## STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

## COMITÉ PERMANENT DE LA JUSTICE ET DES DROITS DE LA PERSONNE

### EVIDENCE

[*Recorded by Electronic Apparatus*]

Wednesday, November 4, 1998

• 1635

[*English*]

**The Chair (Ms. Shaughnessy Cohen (Windsor—St. Clair, Lib.)):** Order.

Just as a reminder, we're back on Bill C-40, an Act respecting extradition, to amend the Canada Evidence Act, the Criminal Code, the Immigration Act and the Mutual Legal Assistance in Criminal Matters Act and to amend and repeal other acts in consequence.

We have the minister, along with Mr. Piragoff and Mr. Lemire, who are back for a return engagement.

Welcome, gentlemen.

Mr. Piragoff, we're seeing an awful lot of you these days.

**Hon. Anne McLellan (Minister of Justice and Attorney General of Canada):** Is that good or bad?

**The Chair:** No, it's fine with us. He has lots of good answers, but he says they have to be accurate before he gives them, which we find quite amusing given our propensity not to be accurate all the time.

Minister, you have a statement on this bill. Then we'll have questions.

[*Translation*]

**Ms. Anne McLellan:** Good afternoon, Madam Chair and colleagues.

[*English*]

I wish to thank the committee for this opportunity to speak on Bill C-40 regarding extradition, and for your expeditious consideration of this important bill.

Canada, as I know many of you are aware, has been subject to criticism by many of its allies regarding its antiquated extradition laws. In the view of some states, Canada is not an effective partner in the fight against international criminality due to our extradition laws.

With the growing sophistication and globalization of organized crime, we must rectify that situation, and we must address those problems in our law that hinder effective and fair extradition practices.

Problems are particularly manifest with the following issues: countries with which we have no extradition treaty or rendition arrangement; entities other than states, such as the United Nations War Crimes Tribunal or the new International Criminal Court, which Canada played such a key role in establishing; countries where there is an extradition treaty in place with an obsolete list of offences that does not include modern crimes, such as drug trafficking, money laundering, or computer-related crimes; countries that have different legal systems than our own and that are unable to comply with our evidentiary laws; and countries of any legal system that due the complexity of the criminal conduct in question are unable to satisfactorily meet our laws, which poses unnecessary hurdles and difficulties that have more to do with the form rather than the substance of the evidence.

The legislation I am bringing forward provides rational solutions to each of these problems. This reform is not just important, Madam Chair, but it is also overdue. With this legislation, we will overhaul and modernize our extradition laws and provide a modern and effective system for extradition.

Transnational crime and criminals are now a daily reality, given modern means of communication and transportation. Our laws must take account of that reality, and we must move Canada's laws, originally drafted in the 19th century, into the upcoming 21st century, let alone into what remains of the present 20th century.

With this bill, we will create a uniform extradition procedure that will apply to all requests for extradition and provides procedural and human rights safeguards for the persons sought. While some of these procedures and safeguards exist under current extradition practices, this bill would provide statutory authority for those practices.

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It would also create some new procedures to resolve procedural problems that exist under the current extradition law and practices. It also makes the extradition process more accessible to countries that have different rules of evidence, while providing accountability between Canada and the other state for that evidence.

In this bill, Canada will be adopting a scheme that was developed by Commonwealth law ministers to ensure that common law rules of evidence are not a barrier to extradition between common law and civil law states, nor an unnecessary hindrance to extradition among common law states. At the same time, it does this in a manner that preserves the important role of the judiciary to evaluate the sufficiency of the evidence and to determine that the conduct for which the person is sought to stand trial or undergo a sentence is considered to be criminal under Canadian conceptions of criminality.

As you heard from my officials yesterday, the bill also sets out clearly, for the first time, a minister's responsibilities and duties to ensure that the human rights and fair treatment of the fugitive will be safeguarded in the other state upon the fugitive's return for trial or to undergo sentence.

The bill will also reduce unnecessary redundancies between the extradition and refugee determination process while still preserving necessary safeguards.

[*Translation*]

I have been informed of the issues raised in the second reading debate and before this committee, both by the Opposition and Government members namely, concerning the way in which the bill accelerates extradition procedures; the importance of the roles played by the Justice Minister and the judiciary; on the way in which the new rules of evidence help the foreign State in presenting its request and supplying to the person being sought more information enabling him or her to gain a better idea of the evidence available in the requesting country; and of the rights and guarantees set out in the bill as well as the relationship with the procedure for determining refugee status.

[*English*]

I understand my officials had a frank discussion yesterday with members of this committee, and provided detailed responses to members concerned. I would now be happy to respond to any comments or questions that members might have, and I again thank committee members for inviting me to be with you this afternoon. I always enjoy appearing before the Standing Committee on Justice and Human Rights, and I look forward to a spirited engagement.

**The Chair:** Is there something going on here that I don't know about?

Mr. Reynolds, do you want to start?

**Mr. John Reynolds (West Vancouver—Sunshine Coast, Ref.):** Why, thank you.

**The Chair:** You don't have to.

**Mr. John Reynolds:** The chair and I haven't had lunch yet—

**The Chair:** We're a little grouchy about lunch.

**Mr. John Reynolds:** —so I'm not sure how spirited we'll be.

I listened to what you said, and your officials yesterday did a great job answering our questions, but one of the concerns I think everybody has is with regard to the Supreme Court: Is this bill watertight? Who has looked at it to tell you that, yes, everything in here is going to work; we're not going to have people going to the Supreme Court such that we lose and have to go back to Parliament to change these laws again?

Because that's an issue. My colleague is probably going to ask about certain cases, and where they're at, and if they'd fit into this program.

What assurances do you have from your staff and others that the Supreme Court would agree with what this bill is doing?

**Ms. Anne McLellan:** First of all, let me say that much of what is proposed here is in fact derived in some part from the jurisprudence that the Supreme Court has developed in relation to extradition appeals before the court.

One can never say with certainty—if this is the point you're getting at—that the Supreme Court would, if called upon to do so, uphold every section of this legislation in every circumstance, and I can't say 100% that this would happen, but to the best of our knowledge, we believe not only is this legislation is in conformity with jurisprudence from the Supreme Court but it also strikes the right balance between the rights of that person who is sought to be extradited and the rights of the extraditing state and the rights of Canadians. I believe it strikes the right balance in terms of our bilateral and multilateral relationships around the world. It strikes the right balance in terms of ensuring that we are able to do our share in terms of extraditing those who have allegedly committed criminal acts in other countries expeditiously, in a timely fashion, so that they can be dealt with in those countries where the alleged acts have taken place.

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So as far as I'm concerned, this legislation is a complete response to our critics, both at home and abroad, and to some extent even the courts, who, from time to time, have criticized us for our antiquated extradition laws.

Therefore, I am very confident that we have here a modern process, a streamlined process, and a timely process that strikes the right balance and that will work.

Do you have anything to add, gentlemen?

**Mr. Don Piragoff (General Counsel, Criminal Law Policy Section, Department of Justice):** That was a good answer, Minister.

**Ms. Anne McLellan:** Oh, oh. Thank you.

**Mr. John Reynolds:** Just explain to me, though, whether there is a process, when you're going through this, and your staff is going through it, where somebody actually has that role. Does somebody have that responsibility? If it comes back a year later, and there's a major flaw, according to the Supreme Court, does that somebody have to say, "Oops, I goofed"?

**Ms. Anne McLellan:** Yes. Indeed, you're probably looking at two of those gentlemen right here.

**Voices:** Oh, oh.

**Ms. Anne McLellan:** Keep them in mind, Mr. Reynolds, because if this doesn't work....

**Mr. John Reynolds:** Okay. That's all I really wanted to know.

**Ms. Anne McLellan:** In reality, of course, let me say I am a firm believer in the concept of ministerial responsibility. At the end of the day, Mr. Reynolds, you will always be able to hold me responsible, be it during Question Period, at this committee, or elsewhere.

But seriously, this legislation is based on years of practice with a piece of legislation that has progressively become more outdated, and therefore we believe the procedures in this bill reflect, as I say, a fair balance. They are efficient. They meet, in our opinion, any kinds of charter arguments that could be made. They respond to the key criticisms of many of our important allies around the world who believe our extradition laws have fallen behind theirs.

What we're doing here, in many respects, where there are changes—and there are some important changes from our existing process—is reflecting the way the rest of the world has moved to deal with extradition and expediting requests, ensuring at the same time that people's rights are protected.

**Mr. John Reynolds:** Given the time delays in using this extradition process, would it not be more practical and simpler to use a simple deportation order against an individual if some of these people shouldn't be here? You know, there are reasons why they shouldn't be; maybe there's a deportation order on them.

Does your department ever look at that aspect of it?

**Ms. Anne McLellan:** I may let either Mr. Piragoff or Mr. Lemire answer that question in more detail, but keep in mind that a deportation order deals with us sending someone out of the country, and in fact, it is an act undertaken by us, and instigated by us.

When one talks about extradition, what you're doing is dealing with a response from an external and sovereign power. Therefore, they would send the request for extradition, and we would then invoke the procedures that appear here.

**Mr. John Reynolds:** But what if you already have a deportation order out against the person they were seeking extradition for? There are cases like that right now.

**Ms. Anne McLellan:** If we already had a deportation order against someone?

**Mr. John Reynolds:** Yes.

**Ms. Anne McLellan:** How would those two relate together, gentlemen, if we already had a deportation order against someone and then a request was made to extradite?

**Mr. Don Piragoff:** Thank you, Minister.

As the minister indicated, the difference between deportation and extradition is that basically in deportation, we are trying to shove someone out of the country who wants to remain in the country.

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The very next day, however, or two minutes later, they can say they're willing to leave. They can get on a plane voluntarily, saying they will leave the country and go to a third country or a fourth country, not the country that wants them to face trial.

We can't stop them, because at that point, if they're willing to leave, they can get on a plane and go anywhere they want.

**Mr. John Reynolds:** We'd save lots of money, though, wouldn't we.

**Mr. Don Piragoff:** Well, it may save money for us, but it does nothing in terms of the international criminal justice system and our allies, who may be treaty partners, asking us why we let that criminal go free, who may now go to a third or fourth country and commit more crimes there, which might have repercussions back to us.

So really, it's a question of our belonging to an international community. We're concerned about transnational crime and not just crime simply in our own borders.

**Mr. John Reynolds:** But is it not a fact that in deportation, quite often, if the person is of criminal intent—we do this all the time now—we send two officers along? The person is in handcuffs and they go where we want them to go. If the country that's seeking extradition wants him, and we have a deportation order, we take two immigration officials, put them on an airplane with handcuffs, and off they go. We'd save all the money and all the time.

**Mr. Don Piragoff:** Deportation is also costly, because there are appeals and procedures that have to be followed.

The question you posed to the minister was this: If there is already a deportation order, what would we do with the extradition order? It's really up to the other country. If we are already deporting to that particular country, it's really not in their interests to then ask for an extradition order, because the person is on their way. If they ask for an extradition order, we would then have to honour their request and consult with them as to whether they really wanted us to proceed with the extradition, or whether we should execute the deportation order.

Where it's the same country, then there may be a duplication, but quite often the country doesn't ask for extradition if we are already seeking deportation. Sometimes both situations may exist at the same time, because the other country has asked.

**Mr. John Reynolds:** If there was a deportation order issued, and you got an extradition request, would you at least talk to that country and say, "Listen, we have a deportation order, and we could hop on an airplane tomorrow with two immigration officials"?

**Ms. Anne McLellan:** Yes, we would do that.

**Mr. John Reynolds:** You will.

**Ms. Anne McLellan:** In fact, I think as the officials have indicated, if one has a reasonably high degree of certainty, or we can guarantee that under the exercise of the deportation order the person is deported to the requesting state....

For example, let's say a deportation order exists against the same person the U.S. has made a extradition request for. If we can guarantee that this person is going to be deported into the U.S., then we would probably alert U.S. officials to that effect, and there would probably be in that case no reason to pursue an extradition request. The requesting state would say, well, we can get this guy as soon as he comes across the border or comes off the plane.

Wouldn't that be the logical way of rationalizing that problem?

**Mr. Jacques Lemire (Counsel, International Assistance Group, Department of Justice):** Yes. We can certainly consult with the foreign authorities who are expressing interest in extradition.

For example, if an individual is undergoing deportation proceedings in the foreign state, and the individual is detained, and the foreign state expresses interest in the provisional arrest of the individual because of a perceived urgency, well, maybe our assessment at that point is that there is no point in arresting the individual for extradition purposes because he or she is already detained and undergoing deportation proceedings. However, if the situation was to change, we could stand ready in order to be able to intervene to honour our international obligations, always in consultation with the other state, obviously. These happen currently.

**Mr. John Reynolds:** Thank you.

**The Chair:** Thanks, John. Mr. Ménard.

[*Translation*]

**Mr. Réal Ménard (Hochelaga—Maisonneuve, BQ):** I hope you will be somewhat indulgent today. This being the first time that I have attended this committee, I am not that familiar with how it works.

I am interested in Bill C-40 because I am my party's spokesman on immigration issues.

To begin with, I have two general questions. What are the mechanisms available to you, and how do you plan to discharge the obligation placed on you by the Bill to ensure that persons returned or extradited to other countries will not have their human rights violated? That is my first question.

• 1655

[*English*]

**Ms. Anne McLellan:** As you're probably aware—and I direct your attention to clause 44 of the legislation—part of my responsibility is the discretion I have to refuse.

Subclause 44(1) reads:

> The Minister shall refuse to make a surrender order if the Minister is satisfied that
>
> (a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or
>
> (b) the request of extradition is made for the purpose of prosecuting or punishing the person by reason of

And there is a list of reasons there.

I understand, Monsieur Ménard, you might like to argue that this list is underinclusive. I think that is an issue I have already flagged. I seek this committee's advice, and therefore your advice, among others, in terms of how we should treat that enumeration found in paragraph 44(1)(b).

[*Translation*]

**Mr. Réal Ménard:** When I met with your officials, all of whom were very kind, I pointed out that there was no grounds for discrimination—you know what I am referring to—as set forth in the amendment to Bill C-33. Clearly the Bloc Québécois will table an amendment, and we earnestly hope that it will be accepted by the government members.

Now, my second question. If I understand correctly, according to the distributional responsibilities between you and the Immigration Minister... A moment ago, reference was made to removal orders according to a very specific mechanism allowed under the Immigration Act. But a decision

made in a case concerning this bill, under your prerogatives as Justice Minister, if it pertains to deportation, removal or deportation orders, will be considered as a binding decision by the Immigration and Refugee Board. Am I correct in saying this?

Please indicate what the responsibility of your Immigration colleague is concerning the whole question of deportation, and especially decisions that might eventually be made by the Immigration and Refugee Board.

[*English*]

**Ms. Anne McLellan:** Monsieur Ménard, if you look at clause 40 of the proposed legislation, it outlines the powers of the minister.

Subclause 40(2) says:

> Before making an order under subsection (1) with respect to a person who has claimed Convention refugee status under section 44 of the Immigration Act, the Minister shall consult with the minister responsible for that Act.

Therefore, my legal obligation is to consult with the Minister of Citizenship and Immigration. However, the obligation extends only to consultation, and therefore it rests with me, the Minister of Justice, to make final decisions in relation to making the committal to await surrender.

So it acknowledges the fact that there may be a refugee process involving someone I might well commit to await surrender, and that I must consult with my colleague responsible for the refugee process before making any final decision. But the decision is mine.

[*Translation*]

**Mr. Réal Ménard:** An argument often used by your parliamentary secretary and by yourself to have this bill passed is based on the notion that updating is required and new procedures must be introduced do deal with countries having different systems for the establishment of evidence. I would like you to be more explicit. What will be changed in the assessment of evidence in our extradition transactions with other countries? I would like to get more details from you.

[*English*]

**Ms. Anne McLellan:** I don't think it probably will change the assessment of evidence. What we want to do is acknowledge the fact that there are common law rules of evidence—for example, affidavits that are foreign to the civilian system. Let me use that great system of law as a comparison, because in fact it is those countries that have a civil law system that I think are currently the most disadvantaged by our existing extradition laws.

• 1700

I think it's also fair to say, though, that probably the Japanese, and a wide range of countries, have problems with our existing evidentiary requirements, which is why we want to move to what we call the "record of the case", which is where most of the rest of the world has moved, or is moving, in terms of meeting the evidentiary requirements.

This is a change. I think it's an important change, and I think it's an important step forward in terms of bringing our laws into this century, recognizing the fact that we no longer live as a country unto ourselves and that we are part of a global community in which there is more than one legal system. We of all nations should understand that, because within our own nation we have the two great legal systems represented.

Consequently, for me, this is a key change, and an important change. It's more than a step forward; it's a quantum leap forward in terms of making sure we do not put requesting nations to an evidentiary burden that is, one, foreign to their legal system, and two, unreasonable.

[*Translation*]

**Mr. Réal Ménard:** I felt like I was listening to one of the vibrant oral arguments you used to make when you were a Law professor at the university. You still have all of your fire and convictions.

Now, my last question. We have a very specific problem in the West Indies region. For a number of Canadian prisoners in Cuba and other West Indies countries, it is difficult to obtain a transfer.

In my constituency of Hochelaga—Maisonneuve, two people have been found guilty of drug trafficking. They are currently in prison in Cuba, and it is difficult to repatriate them. Do you think this kind of bill might help them, either directly or indirectly? Or does it have to do more with the transfer of inmates?

[*English*]

**Ms. Anne McLellan:** That's actually a different issue. Transfer of prisoners is an important issue, but it's not dealt with in extradition law. In fact, transfer of prisoners is a matter that's dealt with by my colleague, the Solicitor General.

It's interesting you should raise the issue of transfer, because it's an area I have an interest in right now. As the member of Parliament for Edmonton West, I have a constituent whose son is presently incarcerated in another jurisdiction, and the family is interested in pursuing transfer possibilities.

So it's a process that does exist. It is dependent, as I understand it, upon the entering into of agreements. For example, with the United States, those agreements have to be entered into with individual states—as I understand it, Mr. Piragoff.

**Mr. Don Piragoff:** Possibly it's with individual states....

**Ms. Anne McLellan:** Yes, it is, because that's what I'm dealing with right now.

**Voices:** Oh, oh.

**Ms. Anne McLellan:** In other cases, it would be, I think, with the nation—for example, the example of the Caribbean, which you have outlined.

When those agreements are entered into, then it permits, in certain circumstances, the transfer of prisoners out of a jurisdiction to serve the duration of their sentence in a Canadian facility. But as far as I've been able to determine, the mere fact that one has an agreement that permits transfer does not guarantee transfer. Therefore, it is dependent upon the policies of that state in which the person is incarcerated, and where obviously the person has committed an offence; that's why he or she is incarcerated. It is their decision as to whether they will permit that transfer.

As we know, there have been a number of high-profile cases in the papers where transfer has been sought. Again, it's usually my colleague, the Minister of Foreign Affairs, who deals with these matters in terms of attempting to expedite requests where he believes that is appropriate.

• 1705

[*Translation*]

**Mr. Réal Ménard:** Can I ask one last question? I would not be a Bloc Québécois member if I fail to ask this one. Even though you are in an area where you are constitutionally responsible for certain things, do you feel that your provincial counterparts are supporting you on this bill? Have you consulted with the provinces, even though it is a prerogative of your government? Don't be too surprised at my question.

[*English*]

**Ms. Anne McLellan:** I can ask Mr. Piragoff in terms of the degree of provincial consultation, but on legislation like this, we consult very closely with the provinces. In fact, provinces have been putting pressure on us over the years to modernize our extradition legislation, to expedite the process. In some cases, of course, these people are held in their facilities. They reside in their "communities", if you like, and in some cases—I I wouldn't say in all cases, but in many of cases—they have an interest in having these people removed from their provinces and dealt with according to the laws of the requesting state.

Mr. Piragoff, maybe you could talk about the negotiations that have gone on with our provincial and territorial colleagues.

**Mr. Don Piragoff:** The provinces and the territories were consulted a number of times. They're in favour of modernizing the extradition laws.

**Ms. Anne McLellan:** We are not aware of any major objections to the federal government exercising its constitutional power over extradition.

[*Translation*]

**Mr. Jacques Saada (Brossard—La Prairie, Lib.):** Are the provinces consulting the federal government?

**The Chair:** Not Quebec, in any case.

[*English*]

Mr. MacKay.

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

Thank you, Minister, and your officials for being here. As was previously stated, the exchanges we had yesterday were very, very helpful.

And I'll be quite frank: I'm very impressed, in fact, with this bill, and the duality of the bill. The streamlining, I think, has been set up in a very unique way. In particular, the setting of the criteria based on our laws—that is, the standard that's been set where we can't export our charter, obviously, but in many ways we're providing it to refugees, at least to some extent, which I think a very magnanimous approach—is very clever in the way it's drafted.

Before I ask a few questions of the minister, I do want to again put on the record, Madam Chair, that it seems, without exception, whenever we have a minister appear before this committee, there is inevitably a bill, in the same department, before the House, being debated.

It's particularly difficult for both the NDP and the Conservatives, where we have but one critic, to be in two places at one time. This has happened repeatedly, time and time again, and I want to voice my objection on that score.

With respect to the bill itself, I had a question yesterday, Madam Minister, with respect to the publication of the bill, the tabling of the bill. Mr. Piragoff has clarified that.

The question I do have relates specifically to the interim period where there would be an appeal—that is, a ministerial decision would be made to not grant extradition, and the foreign country then may choose to appeal that decision. My question relates to the decision to release that fugitive, pending an appeal, or to hold a fugitive. I'm looking for clarification on that point.

**Mr. Jacques Lemire:** As I understand it, your question pertains to a denial of extradition.

**Mr. Peter MacKay:** Correct.

**Mr. Jacques Lemire:** Would that be a decision by the extradition judge or by the minister?

**Ms. Anne McLellan:** By me, exercising my discretion.

**Mr. Jacques Lemire:** Very well.

If the minister were to deny extradition in a case, there is no appeal from that decision by the requesting state. It's a decision made by Canada, by minister of the executive, obviously, and that's made by Canada as a sovereign state in view of its law. There's no appeal of that decision by the requesting state.

**Mr. Peter MacKay:** There's no appeal process.

**Ms. Anne McLellan:** Not from my decision, no. As Jacques has said, it's an executive act.

**Mr. Peter MacKay:** I understand that.

**Ms. Anne McLellan:** So there is no appeal.

• 1710

**Mr. Peter MacKay:** Well, I do understand that, for good reason, the minister, obviously, would be more aware of political circumstances within a country that may be making the request, and I don't dispute that philosophy, but on evidentiary matters, I guess I have some concern that a judge would be perhaps the more appropriate person to have input into that decision.

**Mr. Jacques Lemire:** With respect to appeals from the decision of the extradition judge, the possibility exists under the bill as it exists, and as it exists presently in the legislation—after the amendments that were made to the Extradition Act in 1992—for the requesting state to pursue an appeal of the decision of the extradition judge to discharge an individual in whole or in part. In fact, these appeals do occur.

**Mr. Peter MacKay:** Okay.

As an overall comment, Bill C-40, the Extradition Act, prevents our governments from making extradition decisions based on spurious evidence from international jurisdictions. They have an opportunity to vet that.

So I'd like to ask you, Minister, what provisions—and this goes outside of this particular piece of legislation—are in place in your department to prevent the Canadian justice department, our own, from making requests from within our jurisdiction to other countries based on flimsy evidence?

I'll give you a hypothetical. How do we prevent our Justice officials from writing to a foreign jurisdiction to request search evidence outside of our jurisdiction based on evidence that wouldn't result in a warrant in our own country? How do we prevent that from happening?

**Ms. Anne McLellan:** In fact, Mr. MacKay, I think the facts situation you present is not really a hypothetical facts situation at all, is it.

**Mr. Peter MacKay:** No, not at all.

**Ms. Anne McLellan:** Let me say that I am not going to say anything about that hypothetical situation or any other situation, real or hypothetical, in that regard, but I can outline for you, as best I can, the process we have in place—and my officials might well want to supplement that—if in fact an investigation is begun by the RCMP.

That's an investigation my department has nothing to do with, obviously. We are not involved with decisions to begin investigations, to carry on investigations. If, in the course of an investigation being carried on by the RCMP, they believe there is evidence, in relation to the alleged criminal act they're investigating, that exists in another country, then they can request that evidence through a process that has existed for a long time. The RCMP can request that we draft a letter, which is then sent by them, the RCMP, to that foreign country, outlining the nature of their investigation, allegations in relation to individuals, and why they believe there is evidence held by someone in another country that would be useful to pursue toward bringing their investigation to a successful conclusion.

That is a normal process that has been invoked by the RCMP, in the pursuit of investigations that involve evidence offshore, for a long time, as I understand it.

What we want to ensure—and we have taken steps recently in changing the procedures in our department—is that we clarify for those who might receive such a letter that, if it is the case that one is simply dealing with allegations, then allegations are all they are, as part of an ongoing investigation. Therefore, they cannot be treated as more than that. I think that's a very important point to clarify.

• 1715

So there is a process. It's a process we have modified. In fact, I issued a press release a few weeks ago with the new process, to ensure the degree of protection that your question is premised on. We want to make sure our processes are fair for all, and we want to clarify, when we request evidence from foreign jurisdictions or entities in foreign jurisdictions, why we're requesting it, and the basis on which we're requesting it, so that they understand it, and don't misinterpret it.

**Mr. Peter MacKay:** But, Madam Minister, with respect to that, your department becomes intricately involved as soon as the RCMP makes that request for your letter—

**The Chair:** Mr. MacKay, I'm not trying to run interference here, but I'm trying to run a meeting, and we're way outside the scope of this bill.

**Mr. Peter MacKay:** Perhaps I can just finish my question, Madam Chair.

You've indicated that your department has changed procedures recently in relation to this issue, to prevent requests being made outside of our jurisdiction.

**Ms. Anne McLellan:** No, not to prevent; I don't know what you mean by that.

It is quite common, in relation to an ongoing investigation, for the RCMP to seek evidence—and it's their decision in an ongoing investigation—from those who are outside this country, to seek evidence that is not in this country but elsewhere. You have to have a process by which to do that. There is a process. We play a part in that, and we have recently modified our processes to clarify, so that everybody understands the basis on which we do our part of that process, which is, in fact, to prepare the letter that requests the information. But that is all we—

**Mr. Peter MacKay:** But, Madam Minister, is there no assurance that there is a base level or a standard that has to be met within this country on an evidentiary burden before that request can be made? Is there nothing to ensure that we don't become a laughingstock by requesting another country to do something in their jurisdiction that we couldn't do in Canada?

This is the reverse of this particular bill, by the way. If we're not willing to meet the evidentiary burden in this country, why would we ask another

country to do that?

**The Chair:** This is the last question on this. I want to get back to the bill.

**Mr. Peter MacKay:** That's fine.

**Ms. Anne McLellan:** But I do not interfere, in fact, with ongoing investigations of the RCMP or of any other police force.

**Mr. Peter MacKay:** But your department does their bidding.

**The Chair:** Let the minister answer, and let's get on to the other business.

**Mr. Jacques Lemire:** Perhaps I can add something.

First of all, I wish to stress that this process through which we can seek assistance from a foreign country has been in existence for awhile. It's a process that puts to task treaties in place between countries, or even when there is no treaty.

So it's not a process that is foreign to actual practice. It exists, and it's being used by Canada and by other countries.

In a number of instances, it will occur in the context of an investigation being conducted. It's important to bear in mind the investigative nature of the procedure that's undertaken at that point. The police, competent authorities in Canada to conduct investigations, are looking into whether or not an offence has been committed. So it's not a trial that's being conducted.

In some instances, crime has gone global. Sometimes evidence is located abroad, so you will need to get assistance from other countries. The way to do this is to ask other countries to provide the assistance.

Police will put together basic information, or draft a request for assistance. It will come to the department from that police force, or perhaps from the prosecution. It will be reviewed. It will be reviewed in view of practice, it will be reviewed in view of treaty processes and requirements. It will be made very clear that the allegations under investigation are just that—allegations—in the context of an investigative process.

• 1720

The request, before being sent out, will be reviewed for conformity with the treaty requirements. It will be reviewed for conformity with the policy, and to ensure that it's understandable to the foreign states so that they can address themselves to it and respond to it in view of their own legislation. They will have to apply their legislation to the execution of the request.

Internally, there's a review process in place where requests, before being issued, are considered very seriously by counsel. They have to do that. Then it's reviewed by the director of the IAG before being issued.

Obviously, we approach requests on a good-faith basis. We expect, and we have no reason to doubt, that the police, when putting information forward, are doing this based on good faith, and that it's reliable information being put forward.

If we are faced with a situation where we question that, or where we want to know more, we will go back to the police—and we can—to discuss these concerns.

So there is a process in place. It's being used, and it's a very clear process at this point.

**Mr. Peter MacKay:** Thank you.

**The Chair:** Thank you. Derek Lee.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** Thank you.

Minister, you've indicated that one of the objectives of this extradition reform bill is to facilitate enforcement efforts in relation to organized crime. I'd like to review, if I could, and better understand one element of the extradition hearing process with reference to organized crime.

If I were with an organized crime group outside of Canada, and my country made a move to extradite from Canada one of my guys, I would really like to have the opportunity to have another one of my guys check out the evidence before my guy was extradited. The extradition hearing process in Canada could therefore be a vehicle by which the organized crime group could begin to undermine the eventual trial of the organized crime person who was being extradited. So the extradition process's hearing of the evidence becomes an item of focus.

If the bill is organized-crime-oriented, I'm sure the department has consulted with, for their expertise, prosecutors who prosecute organized crime groups.

To be specific, clause 26 of the bill allows a judge to "make an order directing that the evidence taken not be published", etc., but the basis on which a judge might do that is if he or she is, "satisfied that the...broadcasting of the evidence would constitute a risk to the holding of a fair trial by the extradition partner".

Now, to me, that phrase, "the holding of a fair trial", doesn't at first blush include being satisfied that, for examples, witnesses or evidence would be at risk. When I read "fair trial", I think about fair trial to the accused. I don't think about fairness to the state or the prosecutors.

If I've interpreted that correctly, then I see a weakness vis-à-vis organized crime. I see some vulnerability. If I'm wrong, correct me.

**Ms. Anne McLellan:** You raise a very interesting question. For example, we are moving from first-person affidavits to a record of the case. Therefore, if your concern is the identity of witnesses—

**Mr. Derek Lee:** That's one.

**Ms. Anne McLellan:** —in fact the extraditing authority, in the record of the case, does not—and probably wouldn't, I presume, Don or Jacques—identify where they felt there was a real and substantial threat to the safety of any individual who would be providing evidence at the trial of this

person once extradited back to the requesting state.

• 1725

So I think the record of the case permits the extraditing state to have more flexibility in terms of the specificity of that which they might reveal, especially the identity of individuals, whereas if you're working on the basis of a first-person affidavit, it's pretty hard to avoid, I guess, the identity of that individual, or distinguishing characteristics of information of one sort or another.

As well, you've talked about clause 26 in terms of publication ban or a broadcast ban, but clause 27 also permits the presiding judge to exclude any person from the court if the judge is of the opinion that "it is in the interest of public morals, the maintenance of order or the proper administration of justice" to exclude that person.

**Mr. Derek Lee:** This I understand. I understand clause 27. Why wouldn't the same criteria be used in clause 26?

**Mr. Don Piragoff:** If one looks above clause 26, at subclause 24(2), it says:

> For the purposes of the hearing, the judge has...the powers of a justice under Part XVIII of the Criminal Code

Essentially what that means is that the extradition judge has all the powers a judge has in conducting a preliminary inquiry in a domestic proceeding.

So the problem you've identified is of course one that always exists, even in a domestic proceeding, that in the course of a preliminary inquiry, evidence will have to be revealed in order to satisfy the provincial court judge that the case is sufficient to go to trial. Of course, at that point in time, there is some disclosure in open court about the Crown's case.

In addition, of course, we have disclosure rules that provide very extensive disclosure to an accused person with respect to the evidence the Crown has on a domestic case. Nevertheless, a provincial court judge acting in the course of a preliminary inquiry is able to protect the identity of witnesses in the course of proceedings before the preliminary inquiry. In addition, the courts have recognized that one of the exceptions to disclosure is of course to protect the identity of witnesses where those witnesses could be threatened or actually endangered.

So subclause 24(2) gives the extradition judge all the powers a preliminary court judge would have in conducting his or her proceedings. Whatever exists domestically in the arsenal or powers of a provincial court judge who's conducting a preliminary inquiry also applies to an extradition judge. And that includes the power to protect witnesses.

The issue in clause 26 mirrors an existing power in the Criminal Code—in section 539, I think, or 542—that prohibits the media—and of course the media has a right, and a constitutional right, to freedom of speech—from publishing accounts occurring within the extradition hearing, as they are prohibited from publishing accounts of what occurs in the preliminary inquiry hearing, in order not to prejudice the ultimate trial—to prejudice a jury, for example. Of course, our neighbour, the United States, has many more jury trials than we do.

So that provision is to try to ensure that if there is prejudicial evidence, it not prejudice an ultimate trial, just as we have prohibition orders to not prejudice our own trials from evidence disclosed at a preliminary inquiry.

That's why clause 26 is worded the way it is. It's dealing with one particular problem.

The issue you've identified is a problem that exists in domestic proceedings and that is dealt with under the common law, dealt with under the charter, and dealt with under the powers that a provincial court judge exercises in the course of a preliminary inquiry. Those powers are incorporated by means of subclause 24(2).

So the same concerns exist with respect to an extradition hearing, but the same powers that exist for a domestic proceeding would apply equally.

• 1730

In addition, as the minister indicated, going with the record of the case procedure as opposed to first-person affidavit, there may be some situations where one may be able to protect the identity of a witness in the record of the case, while in the course of a first-person affidavit, you have to identify yourself.

**Mr. Derek Lee:** I take it, then, you're prepared to assure me—the department will assure us here at committee—that there is full ability in the hands of a judge to protect the evidence to the same extent that he or she would be able to do it in a domestic and non-extradition matter, to protect it in relation to issues that sometimes come up in organized crime prosecutions. Is that correct?

**Mr. Don Piragoff:** Yes. If you'd like some details as to exactly what is done in the context of a preliminary inquiry, Mr. Lemire has undertaken extradition hearings and preliminary inquiries. He may wish to add to what I said.

**Mr. Derek Lee:** There is no need to tell the bad guys how to do it. Let's let them find out on their own.

I'm satisfied that there is a procedure. You've given me the assurance I was looking for.

Thank you.

**The Chair:** Thank you. Mr. Cadman.

**Mr. Chuck Cadman (Surrey North, Ref.):** Thank you, Madam Chair.

Madam Minister, we have a case on the west coast right now—I'm sure you're familiar with it—where two young men were wanted in Washington state for a particularly heinous crime. I believe your predecessor approved the extradition, and then that was appealed.

My gut feeling tells me that Washington State is going to dig their heels in on this one. Where do we go if that appeal is upheld? In other words, if the Supreme Court comes back and says there has to be a guarantee that they will not face capital punishment, I feel Washington State will probably dig their heels in on this one and say they're not prepared to give that guarantee. What happens? What do we do with these two guys

now?

**Ms. Anne McLellan:** I'm not going to in any way comment on or prejudge an actual situation.

**Mr. Chuck Cadman:** No, I understand.

**Ms. Anne McLellan:** There is a case before the Supreme Court, you're quite right. That case is going to be heard next week.

Is that what you told me, Don?

**Mr. Don Piragoff:** Possibly next week.

**Ms. Anne McLellan:** Okay.

Therefore, it would be most inappropriate for me to comment on anything surrounding that case and to in any way prejudge any decision I might make in relation to it.

**Mr. Chuck Cadman:** I'll accept that. I won't go into hypotheticals.

**Ms. Anne McLellan:** Thank you.

**Mr. Chuck Cadman:** The other thing I was going to ask was that I understand that if there is an extradition request in process, running parallel with a refugee claim, clause 96, I believe, says that if the offence is punishable by more than ten years in Canada, that will be expedited and will be handled by one judge.

Am I correct that this is the way it is? And how did we come up with the ten years?

**Mr. Don Piragoff:** The refugee convention provides that refugees are not to be sent back to a country if there is possibly an endangerment to their life. One of the exceptions to the refugee convention act is that the person is wanted for a serious non-political offence. In other words, a person can be sent back to a country if they're wanted for a serious non-political offence.

The question that then arises is, what is a serious offence? What we have determined to do in the bill, and what the government has decided, is to give some objectivity to the criteria of what is a serious non-political offence as opposed to leaving it purely up to the decision of an individual judge.

If one looks at the Criminal Code, ten years basically is a cutoff point where anything that is worth ten years of punishment in Canada is a very serious offence. Anything less than ten years, while it is serious, is not what we would say is a very serious offence. If one looks at the types of offences for ten years and above, we're looking at things like robberies, assaults, sexual assaults, violence against a person, major economic crimes, etc.

• 1735

**Mr. Chuck Cadman:** If I can just push that a little bit further, what do we do about a young person under the age of 18 who's wanted for second-degree murder? Under the Young Offenders Act, that's seven years.

**Mr. Don Piragoff:** The act provides that the young offender can be extradited, that the court can commit and the Minister of Justice can surrender. However, the act does provide some discretion for the minister to look at the juvenile justice system, or criminal justice system, in the foreign country to see whether or not it generally is in accord with the fundamental principles of the Young Offenders Act.

**Mr. Chuck Cadman:** I guess what I'm asking about, though, is the seven-year issue, because now we haven't hit the ten. Under our Young Offenders Act, it's punishable by seven years. So if we have a refugee claim running parallel to it, now are we back to the old process, where it has to go to the refugee board for a decision, or can it be extradited the same way as...? Well, it can't, obviously, if it's only punishable by seven years. It doesn't meet the ten-year criteria.

**Mr. Don Piragoff:** We'd have to check with the immigration officials with respect to how they deal with juveniles who are refugees. I can't answer that question. We can get back to you on that, though.

**Ms. Anne McLellan:** I think immigration officials are coming, aren't they, to your committee?

**The Chair:** Yes.

**Ms. Anne McLellan:** So it might be useful to ask them that question in terms of how they deal with any refugee claim from someone under the age of 18.

**Mr. Chuck Cadman:** I was just interested in the seven years as opposed to the ten, if that kicks in.

**Ms. Anne McLellan:** It's an interesting and very good point you've raised.

**The Chair:** Mr. Ménard has one brief question, if you can take that, and then we'll call it a day.

[*Translation*]

**Mr. Réal Ménard:** It's actually a request for documents. As you know, I took a great interest in Bill C-95, and your colleague Mr. Lemire pointed out that their is at tie-in with organized crime, with Bill C-95 and with Bill C-40. Bill C-95 was a major bill adopted by your predecessor having to do with criminal gangs and the products of crime.

I know that your department has a handbook giving a sort of balance sheet of the Act and regulations, and indicating how to interpret the Act. I would like to obtain a copy, but I am having a great deal of difficulty doing so. You alone can help me. I am asking you through official channels, because otherwise it would be a waste of time.

As you know, this bill was passed in three days. All the opposition parties cooperated. It arose from Bloc Québécois initiative; for me it was tied in with the death of young Daniel Desrochers, who was murdered by means of a car bomb. I met with the different police forces. It is a question of interest to me.

I realize that you have an administrative document, and for reasons that I can understand, your officials were somewhat wary. I would appreciate your doing something about it if possible.

[*English*]

**Ms. Anne McLellan:** I will certainly look into it for you. Have you made a formal request for that document?

[*Translation*]

**Mr. Réal Ménard:** Yes.

[*English*]

**Ms. Anne McLellan:** To someone in my department? That's all I need to know.

[*Translation*]

**Mr. Réal Ménard:** Someone who I hold in high esteem.

But I understand. I was told that it was not a final document, among other things. But I know you are conscientious. You will work things out, and I will get the document. I have confidence in you.

[*English*]

**Ms. Anne McLellan:** Well, thank you; I will do all I can. We will follow up on that request.

**The Chair:** Thank you, Minister. We appreciate your attendance and your ongoing cooperation.

**Ms. Anne McLellan:** Thanks very much. It's a pleasure.

**The Chair:** Mr. MacKay, I want to go back to something you said. You said that we do this all the time, having bills in the House while we're holding committee. I recall an objection being raised about this on only one other occasion.

**Mr. Peter MacKay:** I'm not saying I have raised objections every time it's happened; I'm saying it's happened—

**The Chair:** Well, I only recall it happening one other time.

I just want to say this to you. This train's moving down the track, we have a huge amount of work, and we can't stop. So I don't know what the solution is. If you want to talk about it, we can do that. I actually have a special interest in the bill that is in the House today, and I'd like to be there too, but I'm not.

So I don't know what else to do.

**Mr. Peter MacKay:** I know you don't set the legislative agenda in the House. I appreciate that, Madam Chair. Maybe I'm just being paranoid, but every time a minister has been here, there has been either a Justice or a Solicitor General bill before the House for debate at one stage or another. This has happened every time a minister has been here.

• 1740

**Ms. Eleni Bakopanos (Ahuntsic, Lib.):** There's no conspiracy, Peter. There's no conspiracy.

Peter Mancini made the same point in the House. I mean, I think you were playing up to the media that was here. That was obvious.

**Mr. Peter MacKay:** Oh, give me a break.

**Ms. Eleni Bakopanos:** And I think that's unfair. That's very unfair.

**Mr. Peter MacKay:** Will you just get off it?

**Ms. Eleni Bakopanos:** Well, it's true.

**The Chair:** The thing is, I don't control what goes on in the House. We take the minister's time when we can get it.

I'm sorry; I'll try to be more sensitive—

**Mr. Peter MacKay:** No, I appreciate having a minister here. That's great. I'm always glad to have a minister here. I made the choice to be here rather than in the House, but it's extremely frustrating to have to be drawn in both areas.

**The Chair:** Okay. I appreciate that. We'll try to deal with it, but her schedule's tough to accommodate.

Thanks.

At 4 p.m. tomorrow, Lloyd Axworthy.