STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

COMITÉ PERMANENT DE LA JUSTICE ET DES DROITS DE LA PERSONNE

EVIDENCE

[*Recorded by Electronic Apparatus*]

Tuesday, October 2, 2001

• 1633

[*English*]

The Chair (Mr. Andy Scott (Fredericton, Lib.)): Good afternoon, friends, and welcome, Madam Minister, to the 22nd meeting of the Standing Committee on Justice and Human Rights.

We're very pleased that today you've been able to get here on rather short notice. We understand you'll be speaking to Bill C-15A and only C-15A. I make the point only because we're only going to have an hour. I believe I have the consent of the committee to go the first round five minutes rather than seven, which is unusual, because of only having the hour.

Mr. Cadman.

Mr. Chuck Cadman (Surrey North, Canadian Alliance): May I have it put on the record that this is not a precedent?

The Chair: It is not a precedent.

Mr. Chuck Cadman: Thank you.

The Chair: And I appreciate your assertiveness there, sir.

With that, Madam Minister, would you please proceed with an opening statement, and we do appreciate your being here on short notice.

Members of the committee should be aware that we will have to leave here probably at twenty-five after.

Thank you. Madam Minister.

[*Translation*]

The Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.): Good afternoon, Mr. Chairman and members of the committee.

[*English*]

It's always a pleasure to be here before the committee. It's nice to be back for the new fall agenda and it is indeed a pleasure to be here today to talk on Bill C-15A. I look forward to colleagues questions and concerns.

• 1635

I also want to put on the record that I will be happy to return to deal with Bill C-15B at a time before November 30 that is conducive to your deliberations.

Also at this time I would like to let the committee know that you will have a busy fall—I know you are aware of this—because we all anticipate that there will be forthcoming important legislation to help our country, along with our allies, deal with the scourge of terrorism. I know I have friends and colleagues in the opposition and elsewhere who are awaiting that legislation—I see Mr. Sorenson sitting there. I just want to assure colleagues that I will be back before the committee when you deal with that, but it will be a busy and important fall for all of us.

Today I would like to begin by highlighting the elements of the part of the bill I will be addressing. First, measures providing additional protection to children from sexual exploitation, including sexual exploitation involving the use of the Internet; proposed amendments to strengthen the law in the areas of criminal harassment, home invasions, and disarming a peace officer; amendments to the review process for allegations of miscarriage of justice; criminal procedure reform amendments; and, finally, amendments to the National Capital Act and the National Defence Act, which are really fairly minor.

Let me begin by speaking to the section of the bill designed to provide additional protections to children. Everyone here has commented upon this section in at least a generally

favourable way. These provisions respond to the commitment made by the government in the Speech from the Throne to safeguard children from criminals on the Internet.

One of these sections creates an offence of luring. It criminalizes communicating with a child through a computer system for the purpose of facilitating the commission of a sexual offence against a child under 18 years of age, or the abduction of a child. Provincial premiers expressed support for this initiative at their 42nd annual conference last August.

I should also put on the record that my provincial colleague, Gord Mackintosh, from Manitoba, was one of the first among my provincial colleagues to argue strenuously for such an addition. He and his provincial colleagues continue to support the general intent of what we are doing here. They renewed this support in September when Minister MacAulay and I met with our provincial and territorial colleagues.

As people here are obviously all aware, new technologies have created a new environment. Bill C-15 will further protect children by extending the scope of the child pornography offences in order to make sure that those who deal with child pornography, from its creation to its consumption, do not escape criminal liability, regardless of the sophistication of the technology they use.

The bill will create four new offences of child pornography and will extend the offence of possession for the purpose of sale or distribution to cover the new offences. The bill will create two offences covering cases that might not constitute distribution in a legal sense: an offence of transmitting child pornography, such as pornography sent by e-mail from one person to another; and an offence of making available, to cover those who post child pornography on a website without actively distributing.

The bill will create an offence of accessing child pornography to capture those who intentionally view child pornography without legally possessing it because they do not have control over the material. The bill provides that a person would access child pornography when that person knowingly—and this is very important, because I know there have been some concerns raised around the creation of this new offence of accessing—when that person knowingly causes child pornography to be viewed by, or transmitted to, him or her. The definition ensures that inadvertent viewing would not be caught under this offence.

The bill also proposes to create an offence of exporting child pornography. This provision is designed to allow us to meet our obligations under international instruments. The Internet does not stop at borders and international cooperation is the only way to address child pornography on the Internet.

I would like to clarify some points in relation to the offence of accessing child pornography. Concerns have been expressed that parents who monitor what their children are viewing on the net would commit an offence of accessing child pornography if there is child pornography on the sites visited by their children. Let me assure committee members that this is not the case. In order to commit an offence of accessing, a person must know there is child pornography on a site and willingly visit the site with this knowledge. Knowledge is an essential element of the offence.

• 1640

I also want to clarify that the bill does not create additional obligations for Internet service providers, or ISPs, as they are known. As was the case for the other child pornography offences, ISPs that have neither knowledge nor control over the child pornography transmitted via, or stored on, their servers will not be liable for transmitting or making available. The bill does not require them to monitor the material going through their servers.

Doing so would raise significant privacy issues in relation to Internet users and place an excessive burden on ISPs. I understand they are already cooperating with enforcement authorities and I expect them to continue to do so. And in fact I understand they are hard at work on codes of conduct to regulate, through self-regulation, how they operate. It is important in this area to provide them with the opportunity to self-regulate before we, as legislators, would contemplate anything further.

I also want to clarify that the new offences will not allow the police to monitor what people are looking at on their computers. They can only do so after obtaining a warrant from a judge when there are reasonable grounds to believe child pornography will be found on the computer.

Now, colleagues, let me turn to criminal harassment, or stalking, as is it more commonly known. Criminal harassment is a serious offence. It can have a devastating effect upon the emotional and physical well-being of the victim. In Canada, the primary motivation for stalking another person typically relates to a desire to control a former partner.

We know from Statistics Canada data for 1999 that eight out of ten victims of police-reported incidents of criminal harassment were women. We know that eight out of ten accused were men. We also know that more than half of the female victims were criminally harassed by a current or former intimate partner. This data characterizes criminal harassment for many as an issue of violence against women and as an issue of family violence. This government is committed to taking strong measures to ensure that the criminal justice system treats criminal harassment as the serious offence we know it to be.

So, Mr. Chair, Bill C-15 responds to our commitment by proposing to increase the maximum penalty for criminal harassment, when prosecuted on indictment, from five to ten years. By increasing the current maximum penalty from five to ten years, we are sending a strong message to would-be stalkers: criminal harassment is a serious offence and its sentence will now better reflect its serious nature.

Let me just point out—and if colleagues don't have these, we can make them available—that not only do we have a legislative approach, in the context of the Criminal Code, to harassment, but we have also worked with our provincial and territorial colleagues on the creation of a handbook for police and crown prosecutors on harassment so that people across the country can work with the same information—common practices and standards—as it relates to both police and prosecutors. Peter, you're probably aware of and interested in this in light of your previous career.

This is the kind of work we do, together with our provincial and territorial colleagues in the criminal justice system, to ensure that people have a clear understanding of the provisions, their intent, how they can be investigated, and how they can and should be prosecuted, keeping in mind that the prosecution function is within the administration of justice of the provinces.

Let me now turn my attention to home invasions. Honourable members will be aware that this bill deals with home invasions, creating an aggravating sentencing circumstance to be taken into account by judges. You may also be aware that some provinces, as well as some people around the table, have called for a different approach to this serious behaviour. They've called for a new separate offence of home invasion.

• 1645

In our view, the creation of an aggravating sentencing circumstance presents a balanced and reasonable approach to the issue of home invasions. This proposed amendment signals that home invasions are serious conduct and should be met with significant penalties.

In our view, no need for a separate offence has been demonstrated, given that the offending behaviour is already covered by existing offences in the Criminal Code, such as break and enter and robbery and assault, some of which carry a maximum of life imprisonment.

I am also happy to tell you that the courts are already dealing with this type of conduct appropriately. In fact, Mr. Chair, if one looks at some of the sentences from recent courts of appeal, the message is in fact coming through very strongly that they view home invasion as a very serious example of break and enter, robbery, and/or assault.

In the Alberta Court of Appeal, a recent sentence of ten years, upheld on appeal, stated that eight years should be a starting point for sentences for home invasion. In British Columbia, ten years was upheld on appeal. In New Brunswick, four years given at trial was increased to six years on appeal. In Nova Scotia, fifteen years was upheld on appeal. In Manitoba, five years was increased to eight years on appeal. In Ontario, ten years plus thirteen months pretrial for a total of eleven was given, plus three upheld on appeal. In Quebec, ten years was increased to fourteen years on appeal.

You can see that appeal courts are sending a very strong message in this country with respect to home invasion. In fact, what we're doing is sending a strong message as legislators, saying that yes, it's a break and enter, it's a robbery, it's an assault or an aggravated assault, but what we want you to do, courts, especially trial courts, is understand that a home invasion, as defined in these amendments, should be an aggravating circumstance taken into account when sentencing an accused who is found guilty.

I am pleased to see that courts of appeal across this country are taking very seriously the aggravating nature of the home invasion and the tremendous invasion it is upon one's person and one's home. These crimes almost always involve horrific situations of personal violence directed at the people found at home.

Bill C-15 creates for the first time in our Criminal Code a new, distinct offence of disarming or attempting to disarm a peace officer who is acting in the course of his or her duty. The new offence will apply to anyone who tries to take away an officer's weapon when the officer is acting in the course of his or her duties. In clause 19 of the bill a weapon is defined as "any thing that is designed to be used to cause injury or death to, or to temporarily incapacitate, a person". The offence will carry a maximum penalty of five years. This penalty reflects the seriousness of the offence and sends a clear message that taking a police officer's weapon will not be tolerated.

This proposed amendment demonstrates that the safety of police officers is a priority for this government. I want to acknowledge here the contribution of the Canadian Police Association, which was instrumental in developing this measure.

Last year the CPA identified disarming a peace officer as one of the association's top three priorities for law reform. I appreciate the efforts of the CPA for raising the profile of this issue and of the government for responding with this amendment.

Let me now turn my attention to what we call section 690, or wrongful conviction, and the review process that goes therewith. This bill contains very important amendments to this process and, I believe, fundamentally improves the current procedure for reviewing alleged wrongful convictions in Canada. We must all be mindful of names such as Donald Marshall and David Milgaard and of the fact that the conviction review process is the final safety net for those who are the victims of wrongful conviction. These people have already exhausted all judicial avenues of appeal concerning their conviction, and this process is their remedy of last resort, their last chance. As a result, I take my responsibilities for conviction review very seriously.

For many years now there have been calls for reform of how cases involving alleged miscarriages of justice are handled in Canada. In October 1998 I released a public consultation paper seeking submissions on how our conviction review process could be improved. After extensive consultations and review of all the submissions received from interested parties, I concluded that the ultimate decision-making authority in criminal conviction review should remain with the federal Minister of Justice, who is accountable to Parliament and the people of Canada. This recognizes and maintains the traditional jurisdiction of the courts while providing a fair and just remedy in those exceptional cases that have somehow fallen through the cracks of the conventional justice system.

• 1650

Having concluded that an independent body for conviction review was not needed in Canada, I must also say that the consultation process convinced me that maintaining the current state of conviction review was not a desirable option. Therefore, the amendments to the conviction review process will provide investigative powers to those investigating cases on my behalf. This will for the first time allow investigators to compel witnesses to testify and compel the production of documents.

In order to make the conviction review process more open and accountable, ministers of justice will now be required to provide an annual report to Parliament with respect to applications for a conviction review. The Criminal Code currently limits conviction reviews to those who have been convicted of the more serious indictable offences.

In recognition of the fact that any wrongful conviction is wrong and threatens public confidence in the justice system, Bill C-15 proposes that conviction reviews be expanded to allow for the review of any federal conviction, thereby including summary convictions. I also intend to make administrative changes to improve the conviction review unit, which will make the conviction review process more open, accessible, and accountable. The conviction review unit will be expanded to include investigators, a website will be created to give applicants information on the process, and a special adviser will be appointed to oversee the review of applications and to provide advice directly to me in these matters.

In fact, while we have a conviction review unit in the department now that is in fact separate to a large extent, what we want to do is ensure that they operate as an independent unit. I will be appointing from outside my department a so-called special adviser who in fact will head up this unit and who will report to me—not to others in the department—or to future ministers of justice to help enhance the independence of this position and this unit within the Department of Justice. I believe that these amendments are the most efficient and effective way to improve the post-appellate extrajudicial conviction review process in Canada.

Let me now, Mr. Chair, just very briefly turn to those provisions in the bill that deal with criminal procedure reform. My department has been working closely with the provinces and territories on criminal procedure reform for some time, and the work is now in its third phase. The two previous phases were introduced as legislation in 1994, Bill C-42, and in 1996, Bill C-17, and they are now obviously in effect. The first two phases have been successful in assisting jurisdictions to more effectively manage resources in the criminal justice system.

The jurisdictions are now pressing to have the third phase implemented in legislation. It is the proposals of this third phase you have before you today. The objectives of phase three are to simplify trial procedure, to modernize the criminal justice system and enhance its efficiency through the increased use of technology, to better protect victims and witnesses in criminal trials, and to provide speedy trials in accordance with charter requirements.

We are trying to bring criminal procedure into the 21st century, and this phase is an essential instalment—I emphasize "instalment"—in our efforts to modernize our procedure without in any way reducing the measure of justice provided by the system. This package of reforms was developed in partnership with the provinces and the territories. They support these reforms. However, they take my point that this is an instalment. They would like us to go further and expect that we will be working with them—and you will be working with them—to move forward on phase four of criminal procedure reform in the very near future.

As the provinces and territories are responsible for the administration of justice in their respective jurisdictions, I believe we should do our best to give them the tools they need to ensure the efficient, effective, and fair operation of the criminal justice system.

Finally, Mr. Chair, let me just say a few words about the amendments in Bill C-15 to the National Capital Act and the National Defence Act. In order to make the National Capital Act consistent with other federal legislation and regulations, it is proposed that the maximum fine available for offences in regs under the act be increased from $500 to $2,000, the maximum fine currently provided in the Criminal Code for summary conviction matters. The types of offences this proposed change would target are relatively serious regulatory offences, such as poaching of large game and illegal dumping of waste.

• 1655

The proposed amendments to the National Defence Act would allow for the taking of fingerprints and other information from persons charged with or convicted by court martial of designated service offences. These would be offences that are identical or substantially similar to offences for which civilians are currently subject to fingerprinting under the Identification of Criminals Act. This legislative authority is proposed to enable police forces to have access to the full criminal record of persons dealt with under the Code of Service Discipline.

So, monsieur le président, with that, I conclude. I apologize—it was a quick survey of the important provisions in Bill C-15—but I think colleagues have had ample opportunity to acquaint themselves with the provisions of Bill C-15A, and I would be happy to entertain any questions or comments you might have.

The Chair: Again, I would ask everybody to be very alert to the time, because we want to get around once. We're going to go to five minutes.

Mr. Toews.

Mr. Vic Toews (Provencher, Canadian Alliance): Thank you. I thank the minister for her presentation and concurrence in agreeing to split this bill. Her agreement will enable the committee and the House to move quickly to adopt the relatively non-contentious provisions. I say relatively non-contentious, which is not to say I agree with the legislation as drafted, but in view of the exceptional international situation, I think it's in the best interests of Canada that we focus on national security issues primarily. However, I do have concerns, and I trust the minister and her staff will review those concerns, and perhaps in the not-too-distant future we can revisit and perhaps make some further amendments.

Just before I make some comments, I want to correct the minister, if I might offer that correction. The minister advised that criminal prosecutions are within the provincial constitutional jurisdiction as the administration of justice. In fact, constitutionally that is not correct. The Supreme Court of Canada is very clear that this is a delegation—

Ms. Anne McLellan: Delegated authority.

Mr. Vic Toews: —and it's no independent constitutional authority for the province.

Ms. Anne McLellan: Right.

Mr. Vic Toews: But having said that, I don't have too much to disagree with in the minister's comments.

Ms. Anne McLellan: Thank you.

Mr. Vic Toews: Specifically, in respect of the offences we are dealing with, in the creation of the offences relative to the sexual exploitation of children, particularly in connection with the Internet, my concern is that age 14 is simply too low. It should be age 16. I think most civilized countries have age 16. I would commend that to the minister's staff for their consideration.

Secondly, in respect of raising the penalty for criminal harassment from five to ten years, I have real concerns about the lack of minimum penalties. I recognize there might be a philosophical difference between the minister and me, but I think it's often an exercise in futility if there is no concurrent commitment by the courts to increase penalties accordingly. We see penalties being raised from five to ten years, but the courts simply don't reflect the increase in the seriousness with which the House takes these penalties. Therefore, I think together with a lack of commitment by the court to take that into account and also very lax parole laws, it undermines the effectiveness of the important reforms the minister is bringing forward.

Thirdly, in respect of home invasions, my position—and I believe our party position—in the past is that it should be a separate offence, not simply an aggravating factor in sentencing. Again, I emphasize that even though in this particular area the courts have, for some reason, taken it much more seriously.... Perhaps because in Manitoba a court of appeal judge's home was invaded and he was held at the pleasure of certain armed bandits. Maybe that's had an effect on the judiciary generally, I don't know. But certainly, I think there are better ways to ensure we have more effective laws.

• 1700 

Of course, we're very supportive of the offence of disarming or attempting to disarm a peace officer.

The last comment I wanted to make is in respect of the preliminary inquiries. I think the preliminary inquiries, in light of charter guarantees, are basically irrelevant and a waste of time. I speak to many, many provincial judges, and it's simply a waste of time. It slows down procedure. It creates backlog. And although I know defence lawyers are very concerned about the entire loss of the preliminary hearing, I think we need to revisit it and ensure that while we have safeguarded the rights of accused, these preliminary inquiries are not abused. I think there has been abuse of the preliminary inquiries in the past.

Those are my comments. Thank you very much.

The Chair: Thank you, Mr. Toews. We'll see if the minister is able to answer all that in 20 seconds.

Ms. Anne McLellan: Well, actually—

Mr. Vic Toews: I wasn't expecting an answer.

Ms. Anne McLellan: No, I'm not going to respond to it all, because Mr. Toews and I have had the opportunity to talk about some of these things.

Regarding preliminary inquiries, this is an instalment. I think the provinces and territories would like us to look at more radical reform as it relates to preliminary inquiries. You rightly identified that there is grave concern from the criminal defence bar, and that is something we will continue to work on. What we're doing here is streamlining the use of the preliminary inquiry.

With regard to age of consent—from 14 to 16—we have our child as victim consultation paper. We discussed that at our federal-provincial justice ministers' meeting in September in Nova Scotia. Those consultations will be concluded and reported on by December 31 of this year, and I think we will see that a consensus is emerging that with certain safeguards we should probably be moving on the age of consent from 14 to 16. But as with some of these things, they look simple on the surface, but they're not quite so simple. It requires a fair number of changes to the code; we're going to have to review all those sections where age is found. But it's certainly an issue very much on our agenda.

The Chair: Thank you, Madam Minister. Thank you Mr. Toews.

Mr. Bellehumeur.

[*Translation*]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ): Thank you, minister, for having taken the time to come and explain this part of Bill C-15 to us. However, I would like to point out that if you had accepted to split it at the end of May or the beginning of June as the Bloc was asking then, this part would already have been passed and we'd probably be examining the second part of Bill C-15 which is also important. I think we're going to have a lot of work to do on that part.

As for Bill C-15A, I don't have many questions. Overall, these are amendments stemming from the debates we held in the House, private members' bills and an old bill you tabled some time ago, which I believe was C-36. So there's nothing very surprising. We've had the opportunity to examine these parts.

My only concern has to do with miscarriages of justice. There have been decisions and comments made by certain justices. There was a board of inquiry. I think it's in the Marshall affair that it was said there should be an independent organization in charge of investigating and making any final decisions. Quite clearly, in the Marshall affair, the board members didn't think they'd be handing that part of it to the Minister of Justice. They were really thinking about an independent organization with the responsibility for investigating and making the final decision.

In other very democratic and very open countries, in some European countries, and especially in Great Britain, which has a British system, actually it's an independent organization that examines that matter and makes the decision in those few cases where there might have been a mistake made by the Crown, the courts or the police officers who are very close to the legal system and the Department of Justice. Finally, it will be the Minister of Justice of the day who will ultimately make the final decision. I find that puts the Minister of Justice making the final decision in a position of weakness or at least in a very strange position.

• 1705

You said before that having studied the matter, you came to the conclusion that... You made a few comments. You have not convinced me.

I'd like to know why, in Canada, we'll do things differently than elsewhere without any possibility of conflict of interest or other problems whereas in other countries, Great Britain included, it was found that there was a possible conflict of interest because a miscarriage of justice... You have to give the individual the opportunity of being heard and that individual must at least have the feeling that the proper correction will be made.

[*English*]

Ms. Anne McLellan: Merci. Those are important questions. First of all, Great Britain, to the best of my knowledge, is exceptional. It may not be the only jurisdiction that has established an independent review commission, but it is quite exceptional. Other jurisdictions take other approaches. For example, I understand that in the United States of America it is left largely to the courts of appeal to play this role. Other jurisdictions choose other approaches.

The British went to the independent review commission model because of some unique circumstances—not to suggest that it does not have some merit, but I will soon explain why I do not think it's necessary or appropriate here. Keep in mind that the home secretary is responsible for most justice issues, plus policing, in the United Kingdom. Until the British created the independent review commission, it was the home secretary who was in fact called upon to do these reviews of wrongful conviction.

In this country I have no role in relation to policing whatsoever, be it the national police force or local police forces. That function is reposed in either the Solicitor General or my provincial colleagues. I have no role in terms of second-guessing a police investigation.

Another thing is that, in terms of my role in prosecutions, the Attorney General institutes legal proceedings in very few criminal prosecutions. Code prosecutions are all prosecuted by the provinces. The vast majority of wrongful convictions arise from prosecutions begun and pursued in the provinces. That is of course not true in the territories, nor would it be true for federal statutes other than the Criminal Code.

In fact, when a federal prosecutor has been involved in an allegation of wrongful conviction, I ensure that that matter is sent outside the department for independent review. It is even outside the investigative unit within the department, so no one can say that any lawyer or investigator employed by the Department of Justice or the federal government has had a role in the review of such an allegation of wrongful conviction. I send these matters outside.

Keep in mind that part of the context of the situation in Great Britain deals with northern Ireland and the IRA and a rash of very high-profile trials where ultimately there were allegations of wrongful conviction, some of which have been proven. The British felt they needed a fresh start. While we have had examples of wrongful conviction—and some high-profile examples—we fortunately have not had what many felt was a more widespread, perhaps even systemic or structural, problem in terms of police investigations, prosecution, and convictions leading therefrom.

While I would not want to say the British are unique, because I have not surveyed every country in the world to which we might compare ourselves, they do have a history in this area that is unique in relation to countries such as ourselves, the United States, and most European countries.

I met with the head of the British independent commission. I met with his commissioners and spent some time talking to them about both the strengths and weaknesses of their system.

• 1710

I will tell colleagues that they have created an ever-expanding bureaucracy. They have thousands and thousands of applications, most of which they dismiss as frivolous, but only after they have taken up some amount of time on the part of the commission. They do not have the resources to do their job. They will continue to ask for new resources. And the backlog of cases is not less; in fact, it's growing.

Therefore it is not apparent that the independent process is more efficient or more effective or necessarily delivers fairer justice than our process. Yes, it is technically within the Department of Justice with these amendments, but by and large it will be fenced; it will have walls around it. It will be a very independent, free-standing unit, with new powers and a new independent adviser who will report to me and not up the line to officials within the department. I'm hoping we will be able to deal with wrongful conviction allegations in a timely fashion and in a fairer fashion.

The Chair: Mr. Blaikie.

Mr. Bill Blaikie (Winnipeg—Transcona, NDP): I have only a very brief representation to the minister.

As I read it, there is an emerging consensus on the part of the provincial ministers of justice about the need to change the age of consent. Certainly that's what I take from my reading of some of the material sent to me by the Minister of Justice in Manitoba. I was glad to hear you say that this matter will be resolved in the affirmative by the end of the year, if you can deal with some of the questions. Presumably, these difficulties have to do with making sure relationships between—

Ms. Anne McLellan: —consenting young people.

Mr. Bill Blaikie: —teenagers of near age aren't criminalized or whatever.

Luring-on-the-Internet crimes, which we want to further criminalize and make it easier to charge people with in Bill C-15—if we have this huge gap whereby 14-year-olds can be exploited in this way, then you'd have to admit we have a gaping loophole in what most Canadians would ascribe as the intent of Bill C-15. It would seem to be a logical follow-up to this bill.

Ms. Anne McLellan: I'll let Madam Lafontaine respond to the loophole issue.

In fact there is no loophole. Some might argue that we should go further and increase the age of consent, but Madam Lafontaine will respond to what is here in the bill in just a minute.

To clarify, I did not say we would be moving on age of consent as part of a package at the end of the year. We will finish our consultations by December 31. We will have a report shortly thereafter, if not by December 31. I will want to consult with my provincial and territorial colleagues on any actions that might then flow from this process, because the child as victim deals with much more than the age of consent. We will move forward with a package of reforms.

Colleagues, officials from the provinces and from the federal government, as well as some ministers, have flagged the fact that, while it seems simple to go from 14 to 16, there are many provisions in the code that touch upon age, and we need to make sure we are not criminalizing completely normal, legitimate, honest, safe behaviour.

That's not as easy as it may seem. We do have a close-in-age exemption now, but we don't know whether it will deal with all the situations that might arise, and we're looking at that work now. It is fair to say that most people suggest the age should move up to 16, but they also say that if this happens, let's make sure we have the appropriate safeguards so as not to criminalize innocent behaviour.

Again, Madam Lafontaine is only going to deal with the loophole issue.

• 1715

Ms. Lisette Lafontaine (Senior Counsel, Criminal Law Policy Section, Department of Justice): I too disagree that there is a loophole.

We have to understand exactly what the luring offence does to see how it doesn't create a loophole. This new offence protects children in all cases up to 18 years of age, but only in situations involving intent to commit a sexual offence against the child. If offences are not committed, children 14 years and older will not be protected by this legislation. The luring offence doesn't protect children against legal, lawful sexual relations, even if we think they may be premature.

Ms. Anne McLellan: *Oui, exactement*.

People argue about increasing the age to 16 because there's lawful sexual behaviour under the code presently at the age of 14 and up. People are saying increase the age to 16, thereby potentially criminalizing a wider range of behaviour. Then we would be better able to catch people who use the Internet to commit offences.

The Chair: Thank you very much, Madam Minister.

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC/DR): Thank you, Mr. Chair.

Madam Minister, we're always glad to have you here. I want to thank you for changing the wisdom of your ways about Bill C-15.

This bill has some very useful, very worthwhile provisions, as you pointed out. I have a couple of questions with respect to the child pornography on the Internet clauses.

Was there any contemplation given to specific references dealing with the seizure of material or computers used to transmit this type of material? Similarly, is there a section contemplated that would reference careless storage of equipment used for the purposes of transmitting this type of material or knowingly making it available to youth?

You've touched upon some of the concerns raised by Internet service providers. In particular, though, there are still questions about the obligation to police. When we think of smaller Internet service providers, who don't have the resources of the larger ones, this is of particular concern.

Therefore, was there contemplation of possibly including specific exemptions or expressed exemptions, for example, for providers who simply are the custodians, who merely provide the facilities for telecommunications used for the transmission of pornographic material? Was there contemplation of exempting in some way the liability that might flow to Internet intermediaries, that is, those who simply provide the facility but who could therefore be drawn into this web of criminal liability, if not specifically exempted?

Ms. Anne McLellan: On the latter point, because we deal with the requirement of ISPs knowingly functioning as intermediaries, any unintentional or purely accidental act would not be criminalized and would not be caught by the provisions as you see them here.

We have provided the protection that not only Internet service providers but other people have required. I used the example of parents. Interestingly, that was raised in consultations that we carried on. Because of the requirement of intent in terms of accessing or transmitting, for example, the requisite degree of protection and the requisite standard we use in the Criminal Code generally before someone can be found guilty of an offence is provided.

We do have new provisions in here that provide a judge with the power to seize property that has been used for the purposes of child pornography or certain other offences. They are found here in the code, as it will be amended if you approve Bill C-15A, starting at proposed subsection 164.2(1).

Mr. Peter MacKay: Was the storage aspect contemplated in the drafting of the legislation?

Ms. Anne McLellan: Do you mean the storage of images or equipment?

Mr. Peter MacKay: Either, both—anything that would lead to a person.... I mean careless storage. You have careless storage of firearms.

If this is serious enough—and it is—to put in the Criminal Code by virtue of making pornographic materials readily available, isn't it possible that your department may have examined this issue of careless storage?

• 1720

Ms. Anne McLellan: I don't know. I don't think we did. You'd have to look at who you're talking about. Are you talking about the Internet service provider, or are you talking about the producer of the stuff, who's storing it? Are you talking about the consumer of it, who's storing? That would be an offence, clearly, because that's possession, or transmitting or

accessing.

It seems to me you're going to have to look at...are you talking about the Internet service provider who provides the conduit by which this information goes from producer to consumer? We do not have provisions here that deal with the notion of careless storage. I think we have provisions that deal with everything that one would conceivably think of in terms of possession, transmission, distribution, exportation, access. All the things that are likely and reasonable to be actions one might carry out or perpetrate are criminalized either in the existing code or with these provisions.

Now, if you have some particular concern around what Internet service providers are doing, that is an issue you can take up with them. They are developing a new code of self-regulation, and we're working closely with them. Industry Canada is also working closing with them. They have shown themselves, I think so far, to be very responsible in terms of the approaches they are taking, their obligation as Internet service providers. If it appears they're not being responsible, then we can return to this issue.

The Chair: Thank you very much.

I want to get to Mr. Myers, because very soon we're going to hear bells.

Mr. Lynn Myers (Waterloo—Wellington, Lib.): Thank you, Mr. Chairman.

Madam Minister, thank you for appearing. These are very important provisions you're bringing forward, and certainly we appreciate the time you're taking.

I wanted to stick with the Internet service providers, and more to the point, what you have clearly stated—that they will be exempt from prosecution. If they act as facilitators to the Internet, you will not prosecute them. I think that's fair to say.

My two questions flowing out of that are as follows. Have you or your officials had a chance to discuss these provisions with them? Second, would it be appropriate to have an amendment as opposed to the kind of language you're using here today? Would that be a better approach, or does it suffice to simply leave it as is?

I'd be interested in those two answers.

Ms. Anne McLellan: We have discussed this with them at some length, and I would hope they would describe our and Industry Canada's relationship with them as a very cooperative one.

I think they do not want to see a lot of government regulation if they're able to self-regulate their industry. And certainly we have no desire to regulate them, if they are able to self-regulate.

We have no reason to believe they will not be able to do that. They've shown themselves to be responsible to date. We will continue to work with them. We do not believe an amendment is required. We believe it is absolutely clear they are not going to have liability attached to them in the circumstances outlined in Bill C-15A.

That's why I took pains this afternoon to put that on the public record, to reassure them and to guide anyone who might be interpreting these provisions in the future.

So we do not believe an amendment is required, but we will continue to work closely with them, because they are obviously key in this world of Internet connection. We understand the unique position they play as conduit, and how as that conduit they are often vulnerable, to those who produce the stuff—the pornography and other materials—and those who consume it, and the terms under which it's consumed.

• 1725

Mr. Lynn Myers: Mr. Chairman, it's important that the record show that, because this clearly is an area of interest. I think it's fair to say it's a very tricky area as well, and I think it's appropriate—

Ms. Anne McLellan: It's going to be a growing area of interest. That's why I say as we learn more, as we see how these amendments work and how the Internet service provider industry regulates itself, if we see there are gaps or concerns, then I think we will return to this. Internet technology is still relatively new technology, and there is more we will have to observe as we see more incidents investigated by police, prosecuted, and dealt with by the courts. Are there gaps? Are there problems? If so, then we will return to this subject and deal with them.

Mr. Lynn Myers: Thank you very much. That's very instructive.

The Chair: Thank you very much.

You have one minute, Denis.

[*Translation*]

Mr. Denis Paradis (Brome—Missisquoi, Lib.): Thank you for coming to meet us this afternoon, Madam Minister.

First, I congratulate you for having given us the possibility of legislating in the past on a subject that you have not talked about, and that is tourism for sex. I also saw in the bill that changes will be made. I simply wanted a bit more clarification. I know that at the present time, you have to obtain a reference from the country where the sex tourism happened to be able to act here in Canada. I also know that the Attorney General of Canada will be able to act alone without being under the obligation of getting a reference from the other country. That is the first point I wanted to raise.

The second one has to do with the means the police can use, the guidelines given to police officers so they don't invade privacy when dealing with the Internet for youth. It is a criminal offence to look at child pornography on the Internet and I have no respect for those who do that. What are those means and guidelines?

Third, in dealing with communications using a computer, the computer is added to the commission of those offences. Is there anything providing for new technology? You have the BlackBerry or the cell phone, for example, because now you can get onto the Internet with cell phones. Does that come together with the computer concept in the context of criminalizing the fact that you're getting onto an Internet site?

[*English*]

Ms. Anne McLellan: Sexual tourism is a troubling and difficult area. The only truly effective response will be a global one where countries work together.

What we're doing with the amendment we have before you is dealing with a gap that emerged out of a fact pattern in the country of Costa Rica. It was based on the interpretation of

our law by the court in Costa Rica, and therefore we decided we would make it clear for foreign courts, for Canadians, for everyone, what our intent was in this area.

As you're aware, there's a challenge here, because if someone, a Canadian, leaves this country and goes to Costa Rica, Thailand, or wherever to pursue young children in illegal sexual activities, one could either prosecute them in that country or prosecute them at home.

Sometimes there have been Canadians prosecuted abroad for what we would broadly call sexual tourism. We decided that what we wanted to do, if a country decided not to prosecute, was to have the ability to prosecute here, if we felt the case could be made. What we are doing in this amendment is making it absolutely clear that a foreign country does not have to request that we prosecute.

• 1730 

The confusion arose in the Costa Rican court. They thought there was a requirement, as I understand it, that the Costa Rican government had to make a formal request of us before we could prosecute at home.

What we're doing is making it plain that we can prosecute. No formal request would have to come from any other country that we prosecute a resident of Canada here in Canada if we had the facts and if we thought or our provincial prosecutor thought they could make the case against the person. So either a foreign country can prosecute or, as it is absolutely clear, we can prosecute the person if the provincial prosecutor or provincial attorney general feels it is merited.

In terms of—

The Chair: Could you do this quickly? Mr. Cadman wants to get on, and I have a couple of quick notices here.

Ms. Anne McLellan: Okay. In terms of the police, I think your question was about their ability to access that or gain access to that where one is viewing on the net. In fact, there is a warrant requirement, so they would have to have reasonable and probable grounds. They would have to go before a judge to make the case or before a JP for reasonable and probable grounds, and a warrant would or would not be issued.

On the final question, Madam Lafontaine, go ahead.

Ms. Lisette Lafontaine: The definition of computer system is broad enough to include a cellphone or a BlackBerry when you use it as a computer.

The Chair: Before I turn it over to Mr. Cadman, I just want to take a couple of seconds here. Tomorrow members of the committee will be asked to consider extending the sittings of the committee while we have this very busy schedule, so think about Tuesday night, Wednesday night, and Thursday afternoons. I would like you to express yourselves to me tomorrow. We're meeting tomorrow afternoon; that will be discussed then.

The names of the legislative counsel have been distributed to all members in terms of any drafting of amendments you would like to make, so that's available to you now. The reprint of Bills C-15A and B will be available to the committee tomorrow. Finally, Mr. Lee's motion has been distributed today in both official languages and should be at your place.

Mr. Cadman.

Mr. Chuck Cadman: Thank you, Mr. Chair.

I just have a very quick one for clarification on luring provisions. Would there have to be a conviction registered on, say, a sexual assault before the luring provisions would kick in, or would the luring provisions stand alone?

Ms. Anne McLellan: It is an offence. We are creating a new offence of Internet luring. For example, if one has the intent of kidnapping a young person by luring them through the use of the Internet—perhaps a chat room—from their home, the schoolyard, or wherever, one could charge that person with Internet luring and they could be convicted of that offence. Is that what you're getting at?

Mr. Chuck Cadman: No. I just want to make it clear that a sexual assault would not have to occur first and a conviction registered before the luring provisions would kick in.

Ms. Anne McLellan: No. In fact, that's why we're adding Internet luring so there may not be in fact a sexual assault, but the intent was to lure that young person out of the safety of their home or the schoolyard for the purpose of—

Mr. Chuck Cadman: I'm concerned about how difficult it is going to be to prove that in a courtroom.

The Chair: On that note, we see the bells, and we know where we're going.

Ms. Anne McLellan: Thank you all. It's a pleasure to be back.

The Chair: The meeting is adjourned.