the bill. The amendments that we're offering are designed to make sure that the bill is appropriately balanced, and that it withstands any challenges that could happen.

The first amendment that the NDP is offering simply moves to delete a section that speaks to drug recognition evaluation. As you'll recall, Mr. Chair, a number of witnesses, including the Canadian Civil Liberties Association, raised concerns about this provision of the bill, given the fact that there is a fairly high likelihood that individuals who may not be guilty could be falsely accused of being impaired because of the inability of the test to be accurate.

The Canadian Civil Liberties Association said there was a 20% likelihood that individuals who had actually not consumed any drugs would be falsely accused of being impaired, and they went on to say that the non-active metabolites of some drugs stay in a driver's system long after their impairing effects have worn off. These limitations could mean that somebody might receive a positive test when they are in fact innocent, and it's for that reason that I put forward, on behalf of our critic, amendment NDP-1.

The Chair: Thank you very much. If everybody can be as succinct as that, that is perfect.

Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): I appreciate the intention behind the amendment. I don't agree, though, that it is necessary. There already are reasonable grounds, of course, in order for the person to have gone through the process to where they are actually being evaluated for drugs. The officer must have reasonable grounds to believe that the person is impaired. This does create a reverse onus position, but I think it's reasonable in the circumstances. It's a rebuttal of the presumption that the person can put forward and still argue, and if they raise reasonable doubt, then obviously the person is acquitted. Doing so would place undue difficulty on the crown in many circumstances in order to necessarily prove this element. I believe that it's reasonable, in order to have the presumption rebutted by the defence in order to reverse the onus in this position.

I believe that it is reasonable to do so, and that is why I am opposing this amendment.

The Chair: Are there any other comments from anyone?

Mr. Julian, do you have any closing comments?

Mr. Peter Julian: I would just say, as I did at the outset, that if we push a bill through and there have been concerns raised about its constitutionality, we may end up doing the work twice, in a sense—as we saw in the previous Parliament, with bills being rejected by the courts and then Parliament and the government having to start over and redo that legislation.

I am not sure the public interest is served by putting forward legislation that may not withstand court challenge. Ultimately, it would mean that we would have to start over, particularly in an area like this, where I think we were all agreed on the important objectives of the bill.

● (1610)

The Chair: We will now move to the vote on NDP-1.

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

(Clause 3 agreed to on division)

(Clause 4 agreed to)

(On clause 5)

The Chair: We have multiple amendments to clause 5.

CPC-1 is in the name of Mr. Cooper.

Mr. Warawa, go ahead.

Mr. Mark Warawa (Langley—Aldergrove, CPC): It's an honour to be with you to discuss this important bill.

The amending motions from Mr. Cooper focus on mandatory minimums. I will be speaking on my behalf. I don't want to assume to speak for him, but I think we are on the same page.

On the importance of providing guidelines to the courts, I think we would all agree on the importance of the discretion of the courts in sentencing. The courts are provided a guideline for maximums, and in cases where there is impairment, it would be helpful to provide guidelines to the courts for minimums. The more serious the offence, the more serious the mandatory minimum.

In the next number of amendments, the first one focuses on impairment. It is self-explanatory. It's an indictable offence for impairment, and those are the recommended mandatory minimums.

The Chair: Right now, we are dealing only with CPC-1, and there are changes to the mandatory minimums for both indictable and summary under CPC-1. I just want to make sure that we are all clear on what we are talking about.

He is extending on indictable, and he is extending for the third and subsequent offences on summary.

Hon. Rob Nicholson: It's the first one, where no one is injured or killed.

The Chair: Are there any comments from any other colleagues?

Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): I oppose this amendment, because I think the existing minimums are severe enough. We haven't heard any testimony that higher minimums act as a deterrent, and we've actually heard testimony that they don't, so I will be opposing this amendment.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I was going to say the same thing. We haven't heard any evidence that there would be an impact on reducing impaired driving from instituting higher mandatory minimums. What we heard was clear evidence that the fear of getting caught is what actually deters people from impaired driving and has resulted, in many cases, in reductions in other jurisdictions. I don't see the need to change the mandatory minimums as they are now.

I would note as well that aggravating factors on sentencing can result in higher penalties than these mandatory minimums, especially if somebody, for example, were at double the actual limit of impairment. That is taken into account on sentencing.

The current mandatory minimums are adequate, and therefore I oppose this amendment.

The Chair: Are there other comments?

Mr. Warawa, do you want to add anything at the end?

Mr. Mark Warawa: I'll speak on future amendments.

The Chair: Colleagues, given that there is no further debate on this one, I call a vote on amendment CPC-1.

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

The Chair: We will move to amendment CPC-2.

Mr. Warawa.

Mr. Mark Warawa: We're now moving to impaired driving causing bodily injury. The mandatory minimums that are being recommended as a guide to the courts are now of higher consequence.

The comments on the previous amendment were on whether a mandatory minimum acts as a deterrent. It can be argued that it does or that it does not. It definitely provides guidance to the courts, and the more serious the offence is, the more the recommendation in the legislation is for more serious sentencing. That's why this is moved.

We have now moved from the offence of impairment to impairment causing bodily harm.

● (1615)

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: Yes, it is very reasonable, if you have a look at this. You want people to continue to have confidence in the criminal justice system, and somebody who is drunk and injures or harms somebody on their first offence gets 120 days. That doesn't seem out of line. For the second offence it's one year, and for each subsequent offence two years.

You have to send a message out to people who commit these kinds of crimes that there are going to be serious consequences, and I think that is captured in this amendment.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I go back to what I was saying a moment ago on the actual intent of this legislation, which as I understand it is to reduce the incidence of impaired driving. Based on the evidence we heard, it was the fear of getting caught rather than penalties that would actually have the deterrent aspect; however, of course, the current mandatory minimums in place are there for a reason and are well understood.

Just to respond to a comment that was made, these provide more than guidance to the courts; these are minimums that the court must enforce. What is guidance to the court is the case law: similar circumstances for similar offenders should attract similar penalties.

The other thing I would say is that with mandatory minimums comes a prohibition on making a conditional sentence order, so that on a first offence a person is required to be put into actual custody rather than have the possibility of serving a sentence in the community on strict conditions. I think this provision therefore makes a too harsh mandatory minimum, in this case, for a first offence, regardless of the tragic circumstances that may occur with regard to somebody's unfortunately suffering bodily harm. I would rather leave it to the discretion of the courts and stick with the same penalties that we have in place now.

The Chair: Are there other comments, colleagues?

Not hearing any, I'll ask, do you want to close, Mr. Warawa?

Mr. Mark Warawa: No, I'll save my comments for the next amendment.

The Chair: We'll move to a vote on amendment CPC-2.

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

The Chair: We will now move to amendment CPC-3.

Amendment CPC-3 is again in the name of Mr. Cooper, so I call on Mr. Warawa.

An hon. member: Which...?

Hon. Rob Nicholson: It's basically the same.

The Chair: It's the .08 one.

Hon. Rob Nicholson: Exactly, and it's to be consistent with the previous amendment here. Going back to what Mr. Fraser says, we have responsibility to put the limits on how much a judge.... These are the guidelines. Once or twice over the years I've been asked: “Why do you have only five years? The judge may want to give more than five years.” I say, well, it's our job to provide guidelines. These are reasonable guidelines as well, which is the case that my colleague, Mr. Warawa made. We are, then, in favour of this one.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon: I think the comments for the previous two motions pretty much apply to this one, from my perspective anyway. I think the existing penalties are sufficient; I'm not comfortable with increasing them. I am comfortable that our courts are able to make the distinctions and judgements appropriate to the conditions.

The Chair: Is there any further discussion?

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

The Chair: Now we move to amendment CPC-4.

As a note to colleagues, amendment CPC-4 is in conflict with CPC-5 and CPC-6. If amendment CPC-4 is adopted, CPC-5 and CPC-6 cannot be moved, as they amend the same sections of the act. If amendment CPC-4 is defeated, we will then move to amendment CPC-5.

Mr. Warawa.

● (1620)

Mr. Mark Warawa: We have now moved on to impaired driving causing death of another person. The comments made were that the existing penalties at sentencing were adequate.

The committee heard from Markita Kaulius from Families for Justice. Markita's daughter Kassandra was killed while going to a baseball game. She was a very talented, bright young woman. Her vehicle was struck by an impaired driver who ran a stoplight at the intersection of 64th and 152nd Street in Surrey. I think Ron would know that area. My understanding is that the impaired driver had been charged with impaired driving just prior to this accident, so the deterrent of being caught was not a deterrent.

If the previous amendments had been adopted in the Criminal Code, that impaired driver would possibly not have been on the road. We all know that being charged and convicted of impaired driving would not be representative of the number of times the individual might have driven on the road impaired prior to that charge and conviction. The two are very different stats.

The importance of making sure that Canadians are satisfied or that Parliament appears to be representing the desires that there be justice.... Somebody who is driving impaired likely has been driving impaired many times previously and in this case has caused the death of another person. The usual sentencing is seen, particularly by the families—the victims who are left—as very inadequate.

I've never heard, ever, that there has been a maximum sentence for impaired driving causing death. What Families for Justice and other Canadians are asking for is that in this case, when somebody has been driving impaired.... The likelihood of impaired drivers being on our roads is going to be increasing; this is what we're hearing from experts. Whether that's true or not, the responsibility of the justice committee today is to provide clear guidance for Justice so that if an individual decides to drive impaired and causes the death of another human being, there is adequate maximum sentencing and also adequate minimum sentencing.

I would disagree with previous comments that existing penalties are adequate, and I believe that reasonable Canadians would disagree with that. On the first offence, therefore, it is a serious consequence.

If somebody receives a five-year sentence, it's not five years. There is a five-year sentence to be served, likely incarcerated in a federal institution. Anything over two years—two years plus a day—is federal, and the individual would likely, at one-third of sentence, be able to apply for release and likely would receive release, but for the full five years that person would be under some sort of observation. It is reasonable, I think, if somebody has caused the death of another individual, and particularly to the optics of justice, that Canadians would agree with the Criminal Code and we would deal with the tension that is in the Canadian public.

I think, then, that the amending motion is very appropriate.

The Chair: Colleagues, I have a legalistic thing that I have to get out there, which I should have said before Mr. Warawa started speaking.

Mr. Warawa's motion, in the name of Mr. Cooper, is perfectly receivable—don't get me wrong. The issue is that it also touches subsection 255(3.2), amending subsection 254(5). Basically, it deals with a refusal to comply, and CPC-13 deals with the orders that a police officer needs to give if somebody refuses to comply. CPC-4 cross-references sections of CPC-13. For example, under proposed subsection 255(3.21), it talks about somebody "who commits an offence under subsection 254(5) [and] who provides samples under subparagraph 320.271(c)(ii)". This relates to CPC-13, so my belief is that the two are linked.

I would suggest that the correct means is to also look at CPC-13, and that our vote should encompass both CPC-4 and CPC-13, because CPC-13 can't be adopted in the absence of CPC-4—unless it's amended, which you can do. If CPC-4 is amended, referencing sections of CPC-13, and then CPC-13 isn't adopted, we have a reference to something that doesn't exist.

I should have given this ruling before. Again, I apologize.

Mr. Julian.

● (1625)

Mr. Peter Julian: We are going to a vote in about half an hour, as I understand it. What is the normal committee practice on this?

The Chair: We normally ask for unanimous consent to continue, and then about 12 or 14 minutes before the vote we walk over.

Can I have unanimous consent to continue, irrespective of the bells?

Some hon. members: Agreed.

Mr. Mark Warawa: Chair, your recommendation is that we deal with CPC-4 and CPC-13 together.

The Chair: That would be my recommendation, because they are kind of interlinked. I think the parliamentary counsel agrees.

Mr. Mark Warawa: Okay. We agree.

The Chair: Perfect.

Mr. Warawa, do you want to also speak to CPC-13? I want to give you the chance to speak to CPC-13, because you didn't get that chance.

Or Mr. Nicholson....

Hon. Rob Nicholson: I don't mind.

It's certainly consistent and sets out the procedure under which this would apply. I concur with—and have great empathy with—the people who have come forward, including Ms. Arsenault, who was here. They made a very powerful case.

As my colleague pointed out, we are looking at five years, and they are eligible for parole in 20 months. These are people who have been out drinking and killing somebody. It's not like this is out of line.

Again, I think we can take up the responsibility to provide guidelines, and that's exactly what we are doing here. Mr. Cooper, who, unfortunately, was unable to be here, was very passionate about that, and working with these individuals. He has asked us to put this forward here, and we concur on that.

The Chair: Mr. Fraser.

Mr. Colin Fraser: Again, the intent of the legislation is to reduce impaired driving, and I think the way to do that is to ensure that we have the tools in place for law enforcement to catch people who are impaired drivers.

I agree with Mr. Nicholson that in many cases it wouldn't be out of line for that type of sentence to be imposed. The question is whether to do it by actually adding a mandatory minimum. There is no mandatory minimum, I note, for manslaughter or criminal negligence causing death. We leave it to the court's discretion to impose a sentence that is fit and proper.

I therefore oppose this motion.

The Chair: Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): I concur with Mr. Casey, and I understand Mr. Warawa's point entirely. As a non-legal member of the justice committee, and approaching this from a legislative perspective, I am also mindful of the effect that guidelines set across the land. We did hear from a number of witnesses that mandatory minimums don't have the effect that we would all like them to have on people's behaviour, and that the front-line idea of being caught is much more of a deterrent.

I ran on, and fundamentally believe in, the ability of judges to be judges, and to have judicial discretion. For that reason, I can't support CPC-4, CPC-13, CPC-5, or CPC-6.

The Chair: Okay. Thank you.

Right now, we are on CPC-4 and CPC-13, so we'll take note of your comments for future votes on CPC-5 and CPC-6.

Are there any other comments?

Mr. Warawa or Mr. Nicholson, did you want to close?

Mr. Mark Warawa: I'm quite sure that members of the committee are aware that impaired driving causing death is the number one cause of criminal death in Canada. I think back to a story from when I first was elected in 2004. There was a young girl who was killed on a street in Langley. There were two girls, both on bicycles. They were hit from behind by an impaired driver who was returning home, a longshoreman. They were both thrown into the ditch, and one died. If that person had been convicted of impaired driving, and if that impaired driver had been dealt with appropriately with an amendment like this, there's another life that would have been saved. Markita Kaulius's daughter likely would have been saved, and so would that little girl.

As I say, it's the number one cause of criminal death. With our abilities in health care, our medical advances, we're able to save the lives of people who in the past, not that long ago, would have died. There are so many more who are injured seriously because of impaired driving.

This isn't a deterrent; it's a safety mechanism. The courts presently are bound by precedents. Providing guidelines to the courts in Canada would provide an increase to the precedents that have been set with current sentencing.

I'm hearing from my colleagues across the way that they believe the current sentencing is adequate. What I'm hearing from Canadians and have heard for the last 13 years is that sentencing is not adequate and that they want it increased.

Thank you.

● (1630)

The Chair: We'll now move to a vote on amendments CPC-4 and CPC-13 together.

(Amendments negatived on division [See *Minutes of Proceedings*])

The Chair: We will now move to amendment CPC-5. Amendment CPC-5 is also in the name of Mr. Cooper.

Mr. Mark Warawa: I will move it, and I don't think it's necessary to speak to it.

The Chair: Does anyone else feel a need to speak to it?

Not hearing any, we'll move to a vote on amendment CPC-5, which is to change the name of the offence.

Mr. Mark Warawa: Thank you for that reminder.

Markita Kaulius—again, for Families for Justice—feels very strongly that the offence should be called what it is. Instead of "impaired driving causing death", they would like it called "vehicular homicide".

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

The Chair: Now we move to amendment CPC-6.

Mr. Warawa, I think this is rather the same issue of changing the name.

Mr. Mark Warawa: It is. I think I'll provide one more short comment.

The Prime Minister has spoken in Parliament a number of times highlighting promises made during the campaign. Prior to the election, Families for Justice—Markita Kaulius—received a letter from the Prime Minister saying that he would support mandatory minimums, that he would support changing it to "vehicular homicide". I just remind members of the committee that these are the promises that were made. This is another example of broken promises.

The Chair: Is there any further discussion?

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

The Chair: We have one more in clause 5, amendment CPC-7, again in the name of Mr. Cooper.

Mr. Warawa.

Mr. Mark Warawa: I so move.

The Chair: Basically, colleagues, this is giving the judge discretion on making some sentences consecutive, just so that you all know what it is.

Mr. Fraser.

Mr. Colin Fraser: I understand the point of this, but it's already in law that a judge has the discretion to impose consecutive sentences, so I'm not sure exactly what this is trying to achieve.

My concern, and the reason I'm opposed to the amendment, is that it would highlight an area in which it's codifying what is already in law, saying that the judge has discretion to impose a consecutive sentence, whereas other areas of the law wouldn't be so highlighted, and that difference might call into question the consistency in the code.

I don't think it adds anything, and therefore I wouldn't support adding this.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: I think Mr. Cooper put this forward after hearing the testimony of a number of the witnesses emphasizing the seriousness and the tragedy that takes place; that it's more of a tragedy if two people or three people or five people are killed because of somebody's drinking and driving.

Again, you're giving guidelines in a sense to the courts and pointing out that this is one of the possibilities.

● (1635)

The Chair: That's fair enough.

Let me ask the Justice officials this question, just so that everybody has clarity.

As I understand the law, it is, as both Mr. Fraser and Mr. Nicholson have identified, the state of the current law that the judge has a discretion to impose consecutive sentences. There are many other sections of the code in which this would be the case.

Let me ask this: is this codified anywhere else in the code?

Ms. Carole Morency (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): The Criminal Code provides discretion to the courts to impose consecutive sentences generally and then in some instances directs the court to impose consecutive sentences for certain types of offences.

Examples include some terrorism offences. If a child sexual offence—a contact offence—is committed and the individual is being convicted at the same time as for a charge dealing with child pornography, that would draw a mandatory consecutive sentence.

Otherwise, the Criminal Code codifies what was the common law practice, to tell the court that it has the discretion to oppose consecutive sentences when it's appropriate rising out of separate chains of events.

The Chair: Mr. Fraser.

Mr. Colin Fraser: Then, if I understand correctly, in the other areas, where it is actually inserted in the code for specific offences, it is mandatory, whereas this proposed amendment would be permissive.

Is that right?

Ms. Carole Morency: Section 718.3 specifies where there is discretion; then you have, peppered throughout the Criminal Code in other spots, situations in which it's mandatory. Where it's mandatory, however, it's done sparingly and done typically for the very serious, high-level types of offences—terrorism, as an example, and some firearms offences. Otherwise the idea is to leave the discretion to the sentencing court to determine what's appropriate in all of the circumstances.

The Chair: Let me just try to clarify before the vote the question Mr. Fraser had and that I originally tried to ask.

There's one general provision in the code wherein it's permissive; in other locations, it's required—the judge does not have discretion. Mr. Cooper's amendment is permissive, meaning that it's allowed.

Is there any other occasion, besides the general provisions in section 718, in which the permissive language here is used?

Ms. Carole Morency: There is not one that I'm aware of.

The Chair: Okay, that was what we wanted to clarify.

Mr. Nicholson.

Hon. Rob Nicholson: Could you give us a briefing about people who have been convicted of multiple cases of first-degree murder? For instance, in the case of the RCMP officers who were murdered in New Brunswick, the individual got 75 years instead of 25 because the judge had the discretion to make the sentences consecutive, and that was set out in the legislation.

Ms. Carole Morency: That's correct. The previous government had brought forth reforms to the Criminal Code to deal with mandatory consecutive sentences, up to a maximum of three. When you were dealing with multiple murders, you'd have a life sentence, so, yes, the example—

Hon. Rob Nicholson: It's still within the discretion of the court.

Ms. Carole Morency: The norm is to provide discretion to the sentencing court. The exception is to direct mandatory consecutive, in very limited circumstances, for the more serious offences, as I have just described.

The Chair: Do any other colleagues have any questions?

All right. Would you like to close?

Hon. Rob Nicholson: Let's have a vote.

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

(Clauses 6 and 7 agreed to)

The Chair: We have 17 minutes and 22 seconds before the vote. Do we want to try to handle Liberal-1?

Hon. Rob Nicholson: Sure.

(On clause 8)

The Chair: We are at clause 8, LIB-1.

Ms. Khalid, go ahead.

● (1640)

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): I think this specific clause is missing a cross-reference to samples of blood that are taken under proposed paragraph 254(3.1)(b), which authorizes the arresting officer to demand a blood sample to determine blood drug concentration. The proposed amendment would add the missing cross-reference and ensure that these blood samples are subject to the same protections as any other bodily substances.

The Chair: Are there any further comments?

Ms. Khalid, do you have anything to close with?

Ms. Iqra Khalid: Thank you for your support in voting for this amendment.

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

(Clause 8 as amended agreed to [See *Minutes of Proceedings*])

(Clauses 9 to 14 inclusive agreed to)

The Chair: Colleagues, given that we have multiple amendments on clause 15 and I don't want to short-shrift anybody, let's suspend and return right after the vote.

Thank you for moving through this quickly, colleagues.

The meeting is suspended.

● (1640)

(Pause)

● (1710)

The Chair: Thank you, colleagues.

We are now reconvening the Standing Committee on Justice and Human Rights meeting as we deal with Bill C-46.

(On clause 15)

The Chair: We will continue where we left off, which is with clause 15. We have multiple amendments for clause 15, the first one being Liberal-2.

Mr. Fraser.

Mr. Colin Fraser: Thank you, Mr. Chair.

We heard evidence from the Canadian Safe Boating Council, which had expressed a reservation about the change in the definition of the term "vessel".

I am therefore proposing an amendment that may not entirely satisfy what they were seeking, but will at least address the fact that they were asking for "but does not include a vessel propelled exclusively by means of muscular power" to be deleted, and to leave it the way it is now.

Therefore, I would be changing slightly the LIB-2 that I provided, and it would now read that Bill C-46, in clause 15, be amended by replacing lines 5 to 7 on page 14 with the following, "vessel includes a hovercraft", and basically leaving it at that, so deleting everything after the word "hovercraft".

The Chair: Right, and this will replace the old LIB-2.

Mr. Colin Fraser: Correct. It's a modification to the amendment that I had submitted, LIB-2.

The Chair: Let's call it a new amendment called LIB-2 that replaces the old LIB-2. That makes it cleaner for the clerk.

Mr. Colin Fraser: Fine. Sorry if that was confusing.

● (1715)

The Chair: Instead of saying that it's deleting lines 5 to 7, we would say that it would be replacing lines 5 to 7 with the following," vessel includes a hovercraft", which is the current definition, but not keeping the words that were proposed in the bill, which said it excluded vessels propelled by people. I don't have it in front of me.

Hon. Rob Nicholson: Just add some clarification for me while you go back and forth.

It seems to me that if you have somebody in a rowboat, or a canoe, or whatever it is.... There is an example. In fact, my colleague, Tony Clement, was just the other day telling me about a terrible accident. Somebody was impaired and somebody in the boat was killed. It wasn't a motorized boat, but is that going to be excluded from this?

The Chair: I'm sorry, I'll go back to you. I don't want to overstep my bounds, but I just want to make it clear.

The complaint we had to the bill was that it specifically excluded manually propelled vessels. What Mr. Fraser is doing is removing that from the definition to say the vessel includes a hovercraft, as it does currently in the code, and not excluding those vessels.

Mr. Colin Fraser: Exactly, and I'm sorry I didn't make that more clear, because there was a slight change to what I had previously put, but yes, it answers that very point and allows the case law to develop what the definition of a vessel is further than that.

Hon. Rob Nicholson: So it's still going to be a crime to paddle a canoe impaired?

Mr. Colin Fraser: Yes.

Hon. Rob Nicholson: Yes, thank you very much. That's all I need to know.

The Chair: Or at least the police would be given the means to charge, should the police so interpret that a vessel includes a canoe.

Are there any further thoughts on this one, colleagues?

Ms. May, perhaps you have a lot of thoughts about canoes and rowboats. Do you have anything?

Ms. Elizabeth May (Saanich—Gulf Islands, GP): It's kind of new, although the terms of the motion that you all passed, which forces me to be here today, don't give me that latitude. But I actually have nothing but support for the Liberal amendment.

The Chair: Not hearing any other comments on the new LIB-2, can we have a vote on LIB-2?

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

The Chair: We will now move to PV-1.

Ms. May.

Ms. Elizabeth May: I hope it's not too grim.

First of all, with respect to all members of this committee, I need to put on the record that the motion that brings me here is one that I do not find helpful, but rather coercive. I would have rights, unrestricted rights, as a member of Parliament for the Green Party but not in a recognized party to provide substantive amendments at report stage—other than, I imagine, the PMO telling all of you in every committee to pass the same motion that was drafted under Stephen Harper to make sure I couldn't present amendments at report stage. There's never been a time in Canadian parliamentary history when a majority party has gone to such lengths to deprive a party of one MP, already with very few rights...to have even fewer rights and have to show up for clause-by-clause in this restrictive capacity. I need to put that on the record every time, but with that I will speak to my amendment, which is deemed to have been moved, because I'm not a member of the committee.

We've heard evidence from the Canadian Civil Liberties Association about this particular section that we're dealing with in clause 15. I'm proposing to change lines 5 to 6 on page 15, lines 9 to 10, and lines 14 to 15, for the purpose of alleviating what the Canadian Civil Liberties Association described as an attempt to fix something that has an extremely rare chance of ever presenting itself, but which results in a shortcut in proving criminality and a reversing of the onus of proof that are not justified. The purpose of all the various sections that are amended in amendment PV-1 is to restore the crown's responsibility, and not to reverse the onus of proof.

● (1720)

The Chair: Ms. May, I know that sometimes I may be overstepping, but you know I also want to make sure whatever we do is legally correct.

In your amendment, you're using the words "while operating or having the care or control". I just want to bring to your attention that "having the care or control of a vehicle" is included in the definition of "operating".

I'm sure your intention isn't to create any confusion or to delete any portion, so can you just look at that before...?

Ms. Elizabeth May: In preparing these amendments, certainly we're aware of the change in definition, but we use this wording for greater clarity and to assure that when we're going forward we know exactly what the person who has consumed alcohol and drugs after driving is actually doing in terms of using and operating a motor vehicle or any other conveyance.

The Chair: Okay, so it's intentional. I just wanted to make sure.

Mr. Nicholson.

Hon. Rob Nicholson: I'm not speaking for the government, but it seems to me that what it was trying to do was to deal with the possibility that somebody who gets into an accident, for instance, will tell the police they've had a couple of drinks since the accident because they wanted to calm down. I had to ask one of the solicitors for the Canadian Civil Liberties Association and she said she had done many, many impaired driving cases and had hardly heard of this. I didn't practise criminal law for that long, but I remember a couple of cases where that's exactly what happened: somebody is allegedly impaired, they get into an accident, they call the towing people around, and then when the police come to see them they're having a couple of shots because they say they want to try to relax after the terrible thing that happened to them. This definitely complicates the ability of the police to do this. Again, I believe what is proposed in this legislation, and I support that. Whether or not the Canadian Civil Liberties Association has ever seen a case like this, I know myself that I have seen a couple cases where people have made that claim, and it was good enough to get off the impaired driving charge.

The Chair: Ms. May.

Ms. Elizabeth May: Believe me, I'm very sympathetic to getting drunk drivers off the road, and for being much stricter around drunk driving. But I was just going to say the burden of proof falling on the accused could, as the Canadian Civil Liberties Association pointed out, affect people who are in marginalized segments of our society. Having to obtain their own toxicologist report to be able to respond adequately with a reverse onus of proof may leave them unable to provide a defence.

The Chair: Is there any further discussion, colleagues?

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

The Chair: Next we will move to CPC-8, which is another one from Mr. Cooper.

Mr. Warawa, it's the same issue as previously, on the definition of the offence.

Mr. Mark Warawa: It's changing the name of the offence from "impaired driving causing death" to "vehicular homicide". So moved.

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

The Chair: Next we will move to LIB-3.

Ms. Khalid.

Ms. Iqra Khalid: Thank you, Chair.

LIB-3 is basically a grammatical error. A conveyance cannot be in an accident with another person because a conveyance is not a person. The amendment is specifically removing "another" and just putting "a person".

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

The Chair: Now we'll move to LIB-4.

Ms. Khalid.

Ms. Iqra Khalid: Under the current Criminal Code provisions, it's an offence to drive while prohibited from doing so. That is, if a driver is disqualified from driving under a provincial law because of a criminal conviction, or if a driver is disqualified because of a conditional or absolute discharge under section 730. As it's currently worded, Bill C-46 captures the first situation but not the second. This was inadvertently omitted from the bill. I'd just like to include it, to make sure both parts of it are captured.

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

● (1725)

The Chair: We move to CPC-9, which is attempting to amend the same lines as NDP-2. If CPC-9 is adopted, NDP-2 cannot be moved.

Mr. Julian.

Mr. Peter Julian: I'm sorry, Mr. Chair. Can you just clarify that?

The Chair: Basically, NDP-2 seeks to replace lines 13 and 14, and line 16 on page 18, where CPC-9 is changing lines 11 to 23 on page 18. A line can only be amended once. If CPC-9 is adopted—and I would note that CPC-9 is the same subject that has been rejected multiple times—NDP-2 then could not be moved in its current form, because it would be the same lines conflicting with what we would have amended. Does that clarify?

Mr. Peter Julian: Yes. Thank you.

It may be no surprise to you that I will be voting against CPC-9.

The Chair: I think I can safely predict how everyone will vote at this point.

On CPC-9, Mr. Warawa.

Mr. Mark Warawa: As has been pointed out, we'll be moving to amend 320.19. It's mandatory minimum sentences for repeat impaired drivers and failure to blow.

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

The Chair: Now we move to NDP-2, Mr. Julian.

Mr. Peter Julian: I am going to cite Mr. Boissonnault and Mr. Fraser, who both very eloquently spoke against mandatory minimums just a few minutes ago. What we are endeavouring to do with this amendment, NDP-2, is to take the mandatory minimums out of the legislation, for a number of reasons.

I'll recall to the committee that Ms. Sarah Leamon, when she was testifying here, said the following around this issue of mandatory minimum sentences:

> We are seeing that the sentences are being increased substantially. Also something that really struck me when I was reviewing this bill were these new aggravating factors that are now meant to be considered. Some of them...lack definition and clarity. I am a bit apprehensive about how [they] are going to be employed by our courts.
>
> They are going to dissuade people from entering a...guilty plea when they might otherwise do so. That...[creates] delays. When an accused person feels they have nothing left to lose, then they are more likely to run that trial, and it does take an immeasurable amount of resources to do that.

I also want to cite two other quotes, Mr. Chair, first from the MADD Canada report that was produced in December 2015. It's an organization that does tremendously good work in the community, as we all know. They said the following:

> The media, politicians...often argue for increasing sentences as a means of deterring both the offender...and others who might otherwise engage in the conduct.... However, research during the last 35 years establishes that increasing penalties for impaired driving does not in itself have a significant specific or general deterrent impact. Rather, the evidence indicates that the perceived and actual risk of apprehension (certainty of sanction) and to a lesser extent the swiftness with which the sanction is imposed (celerity of sanction) are the key factors in deterrence.

Finally, I'll quote the Prime Minister, something I do from time to time. The Prime Minister did say prior to the last election, in referring to mandatory minimums:

> It's the kind of political ploy that makes everyone feel good, saying, "We're going to be tough on these people", but by removing judicial discretion, and by emphasizing mandatory minimums, you're...not necessarily making our communities any safer.

Also, around the same period in 2015, in an interview with Tom Clark in *The West Block*, he said, "we have concerns" about the "overuse and, quite frankly, abuse of mandatory minimums."

For all of those reasons, I'm offering NDP-2 on behalf of Alistair MacGregor.

● (1730)

The Chair: Mr. Fraser.

Mr. Colin Fraser: Well, I take the point, and obviously we did have a discussion earlier about mandatory minimums. However, what this amendment does in effect is that it replaces the minimum with a maximum, which is problematic in my view. You're saying that for a first offence, it is a fine of not more than $1,000. That would be the mandatory minimum that we're talking about. We're taking the discretion away from the judge to say, well, in this case you actually should have a fine greater than $1,000, for all kinds of reasons or aggravating factors or other things that need to be taken into account.

I can't support this amendment. I think the minimums that are in place now are well known at law, and known by the public. They strike the right balance and have proven to be effective. While I don't agree with raising the mandatory minimums, I certainly don't agree with making those minimums now the maximums.

The Chair: Mr. Julian, if the intention was to delete the mandatory minimums, which I understood from your statement, is there a reason you didn't provide an amendment that would simply delete those lines, as opposed to trying to replace them by saying "not more than"?

Mr. Peter Julian: We believe that accomplishes the same end. That's why we were intending to cap it.

Though Mr. Fraser is technically correct, there are other provisions of this bill that provide for additional punishments, for lack of a better word. In that sense, what we would be doing is removing the mandatory minimums but still providing for very robust consequences.

The Chair: Ms. May.

Ms. Elizabeth May: On a point of procedure, and maybe the clerk could advise, I always thought that members in a committee couldn't put forward deletions. They could make substantive amendments in committee, and deletions would have to wait for report stage.

That might be another reason why there weren't deletions put forward at this point, but perhaps I'm incorrect on the procedure.

The Chair: I think that you can't propose to delete an entire clause, because that way you would be.... The right thing is to vote against the clause. However, for specific lines you can.

Ms. Elizabeth May: Exactly, but not the entire clause....

The Chair: These would be specific lines, because they are only one portion of a much longer clause. That's why I was confused as to the way it was done.

Ms. Elizabeth May: Clarification accepted. Thank you.

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

The Chair: Next, we move to LIB-5.

Ms. Khalid, go ahead.

Ms. Iqra Khalid: LIB-5 basically seeks to delete the words "punishable on summary conviction" from that specific clause, for the purpose that it capture charges that are proceeded with both on indictment and on summary. I think it just makes sense.

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

The Chair: Next, we move to CPC-10. Let me just check if CPC-10 is in conflict with anything.

There is a new one, LIB-5.1—we should give copies of it to everyone—and if CPC-10 is adopted, LIB-5.1 cannot proceed, because they amend the same lines.

All right. I understand that the document has now been distributed, so we'll move to CPC-10 in the name of Mr. Cooper.

Mr. Warawa, go ahead.

● (1735)

Mr. Mark Warawa: Thank you, Mr. Chair.

CPC-10 would amend proposed section 320.2 by introducing a mandatory minimum for repeat impaired drivers, and also, again, for refusing to blow, for those who have caused bodily harm. Before, it was just the offence; now it's the causing bodily harm part of the offence.

The Chair: Are there any further comments?

Mr. Mark Warawa: I'd like to thank the chair for the endorsement of this, and I hope everyone will follow his example.

The Chair: I didn't know that I had endorsed it, but thank you. Maybe you inferred my smile as an endorsement.

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

The Chair: Now we move to LIB-5.1, which I could heartily endorse. I shouldn't say that.

Mr. Fraser, go ahead.

Mr. Colin Fraser: This is a new one that was put forward. It affects the same lines as CPC-10 did. CPC-10 was increasing what is currently in the law dealing with the mandatory minimums on those offences for impaired.

What LIB-5.1 does is basically leave the state of the law the same as it is now with regard to the mandatory penalties for this type of offence. That was not included in the bill as presented.

It's replacing lines 16 to 20 on page 19 with basically the mandatory minimums for first, second, and third or subsequent offence that are known at law, and known notoriously to the public. They have been proven effective and are consistent with the other elements of the Criminal Code that deal with similar types of provisions.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: This is an improvement from the original bill that didn't include this.

As you can see from the amendments from my colleague, Mr. Cooper, we wanted to increase these, but, again, this is better than nothing.

The Chair: Mr. Fraser, did you want to close on anything?

Mr. Colin Fraser: No, that's fine. Thank you.

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

The Chair: Next we move to amendment CPC-11.

We have an amendment, LIB-5.2, that would also conflict with the lines of amendment CPC-11, which is the same issue as before. It's pretty much doing the same thing again. They had not put in the minimum mandatories. LIB-5.2 would insert minimum mandatories as in the current scheme.

The first one is amendment CPC-11. I will let Mr. Warawa explain amendment CPC-11.

● (1740)

Mr. Mark Warawa: Having just passed LIB-5.1 dealing with impaired driving causing bodily harm mandatory minimums, I would suggest that amendment CPC-11 would harmonize very nicely with that in dealing with impaired driving causing death. I would therefore move that.

The Chair: Perfect.

If there are no other comments, let's move to a vote on amendment CPC-11.

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

The Chair: Now we move to the new LIB-5.2.

Mr. Fraser.

Mr. Colin Fraser: Again, it's dealing with the same lines as amendment CPC-11, which was seeking to add a mandatory minimum of five years.

I would like to seek clarity from the Justice officials, if I can, on the amendment that I put forward...in the case of death, putting in the mandatory minimums that are currently in the code now. I just want to verify that these mandatory minimums exist now, even in the case of death.

Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice): Yes, they do exist now.

Mr. Colin Fraser: My intention was to replicate the current state of the law that is well known and dealt with effectively, and ensure that, for these, while the minimum may in most cases not be sufficient, that at least the minimums that are currently the state of the law now be put in the law.

That's why I'm making that amendment.

The Chair: Mr. Warawa.

Mr. Mark Warawa: I'm thankful that there's recognition of the importance of mandatory minimums and their effect.

My concern and opposition to this amending motion is that it doesn't properly represent what I think Canadians believe are appropriate sentencing minimums. For the first offence of impaired driving causing death, it would be a mandatory minimum of $1,000, and the second offence, impaired driving causing death, would be at least 30 days. Am I understanding this right? Each subsequent offence of impaired driving causing death would be imprisonment of at least 120 days.

We know that you qualify for release at one-third of sentence, and this would be provincial time, so one-third of 30 days. On the second offence of impaired driving causing death, there would be at least 10 days in lock-up. The other 20 days would be under supervision.

I don't think this represents where Canadians are, and I don't think it represents what the Prime Minister indicated when he wrote a letter of support for the impaired driving legislation that was presented by the previous government. He indicated, in writing, that he would support that type of legislation, and this is nothing even close to it.

The Chair: Is there any further discussion?

Mr. Fraser, you're the mover, so you can close.

Mr. Colin Fraser: The point of the amendment is to leave the state of the law the same as it is now with regard to mandatory minimum penalties so that there is consistency between the offences. I am in no way suggesting that these would be necessarily appropriate in most circumstances, but I think it's important to have consistency, and the way the bill was drafted didn't have these at all. I thought that was problematic, and that's why I'm moving this amendment. I believe the case law would show that, in almost all of these circumstances, these minimums will not be the actual sentence that's imposed.

On the reading of it, I thought it was important to have the general public know that these are the minimum consequences you would face for any impaired driving conviction.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: Mr. Cooper tried to do this by increasing these minimums that say, if you have three convictions of killing people while you were impaired, and you're subject to the mandatory of 120 days.... Talk about decreasing people's confidence in the criminal justice system. I appreciate these are the minimum sentences here, but you're saying.... What are they doing there, quite frankly, and why don't we triple this?

I'd like to have it go up 30 times, to tell you the truth, but that's another story.

● (1745)

The Chair: Mr. Fraser.

Mr. Colin Fraser: I take the point. I guess, if it would be satisfactory to not have consistency among the different ones, we could delete it and not have the mandatory minimums at all, if that would be preferable, I suppose.

I don't know, in reading the case law that I have, that these are imposed where there's death, but in looking for consistency across the impaired driving convictions, it seemed odd to me that there would be mandatory minimums for offences causing bodily harm but not for death. It adds consistency to the code, at least in that respect.

I'm not suggesting these would necessarily be adequate sentences in almost any circumstance causing death, and I don't think the case law bears that out either, but the point is, if my friends would be more comfortable not having them at all to add consistency, then I'd be happy to withdraw it.

The Chair: Mr. Warawa.

Mr. Mark Warawa: Chair, I don't think the point is not supporting consistency in the Criminal Code of Canada. We support that totally. This is an opportunity to point out that the consistency is supported. The mandatory minimums that are listed here, we feel, are grossly inadequate.

The Chair: Colleagues, can I get unanimous consent to continue as the bells ring, and just stop about 12 or 15 minutes before?

Some hon. members: Agreed.

The Chair: Thank you.

We have had some good, robust debate on this one. We will move to a vote on the new amendment LIB-5.2.

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

The Chair: Next we move to amendment CPC-12, which is another one from Mr. Cooper.

Mr. Warawa.

Mr. Mark Warawa: It is self-explanatory and so moved.

Hon. Rob Nicholson: Just for colleagues who are a little bit confused, several of the amendments seem repetitious, but what Mr. Cooper is doing is repeating in part 2 what he did in part 1 so that they all come into effect on the same date. That's why we're dealing with the same motion twice.

I guess there is no discussion, so all those in favour of amendment CPC-12?

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

The Chair: Next we move to amendment LIB-6.

Ms. Khalid.

Ms. Iqra Khalid: Amendment LIB-6 basically seeks to add when a prohibition order takes place, and it should take place on the day it is made. This is just so that we can keep track of when driving prohibition orders come into effect. Instead of once past the sentence, they should come on the day the order is made, basically.

Hon. Rob Nicholson: That makes sense.

The Chair: Yes.

Is there any discussion or debate about that?

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

The Chair: Next we move to LIB-7.

LIB-7 is also Ms. Khalid's.

Ms. Iqra Khalid: LIB-7 I think is just fixing a drafting error.

The bill refers to proposed new subsection 320.14(1). The amendment is adding 320.14(1) to 320.14(3), which basically outlines the offences that are to be considered prior offences for the purpose of escalating the mandatory minimum penalties.

The Chair: Okay, are there any questions or discussion?

Ms. May.

Ms. Elizabeth May: I just want to say how pleased I am to see a government party putting forward the willingness to fix drafting errors.

In the 41st Parliament—and no offence to my Conservative colleagues here—many times we pointed out drafting errors, but there was such a zeal to pass a bill unchanged from first reading to royal assent that drafting errors were left in place deliberately.

I want to thank the Liberal Party and Iqra for bringing forward amendments that fix drafting errors.

● (1750)

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: I know we have to be very tolerant and accommodating to everybody, but I can say with assurances, that with the great representatives of the Department of Justice, at no time did we deliberately continue with any pieces or parts of legislation that were either inconsistent, wrong, or anything else.

I had the benefit, for seven years, of getting the very good advice of the Department of Justice here as to how to draft these things, and I want to thank them. They wanted to make sure that the legislation worked and that it was consistent with other pieces of legislation.

The Chair: We'll call this debate and outside the scope of the motion.

Ms. Elizabeth May: Prime example.

The Chair: What I do want to say for Ms. May's benefit is that she should have been here at our last meeting when we were going through a report and Ms. Khalid had grammatical fixes on every single page.

Hon. Rob Nicholson: That's true.

The Chair: Is there any further discussion on LIB-7?

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

The Chair: Next we go to PV-2.

Ms. May.

Ms. Elizabeth May: To be brief about this as the bells ring, we're looking, at the bottom of page 23, to proposed new subsection (2) of 320.27. This section as drafted is about opening up the possibility for completely randomized breath testing, as opposed to selective breath testing. There is no need for having any probable cause for stopping a driver.

What I'm proposing here is to ensure that there is a stationary roadside checkpoint before this can be applied. This is based, again, on evidence from the Canadian Civil Liberties Association that there isn't any real improvement in efficacy between randomized breath testing and selective breath testing, and that overall the deterrent factor is just as strong when it is selective than if it's randomized. There is a very strong likelihood, as we've seen, for instance, with examples like the Toronto carding program and many others, that there tends to be racial profiling in the way that people are stopped.

I would prefer that this clause not pass at all, but it would certainly be preferable to have it be constrained to fixed roadside checkpoints.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon: I certainly agree about the efficacy of fixed roadside checkstops. We heard a lot of testimony to the effect that they are an excellent deterrent, particularly when you incorporate mandatory testing in those circumstances. However, there are many areas of Canada where those circumstances don't apply. There are rural areas, there's....

I believe there still needs to be the ability for a peace officer to lawfully stop a car and make these tests.

The Chair: Ms. May.

Ms. Elizabeth May: I would just say that I—

The Chair: Sorry, you'll get the floor, I promise.

Mr. Fraser's hand was up as well, and then I'll come back to you, and then I'll get to Mr. Julian.

Everybody will get a chance. We don't ever cut off debate here.

Mr. Fraser.

Mr. Colin Fraser: There are a couple of things. First of all, I accept the intention behind this. I have thought about the difficulty with this myself. However, on the whole, we've heard a preponderance of evidence suggesting that the way to deal with this significant problem of impaired driving in Canada.... We have the highest rate of impaired driving in the major countries, and we have to take significant steps to deal with it. In the countries that have had mandatory alcohol screening, it has led to people feeling like there is a good chance, or a more significant chance, that they will be caught, and that fear of getting caught is what actually deters the activity that we are trying to stop. While I understand the issues at play here, I believe that limiting this only to the roadside checks would not go far enough in order to satisfy the objective of the bill.

I do agree that we have to ensure that it is done in a proper fashion. The law addresses, of course, that any unlawful check, including pulling somebody over for irrelevant considerations, would not be acceptable.

In addition, I will be making an amendment to the preamble later, which will hopefully speak to this point in a more substantive way.

To achieve the objectives of this bill, I believe it is important that mandatory alcohol screening be permitted for stops outside of just the roadside checks.

● (1755)

The Chair: Ms. May, the floor is yours.

Ms. Elizabeth May: I just want to raise again the concerns that were expressed by the Canadian Bar Association and the Canadian Civil Liberties Association that this section may be unhelpful to the bill and it is likely to result in litigation, as the question of whether it violates section 8 of the charter in terms of unreasonable search and seizure would come into play.

Again, with caution, the use of roadside checkpoints would work. I have lived mostly in rural areas over my life—I haven't lived in big cities—and I have seen lots of roadside checkpoints in rural areas. They are also very effective.

The Chair: Mr. Julian, go ahead.

Mr. Peter Julian: I certainly think this is a laudable attempt by Ms. May to raise concerns that we have as well. I think she is right to say that the legislation could well be challenged. This brings me back to the point I made earlier, that we have to do this effectively and we have to do it well. We can't put through legislation that is going to be essentially thrown out. It is unhelpful, given the importance of the issue.

I completely agree with the principle that she has included in bringing this forward. I won't be supporting this particular amendment, because I think our amendment does more. It's not because I disagree with the amendment offered by Ms. May; it's more because I think we need to go a step further to ensure compliance with the charter.

The Chair: Is there any further debate?

Not hearing any, I will ask for a vote on amendment PV-2.

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

The Chair: Now we move to NDP-3.

Mr. Julian, go ahead.

Mr. Peter Julian: Thank you, Mr. Chair.

As I mentioned at the outset, I'll probably take a little longer to deal with this.

The Chair: We are 19 minutes and 39 seconds away from the vote.

If colleagues prefer, we will recess and reconvene right after the vote.

The meeting is suspended.

● (1755)

(Pause)

● (1900)

The Chair: We'll reconvene this meeting.

Mr. Julian, on NDP-3.

Mr. Peter Julian: Thank you, Mr. Chair.

I want to take a few moments on NDP-3, because it's a critical amendment for us. I'll explain why in a moment.

[*Translation*]

Mr. Chair, we haven't used the translation service since the beginning of the committee. I think it's important for us to take a moment and read our motion.

It talks about a legitimate exercise of powers in a roadside testing program under federal legislation.

[*English*]

Effectively, what this does is move to more carefully define that section of the bill. I believe each member of the committee would have received an email from Alistair MacGregor, our justice critic. Hopefully you've had a chance to look over it. The key point, the key paragraph that I'll read from his correspondence, is the following, "Statistics from both the Ottawa and Toronto police services show that a disproportionate number of racialized Canadians have had frequent interactions with authorities. Giving the police the power to demand an immediate breath sample during the course of the lawful exercise of their powers is going to lead to more of these statistics."

Over the course of committee hearings around the bill, you did hear a number of statistics. Committee members heard the fact that the process of carding—police street checks known as carding—resulted in a disproportionate impact on the black community. Some 8.3% of Toronto's population is of African origin, but it accounted for 25% of the cards police wrote from 2008 to 2011.

As far as testimony before the committee is concerned, I did want to cite Michael Spratt, who spoke on the bill saying the following:

> Now, in the last two and a half minutes, I want to deal with what I think is the most important problem of this bill, and that is the random breath testing. Let's just cut to the chase here. There's nothing random and there will be nothing random with this breath testing. What we know now, from right here in Ottawa and the 2016 Ottawa police traffic data race collection program—arising out of a human rights complaint for racial profiling—in which the police collected race data about everyone they stopped for every traffic violation, is that if you're a visible minority or part of a marginalized group or living in an overpoliced area, you are stopped disproportionately compared to the rest of the population. In simple terms, if you're black, if you're Arab, if you're a visible minority, you get pulled over more often than a white person does. That study went on to find that those people actually were not committing offences at any higher rate than anyone else was; in fact, the rate was lower.

He went on to say:

> The charter analysis isn't going to look at you and me; it's going to look at the young black man who is stopped five, 10, 20 times. Go and read Desmond Cole's piece in *Toronto Life* about carding and the effect that has on someone. That's the analysis that will take place, so it's a big problem.

The Criminal Lawyers' Association has also stated that it supports the amendment brought forward by the NDP to the mandatory alcohol screening provisions of Bill C-46. The association stated that the amendment will limit the influence of overt, unconscious, or institutional racism in the application of mandatory alcohol screening. The amendment will also bring the provision more in line with the Canadian Charter of Rights and Freedoms. It is our hope that this reasonable and modest amendment will be supported by all members of the justice committee. It is also in the testimony provided to this committee by the Canadian Civil Liberties Association.

There are two reasons why I'm bringing this forward. Of course, all of us support the provisions of this bill. There's no doubt. But all of us, I also believe, are acutely conscious of some of the abuses that have taken place in the past. What we've heard in testimony before this committee is that the current structure of the bill could lead to more abuses, so it is incumbent on us to fix that problem with the bill, and that would be by adopting NDP-3.

● (1905)

The final point I want to make is with regard to whether this bill is constitutional. This is the big weakness in the bill itself; it's most likely to be challenged, to be thrown out, and then brought back. That would be an embarrassment for the government of course, and I think it would cast a shadow on all of us as justice committee members going through this bill in good faith. If we don't fix this provision it is likely—possible—that the bill will be rejected and that will mean we have not done our due diligence. That is why I'm putting forward this amendment on behalf of Alistair MacGregor and hoping that members of the committee will support the amendment.

The Chair: Thank you very much, Mr. Julian.

Ms. Khalid.

Ms. Iqra Khalid: I completely take into consideration what you're saying. The problem we have—especially in my riding, in my city, and the region of Peel—is that carding is an issue. We understand that racial profiling occurs, but I don't think that we can legislate that kind of problem away. I think there needs to be a more fulsome, a more wholesome, approach to it and this amendment won't really help in curing the problem you're trying to cure, but it will take away some of the deterrent pieces of...or the intent of the legislation, so I don't think I can support this amendment.

The Chair: Mr. Ouellette.

Mr. Robert-Falcon Ouellette (Winnipeg Centre, Lib.): Mr. Julian, do you have any stats on indigenous populations?

I know Elizabeth Comack from the University of Manitoba had been looking into policing and indigenous populations, and I know from anecdotal evidence there's an issue in Winnipeg, and in Manitoba. I've been carded walking down the street in downtown Winnipeg. If you don't wear a suit, sometimes you can get stopped. I was wondering if you had any information on that.

Mr. Peter Julian: I'll refer to the clerk of the committee because, as I'm a substitute for today's meeting, I have not attended the other committee hearings. I don't know if that came out. I'll go to the analysts and....

We have figures from Toronto that I've cited. Were there figures around indigenous Canadians?

Ms. Lyne Casavant (Committee Researcher): I don't believe numbers were put forward about the indigenous people in particular, but there certainly were more general comments about a lot of people being affected by racial profiling, including indigenous people.

The Chair: All right. That's appreciated.

Questions should be directed to the chair, and then I would recognize Mr. Julian, but that was okay. I don't mind that Mr. Julian answered the question as best he could, not having been at most of the meetings.

Mr. Fraser.

Mr. Colin Fraser: I'll make similar comments that I made to the previous amendment that was proposed. I take the point well. I read the email from Mr. MacGregor carefully, and I respect entirely the point that's being made here. I've thought about this carefully. The intent of this bill is to get at the significant problem that we have with impaired driving in Canada—the highest rate of impaired driving of all major countries—which is causing significant problems on our roads as far as public safety. It's a really big issue.

We heard significant testimony that the best way to deal with that problem is to make people feel they're going to get caught if they are impaired drivers. That is the object of this bill. It would severely limit the impact of that deterrence if it were limited to roadside checks. I take the point well. The language used in this bill does, obviously, highlight the fact that any unlawful stop for any irrelevant considerations cannot be acceptable. I'll be proposing an amendment later, in the preamble of the bill, to address this issue as best as can be done.

Overall, when we're talking about the charter, the Supreme Court in many decisions dealing with impaired driving laws has given latitude to Parliament to enact laws that will reduce the harm of impaired driving in this country, and often will indicate that even though there are breaches, it's saved by section 1 of the charter. I'm not in any way minimizing the point that you or Mr. MacGregor has made, but overall, in balancing all these things, we have to do a better job in insuring this doesn't happen. Overall, the intent of the bill would be severely limited by the impact of this amendment, and therefore I cannot support it.

● (1910)

The Chair: Are there any further comments, colleagues?

Mr. Julian, do you have any closing words that you want to say before we move to a vote?

Mr. Peter Julian: The concerns that have been raised in testimony before this committee, including by Michael Spratt, who indicated he believes that the bill is unconstitutional, are a matter of real concern. Despite the fact that we all support the intent of the bill, if the bill is unconstitutional, it means that our effectiveness as a committee in passing this bill as legislation is eliminated. We will not have a bill that does what the government wants and what we all want to see. We have a responsibility to do our due diligence. When there is testimony that says that, indeed, it could be considered unconstitutional, it's something that we should take under careful consideration.

I will come back to the Criminal Lawyers' Association, because Ms. Khalid indicated that she didn't think it would do what I am suggesting the amendment would be able to do. The Criminal Lawyers' Association supports this amendment. They believe that it will eliminate the most egregious parts of this bill. That's why you have, from outside experts, support for the amendment to be adopted by the committee.

That's all I can say. I put that case forward and hope that members of this committee will do their due diligence and make the appropriate amendment. It simply would not be effective to change the preamble. We have to change the legislation if we want to make sure that the bill can stand that test of the charter.

The Chair: Ms. May.

Ms. Elizabeth May: Thank you for your discretion in allowing me to speak. I just want to say that, having read NDP-3, I agree with Mr. Julian that it's a better construction and a very good amendment, and if I were a member of the committee.... I do, as a non-member of the committee, recommend that you consider NDP-3. It's better than my effort in PV-2.

The Chair: Now we'll move to a vote on NDP-3.

Mr. Peter Julian: Mr. Chair, can I ask for a recorded vote on this?

(Amendment negatived: nays 8; yeas 1 [See *Minutes of Proceedings*])

● (1915)

The Chair: CPC-13 was defeated with CPC-4 because we bundled them together, so we will now move to Green Party-3.

Ms. May.

Ms. Elizabeth May: This is again the concern of taking away the previous state of the law that we would know that someone had been driving within the previous three hours. This now uses the full force of criminal law by virtue of deeming provisions alone because the section of the act I'm trying to amend is that, if a police officer has reasonable grounds to believe the person has operated a conveyance while the person's ability to operate it was impaired, as opposed to the three-hour standard with regard to reasonable grounds....

I would urge the committee to vote for this to ensure that we haven't created an unreasonable burden on the accused without the provision that three hours prior to the arrest is when we're presuming that they've been drinking, essentially, or other forms of intoxicants.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: I'm somewhat sympathetic to this, Mr. Chair, and I wonder if even the Department of Justice would wonder how this might work. Would it be possible that a person, let's just say, was impaired and crashed into a tree somewhere, and knew that all they had to do was just be outside of three hours and they would be exempt from the provisions? That would be one of things I'd worry about. On the other hand, the idea that you could come a day or so later and ask somebody to start taking tests....

The Chair: Let's ask the department what the effect of this would be.

Mr. Yost.

Mr. Greg Yost: We have various time limits. For the mandatory screening, they must have the approved screening device with them. Use of the approved screening device on suspicion must be within three hours. However, for the breath test to try to establish an “over 80” offence, there is no time limit as there currently is now. There are cases, particularly people who flee the scene of an accident, where the police do not find them until three hours later but still have good reason to believe they were impaired and have alcohol in their system.

Accordingly, this bill would propose to eliminate the artificial three hours. Currently, if they arrive there three hours and ten minutes later, they're stuck. Under this legislation, they would do it. As you know, there is a formula available in here for calculating BAC etc., so it all fits together, if I can put it that way.

The Chair: Any further comments, colleagues?

I'm not hearing any. Ms. May, do you want to close?

Ms. Elizabeth May: I have no additional comments, thank you, Mr. Chair.

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

The Chair: We will move to CPC-14.

Mr. Nicholson.

Hon. Rob Nicholson: Colleagues, you may remember that we heard testimony here that they're getting more sophisticated in being able to analyze what exactly a person has taken or drunk.

One of the suggestions made to us was that there's been progress in the area of just being able to take sweat from somebody and analyze that. I wanted to make sure that the legislation leaves open that possibility, because it's less invasive than taking a blood sample. If the technology is being developed so that they can take it just from your sweat, that would be much more acceptable overall. I wanted to make sure that was included in there. Again, it's consistent with the testimony that you remember we heard.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I know there's another one later that will be interesting to compare to this one, but my concern is this one is including specifically sweat but no other bodily substances. We'd be including that, but not the whole gamut of bodily substances like it does in a later one.

The drugs and driving committee basically said that, in relation to drug-impaired driving, they don't recommend sweat for use in analysis, and my understanding was that it doesn't have the ability to necessarily detect the current state of somebody's impairment. Right now, the scientific data doesn't seem to support the ability to use sweat for that purpose, so I'd be concerned that if inserted here, it would not have the scientific backing to make it appropriate for addition. I'll certainly keep an open mind on the later one, which includes sweat in a different way.

● (1920)

The Chair: If I may, Mr. Nicholson, my recollection was that sweat was analogous to urine in the sense that—as the scientists who appeared before us said—stuff could stay in your system for 30 days. It wouldn't be used to determine impairment, but simply if you actually had consumed that drug in a certain period of time. That's what I remember.

Colleagues, any further comments or thoughts? Perhaps we can ask the department for clarification on their thoughts on this, so we all have the right information.

Mr. Greg Yost: While it's certainly true that the drugs and driving committee does not recommend to the government that sweat should be included at this stage, the technology is basically in its infancy. Its utility is limited. We do have blood, which is the gold standard. This is the one that's active in your system right now affecting your brain, and would be the one that would be preferable in most circumstances. Urine is very easy to collect—it does not require a specialized thing—and, of course, they can take an oral fluid sample. Oral fluid is recent consumption. Sweat is not. In that way, sweat is somewhat like urine, not as usable.

The main problem, according to the drugs and driving committee, is reliable collection without having it contaminated. They would have to develop entirely new processes for analyzing this stuff in the laboratories. They are not equipped to do that as they are equipped now to do the other bodily substances.

The Chair: As I understood, and just so that I'm clear, you would never use sweat to determine impairment. That is my understanding from the testimony. You would use saliva as a precursor, and then blood to substantiate and have the gold standard. But either urine or sweat would simply tell you if somebody had consumed this drug within a pretty long period, correct?

Mr. Greg Yost: That is correct.

The Chair: Are there any other comments on CPC-14?

Mr. Nicholson.

Hon. Rob Nicholson: You will remember, colleagues, for the record, Smart Start Incorporated submitted a briefing on this. This is what certainly caught my attention here, and this is the area we're developing.

The Chair: We'll move to a vote on CPC-14.

Mr. Boissonnault, I'd ask you to sit down to count your vote.

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

The Chair: We'll move next to Lib-8.

Ms. Khalid.

Ms. Iqra Khalid: LIB-8 is an amendment that basically deals with what is an approved container, which is defined in the bill as a container designed to receive a sample of a person's blood for analysis that is approved by the Attorney General of Canada.

If there's no approved container that's used when the blood is taken, at a hospital perhaps—a different variety of container—that shouldn't in and of itself pre-empt that blood sample or deem it inadmissible as evidence.

This amendment is basically saying that by not being an approved container, it shouldn't nullify the evidence that's collected in it.

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

● (1925)

The Chair: Mr. Nicholson on CPC-15.

Hon. Rob Nicholson: This was brought to our attention, and the recommendation to us was that if somebody is acquitted, somebody who is innocent of an impaired driving charge or an impaired charge, the evidence should be destroyed.

My concern is, and we've had this before at this committee, the proliferation of information about all of us. Who knows where this ends up? If you are completely cleared, that material, or whatever it is they have there, should be destroyed, and it shouldn't be on file or shared with other countries like the United States or anybody else.

If you're cleared, you're cleared. This should be addressed by this, because in the end, as we know with so many other areas, our personal information gets spread, put out there, and the person who is innocent shouldn't have that happen to him or her.

The Chair: Mr. Julian.

Mr. Peter Julian: I want to compliment Mr. Nicholson. I think this is an excellent amendment. It's something, hopefully, the entire committee can support. It's a no-brainer. This is a matter of personal rights.

The Chair: Mr. Fraser.

Mr. Colin Fraser: When I first read this, I agreed with it, but then I started thinking about it and wondering about some of the unintended consequences that may result. I'd like to hear Mr. Nicholson's comment, if I could. Or maybe I could ask the department for their input, and then—

The Chair: We can get both.

Mr. Colin Fraser: If other proceedings were going on, for example a civil proceeding, that were to come after the fact, would this information then not be available to that individual to use? Would that information already have been destroyed? What about provincial regulatory offences?

I know that you say, “finally acquitted of the offence and any other offence in respect of the same transaction.” I suppose you're trying to encapsulate other types of proceedings there, but I just don't know if the wording ties it up. I'd be concerned about civil proceedings.

I know we're going to be limiting the scope in a later amendment, or attempting to, to anything dealing with drug- and alcohol-related offences...rather than being used for any purpose by the government.

I have some hesitation on this, so I'd like to ask the department for its view, and then maybe Mr. Nicholson to respond to what I've said.

The Chair: Can I also ask the department one other question?

It says, “A judge of a superior court of criminal jurisdiction or a court of criminal jurisdiction”. Would that judge have knowledge in every province of both federal and provincial proceedings? In Quebec, it wouldn't likely be. I'm also wondering about that.

Mr. Greg Yost: My initial reaction is yes, they would be involved in these proceedings. I don't know how things operate in Quebec, I'm afraid. I'm a Manitoba lawyer by training. In Manitoba they would know.

The Chair: And Mr. Fraser's question?

Mr. Greg Yost: There are, actually, a lot of possible unintended consequences to this amendment.

One of the first problems we see is that there is an appeal period. You've been acquitted, and you have to go back to the court to say that the appeal period has gone by. The judge is not going to be keeping track, normally, as to whether an appeal has been filed from his acquittal.

Even if the acquittal period has gone by, on more than one occasion one has read about an extension of the time granted by the court so it can hear the appeal. There's a lot of uncertainty as to how the court would know there's been a final acquittal.

You could have major new procedures, which at the time of Jordan was not something we were promoting, if I can put it that way. Some of the records are used in many ways that are unanticipated, perhaps, or certainly not covered here. Drug recognition evaluators, for example, have to recertify every two years on the basis of a certain number of evaluations they have carried out, documenting that they were accurate. I believe it's in 80% of the cases, but I'm not sure. They need to keep those records in order to be recertified. There are court records, themselves, and the police records. Who do you advise to get it?

We understand the concern. The legislation, we thought, was fairly tightly drawn, since it was administration or enforcement of a law, and it's a criminal offence to use it for anything else. You can't analyze a substance for any other purpose than the purposes of that part, so you couldn't use it for DNA analysis, or anything like that.

It's for the committee, obviously, to decide whether we were right or wrong.

● (1930)

The Chair: Mr. Nicholson, and then Ms. Khalid.

Hon. Rob Nicholson: You can go ahead, if you want to.

Ms. Iqra Khalid: I actually just wanted to seek clarification from the analyst, if that's okay, Mr. Chair.

In the proposed amendment, it says, “without delay”. If “without delay” were to be taken out and replaced with, let's say, “the longest period of statute of limitations per province”, taking into account all the appeal periods, would that remove some of the concerns you've raised with respect to that?

Mr. Greg Yost: My initial reaction is that I simply don't know enough about what provinces may use this for. They have procedures that could be based on a person who was acquitted of over 80 charge, but they have the BAC, or the person was charged on a basis of a BAC of 60 combined with something else, but the person's acquitted. The 60 could be a provincial issue for their licences.

Some of them have higher penalties if you've had three in five years or whatever, and they would need that record for the administration of their legislation to be connected with the person's alcohol or possibly drug abuse. I'm not in a position to say that would resolve concerns that the provinces might have.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: The last part of it says, “the person is finally acquitted of the offence and any other offence in respect of the transaction.” When you're finally acquitted is when the appeal period has elapsed or the appeal has been settled. That's when it is final. What this says, among other things, is that all samples of bodily substances of a person who is found innocent are to be destroyed, and that individual's record shouldn't be kept.

We had this on the genetic discrimination bill, you know, the proliferation of information, where it's going, where it's ending up, and if we don't take steps to try to protect.... We're trying to protect somebody here who has been completely cleared of all offences and saying it's over. I understand with respect to somebody wanting to start a civil action against someone, but again, you're balancing off. When somebody who has been charged with an offence has been found to be completely not guilty and/or innocent of that charge, you're balancing his or her rights against somebody who may want to sue them later on. If somebody sues, they still have to go through the process of trying to prove that somebody had done something wrong on a balance of probabilities.

With respect to this, I think we're making a mistake. I thought, when this was suggested to us, that it was just that the bill was silent on this. What happens? Okay, we're having this mandatory testing, but what happens when your name finally gets cleared? What happens to the information? I don't want it to be out there that there's no remedy for that.

Ms. Khalid suggested that we further clarify with respect to the appeal period. I have no problem, obviously, with that, but it's the intent of this, I think, that should have the support of everyone.

● (1935)

The Chair: Mr. Fraser.

Mr. Colin Fraser: I have one question through you, Chair, to Mr. Nicholson.

What about rather than “shall”, putting in a permissive “may”, allowing the court to determine, and then counsel making argument on it? What do you say about that?

Hon. Rob Nicholson: Well, it's better than nothing, Mr. Fraser. If you and your colleagues are going to vote against this, I'd rather have that than nothing at all, because at least we're drawing attention to the fact.

In a couple of years when we're back in government, we can always change it to, “shall”, if we want.

Voices: Oh, oh!

The Chair: It's funny that over the last 10 years you didn't do that.

Hon. Rob Nicholson: We were busy the last 10 years, believe me.

The Chair: The department wants to intervene.

Ms. Carole Morency: As my colleague has said, we're not aware of what the processes might be for courts to be able to implement this. I'll just caution on that. If it is to be permissive, perhaps the committee may wish to consider “on application of the individual” or something like that. I think the concerns we were trying to identify for the committee's consideration are that we haven't had the ability to think this through or be able assess what the fuller, broader implications are, beyond understanding what the intention is and to highlight that the bill does make it an offence to use the sample for a different, unauthorized purpose.

The Chair: Mr. Boissonnault.

Mr. Randy Boissonnault: We've heard from department officials that it's a criminal offence, if we proceed as the bill is written, to use these bodily fluids in any other way. That's enough for me. With all due respect to Mr. Nicholson, I don't think these provisions are necessary.

The Chair: Is that okay?

We're going to briefly recess to give them a chance to talk.

● (1935)

(Pause)

● (1940)

The Chair: We're back to our discussion of CPC-15.

Mr. Fraser.

● (1945)

Mr. Colin Fraser: Thanks, Mr. Chair, and my thanks to everyone for your indulgence.

I appreciate the amendment coming forward, and it is a tough one. The reason I'll vote against the amendment is that, as we've heard from the department, there may be unintended consequences that we haven't been able to grapple with in the short time that we've been able to study this at the committee meeting here today.

Also, we've heard about the tight limitations that have been tried to ring-fence around the issues dealing with privacy. There may be issues in civil proceedings with different limitation periods in various provinces that would be far beyond the scope of any timeline for offences being resolved.

I would suggest that upon completion of the committee's work we send a letter to the Minister of Justice flagging this as an issue to consider in a future review of this bill. I know we'll be considering an amendment to the bill at a future review date. I think that would be the best way to handle it. By that time, we'll know whether any issues have arisen relating to the misuse of this information. I note that in my questioning there are no examples of this information being used for nefarious purposes. I think it would be a very limited problem. So let's write to the minister, flag this issue, and put it to future consideration.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: Thank you.

I'm fine.

The Chair: Okay, perfect.

Let's move to a vote on CPC-15.

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

The Chair: We will note for the record, Madam Clerk, that we will compose a letter to the minister to flag this as an issue. Is there agreement, colleagues, to do that.

Mr. Fraser on Liberal-9.

Mr. Colin Fraser: We heard some evidence, I think from Mr. Spratt and perhaps some others, about what appeared to be an absurdity in the way the bill was drafted. If somebody had zero alcohol in their blood, there could still be a presumption going backwards in time that they would have actually been deemed to have been intoxicated or impaired at some time.

We heard other testimony that in practice this would never be the case because no scientist would engage in that sort of calculation. But I think this amendment addresses that issue and is consistent with what probably was intended in the crafting of this part of the bill. By the way, 20 milligrams, as I've learned from my inquiries, is the lowest amount that can actually be detected, so this should the baseline rather than zero.

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

The Chair: Next we come to Green-4.

Ms. May.

Ms. Elizabeth May: If you wouldn't mind, I'll use this occasion of having the floor to withdraw Parti Vert-5, Green Party-5. I've been advised by the clerk that it would likely be inadmissible, and I confess to you that I also have adjournment proceedings coming up shortly in the House.

I will now defend Parti Vert-4, but I thought I might as well jump to the inevitable conclusion that my fifth amendment was unlikely to be accepted as admissible.

I don't think that the Liberal amendment that was just accepted, which I support, changes the rationale for my amendment. It continues on page 29 in respect of presumptions of blood alcohol concentration. My amendment would replace lines 15 to 17 with "section (1) or (2), as the case may be". What we now have is a deeming assumption of an additional five milligrams of alcohol in 100 millilitres of blood for every interval of 30 minutes in excess of two hours.

By ending the paragraph without that assumption, my amendment would restore a requirement for evidence from a toxicologist rather than assuming that you have this blood alcohol level for every 30 minutes in excess of two hours.

● (1950)

The Chair: The way you explained it is not the way I would have understood that. It's a conclusive presumption. My understanding is that there would be a conclusive presumption at that point. The blood alcohol level would be what it was whenever they tested if it exceeded 0.2, and not based on toxicology. Again, that's how I read it.

Could I perhaps ask the department—maybe I'm misreading—what the effect would be of removing that.

Ms. Joanna Wells (Counsel, Criminal Law Policy Section, Department of Justice): This particular presumption that the motion proposes to amend is intended to provide a legislative formula to avoid having to call a forensic toxicologist to calculate the blood alcohol concentration. The motion would essentially render that presumption inoperable for its purpose.

The Chair: With the Green Party amendment as it's drafted, we're now saying that there's a presumption that it's exactly the level that it was when it was tested.

At that point, the toxicologist would have to testify that the presumption was wrong. It would make it not what the current law is. It would make it more difficult for the crown than the current law.

Ms. Joanna Wells: I think the result would be to have two conflicting presumptions.

There is a previous presumption in the bill that says if you get the sample within two hours, then your blood alcohol concentration is presumed to be that level. If you're outside two hours is when this particular presumption that's before the committee at this point comes into effect.

The Chair: It says if it's "more than two hours...[it] is conclusively presumed to be the concentration" in the test.

Ms. Joanna Wells: "Plus"—

The Chair: No, but if you remove the "plus"—

Ms. Joanna Wells: Right.

The Chair: —then it's going to be conclusively presumed to be what it is 10 hours later, and somebody would have to come to rebut that presumption.

Ms. Joanna Wells: Exactly.

Ms. Elizabeth May: Thank you, Mr. Chair. That is in fact my intention.

With where it is right now, there is a deemed presumption of a higher blood alcohol level than that which you've actually tested, and it is set at a certain amount for every half hour. To rebut that presumption, you'd need to call a toxicologist. Whereas, if you cut it off right after as the case may be, the provision is more evidence based and less of an inferred and assumed level of blood alcohol.

The Chair: Okay, I still think it makes it more difficult.

Mr. Boissonnault, do you have a comment?

Mr. Randy Boissonnault: My understanding is that with the way we drafted this, we want to improve trial efficiencies and reduce the need to compel toxicologists to come and to give judges the ability to do the calculations on their own.

With all due respect to Ms. May, this would change that, would abrogate it, and in my limited knowledge of how the Criminal Code operates, it would make proposed 320.28(4) inoperable. That would defeat the whole point of what we're trying to do here.

The Chair: Are there other comments from anyone?

Ms. May, do you want to finish?

Ms. Elizabeth May: I want to say to my friend Mr. Boissonnault that it's certainly not inoperable. It's operable as a presumption of what kind of blood alcohol levels you've found, without deeming additional levels that you haven't been able to find through testing.

The Chair: The only question I have is that all of the evidence that we had before us indicated that the farther away you are from drinking, your level goes down.

Now we're creating a presumption that your level will be exactly what it is when it's tested many, many hours later. It seems to be a faulty presumption.

Ms. Elizabeth May: What I'm putting forward is based on a lot of the evidence to this committee.

If you continually put the burden on the accused—and the burden has now shifted substantially throughout the legislation to the accused—there's a level at which you may in fact have false convictions because someone is economically unable to defend themselves by bringing in toxicology evidence to reverse the presumption.

● (1955)

The Chair: Yes, I understand that too.

All right, are any further comments?

Not hearing any, let's move to a vote on PV-4.

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

The Chair: Now we move to NDP-4.

Ms. Elizabeth May: Good luck.

The Chair: Thank you for joining us today, Ms. May.

On NDP-4, Mr. Julian.

Mr. Peter Julian: Thank you, Mr. Chair.

I won't spend a lot of time on this amendment because it's very similar to the first amendment, NDP-1, that I presented earlier tonight.

I wanted to remind members of the committee that we've had testimony that there's up to a 20% likelihood that individuals who are innocent would be found to have consumed drugs through what is currently a very faulty type of testing. The intent here is to delete that section.

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

The Chair: Mr. Nicholson on CPC-16.

Hon. Rob Nicholson: This goes back again to the discussion we had a little earlier about when and where other types of bodily substances or fluids can be used. In this particular one I'm adding along with “breath, blood, urine, sweat or other bodily substance...”.

We already had the words “other bodily substance”. It already takes into account the fact that it could be sweat. I'm pointing out that it may be sweat, and this is where the technology seems to be going. It always seems to me the less intrusive we can be on people the better off we are. I hope this will get the support of the committee.

The Chair: Mr. Fraser.

Mr. Colin Fraser: Yes. In other areas we're not including sweat, but I recognize that this one is “other bodily substances”, which would encapsulate sweat, so this is different from the other one. I don't see the harm in adding that word.

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

The Chair: We are on NDP-5.

Mr. Julian, this is adding the records of the maintenance of the device.

Mr. Peter Julian: Thank you, Mr. Chair.

[*Translation*]

Adding “the historical results of the approved instrument's maintenance records” does amend the clause.

[*English*]

To provide some of the evidence that this committee heard to support our amendment NDP-5, we heard from Sarah Leamon who said that currently maintenance records are being employed in Washington state. She said:

> Yes. We have seen that being employed in Washington state and, to my understanding, employed very well, to the benefit of really all parties to a criminal proceeding and to the public. We want to make sure our police officers are doing things correctly. We really do. I feel my role, often, as a criminal defence lawyer is to make sure that police officers are conducting themselves properly according to the charter, providing motorists and other people with those charter rights, but also that they're maintaining equipment, such as breath testing equipment, in a proper way. That transparency really helps. I think it helps assure the public, and there's no reason why we can't use the benefit of the Internet to do this.

We heard testimony that reinforces the advisability of accepting or adopting NDP-5.

The Chair: Mr. Boissonnault.

Mr. Randy Boissonnault: I listened to the testimony, and I want to make sure that we're empowering police officers to do what we're asking them to do. I think this amendment would slow their process and would also result in longer trials. Even if the information is available online, I'm suspecting that a clever defence lawyer would be using this very quickly to talk about the completion of those records, where the server resides, and so on. I think this opens up a whole bunch of onerous implications that we can't fully study at this point.

● (2000)

The Chair: Mr. Julian.

Mr. Peter Julian: Yes. Thank you, Mr. Chair.

This system is already in place in Washington state. One might laugh at Washington state. I certainly don't. They're our neighbours to the south.

Mr. Randy Boissonnault: It's not Washington.

Mr. Peter Julian: This couldn't be managed effectively and provide an additional level of protection for the individual...I think is clear would be advisable. The committee heard testimony to that effect as well.

The Chair: We will now move to a vote on NDP-5.

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

The Chair: On Liberal-10, we have Mr. Fraser.

Mr. Colin Fraser: This is basically intended to limit the use of the information collected to make it related to drugs or alcohol with regard to the reason that information is kept.

The purpose of this was to limit the scope within which the information obtained would be utilized, so that it would be utilized only in cases of drugs or alcohol. Currently, it says "a federal or provincial Act", but that may go outside of the scope of drugs or alcohol, which is the purpose for which it should be used.

I feel that this reins in the scope of what the actual information can be obtained and used for.

The Chair: Or the operation of a conveyance....

Mr. Colin Fraser: That's correct.

The Chair: Mr. Nicholson, go ahead.

Hon. Rob Nicholson: I agree with Mr. Fraser on this one.

I just have a point of information. It says "provincial Act related to drugs or alcohol". Would it be necessary to say "and/or alcohol" and "and/or vessels"? They are not just separate; sometimes they are combined.

The Chair: Let's ask the department.

Is there a distinction in the wording based on whether we put "and/or" or just "or"?

Mr. Greg Yost: I don't believe it causes a difficulty to say "drugs or alcohol". If they are combined, one or the other would cover it.

The Chair: Is there a problem if we say "and/or"? Does it create a drafting issue?

Mr. Greg Yost: I don't believe so.

The Chair: Okay.

Is this a friendly amendment?

Mr. Colin Fraser: I would be happy to accept the friendly amendment.

The Chair: Would that be "and/or to the operation of a motor vehicle", too?

Hon. Rob Nicholson: Yes, please.

The Chair: Okay, so two "ands" are now added to line 2 of the amendment.

It will now read, "enforcement of a federal or provincial Act related to drugs and/or alcohol and/or to the operation of a motor vehicle, vessel, aircraft or railway equipment."

We'll move to a vote on LIB-10, as amended. It was a friendly amendment.

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

The Chair: PV-5 was withdrawn, so we now move to Liberal-11.

Ms. Khalid, go ahead.

Ms. Iqra Khalid: Liberal-11 basically seeks to work on the definition of what is an analyst. I think that it is not broad enough. As it is currently drafted, it talks about breath samples and blood samples, but I think the intent is to encompass all bodily substances, and an analyst should be able to do that. The amendment basically seeks to broaden what an analyst can be with regard to the act.

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

(Clause 15 as amended agreed to on division)

The Chair: Colleagues, would you mind if we group clauses 16 to 31 together and agree to vote on them all at once?

(Clauses 16 to 31 inclusive agreed to)

● (2005)

The Chair: Now we move to NDP-6.

Mr. Peter Julian: Thank you very much, Mr. Chair.

I would like to say I enjoyed enormously being with the committee this evening.

The Chair: It was great having you here.

Mr. Peter Julian: You are very welcoming, and, Mr. Chair, you do a very good job of guiding us through each of the votes. Not all committee chairs do that, actually making sure everyone understands which amendment we're on, so thank you for your good work.

The Chair: You're welcome, but before you begin, Mr. Julian, I just have a small question for you. In this amendment you used the word "Minister", and the minister is not defined in the act. My belief is you mean the Minister of Justice and Attorney General of Canada?

Mr. Peter Julian: Yes.

The Chair: Would you agree that where we say "Minister", you would accept a friendly amendment to say "Minister of Justice and Attorney General of Canada" so we clarify that?

Mr. Peter Julian: Yes, I will accept that.

We have talked about transparency. Of course, through the course of the discussions tonight, we've also talked about going to the minister and raising certain issues that have come up that we're not able to resolve.

The NDP-6 amendment would provide for a two-year review of this legislation. It would seem to me that given the fact that there are some grey areas and some areas of concern, it would make sense to have that also. The new government has said it wants to be transparent so having a two-year review allows for that transparency around the act as well.

I'm hoping all members of the committee will support this amendment.

The Chair: Ms. Khalid.

Ms. Iqra Khalid: I'm very much in favour of this amendment in principle. I do propose, though, that we change the two years to three years because I think we need to have more time to collect the data and to do the proper analysis.

Secondly, the amendment speaks to datasets collected by government and non-government agencies. The non-government part is not within the scope because it would entail finances using money.

Can the chair clarify?

The Chair: I've discussed it with the legislative clerk. There could be occasions where it would fall in the department's regular operations so I think that's okay. I'll rule that's okay after discussion.

We'll put your other proposal to Mr. Julian, in terms of whether that's friendly or not.

I would note that I think they did a three-year review in Bill C-45.

Mr. Peter Julian: Yes. It's a friendly amendment. I thank you very much, Ms. Khalid, for making the proposal, and I accept it.

The Chair: Okay. We can consider that a friendly amendment. The two is changed to three. The minister is changed to Minister of Justice and Attorney General of Canada. The rest stays the same.

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

(Clause 32 as amended agreed to [See *Minutes of Proceedings*])

The Chair: We don't have any amendments going until clause 52 if I'm correct.

Is that correct, Mr. Legislative Clerk?

Mr. Philippe Méla (Legislative Clerk): Yes.

● (2010)

The Chair: Would everyone agree that we group them together for one vote?

(Clauses 33 to 52 inclusive agreed to)

The Chair: Now we move to the preamble, which would be LIB-12.

Mr. Fraser.

Mr. Colin Fraser: Obviously, we had discussion before about the potential impact of mandatory alcohol screening beyond just roadside checks. My amendment would change the preamble of the bill so that it would add that the exercise of investigative powers be in a manner that is consistent with the Canadian Charter of Rights and Freedoms.

The intent is to highlight the fact—it's already implicit but to make it explicit—and state clearly that, obviously, any investigative powers must be done and performed in a manner consistent with the Canadian Charter of Rights and Freedoms, and that any irrelevant considerations being taken into account in the performance of their duties are unacceptable. I think that the preamble is an appropriate place to highlight that fact.

That's why I put forward this amendment.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: I'm not quite sure why it's necessary. It's implicit in every piece of legislation passed by the Government of Canada that it has to be consistent with parts of our Constitution, so I don't think it's necessary to put that. You're almost implying that we have problems in this area. We're confident that everything is constitutional—the testing. I don't see why it would be necessary to put this in.

The Chair: Mr. Julian.

Mr. Peter Julian: I have to disagree with Mr. Nicholson on that. I'm not confident at all. I think the amendment may well be helpful, so I'm supporting it.

The Chair: Sorry to jump in; I know that I shouldn't be debating. I just want to point out that the concerns expressed by some but not the majority of witnesses, related to the mandatory new checks, were always related to charter compliance by the police, and I think this certainly reflects an intent that they "exercise investigative powers" consistently.

I'm flexibly allowing this to proceed, in itself, even though there weren't necessarily amendments. It's up to the committee.

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

The Chair: Shall the preamble carry, as amended?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the title carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: May I report the bill as amended to the House?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: On division. Really?

Mr. Peter Julian: Yes, by all means.

The Chair: Wow. You're a tough guy. Murray never did that.

Hon. Rob Nicholson: I don't think you have any choice. You have to report it, don't you?

The Chair: He always stops on that one and says, "Oh yes, you can report it back."

Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Ladies and gentlemen, thank you very much for your work on this bill. Have a lovely evening.

The meeting is adjourned.