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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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● (1530)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, everyone, and welcome.

This is meeting 40 of the Standing Committee on Public Safety and National Security. It's Wednesday, November 17, 2010, and today we're discussing two items of business before our committee. The first is Bill C-23B, an Act to amend the Criminal Records Act. We are also conducting a review of the Criminal Records Act in pursuance of Surrey North Member of Parliament Dona Cadman's private member's motion M-514.

I would just like to read to you an extract from the Journals of the House of Commons from Wednesday, September 29:

> Pursuant to Standing Order 93(1), the House proceeded to the taking of the deferred recorded division on the motion of Ms. Cadman...seconded by Mr. Norlock...—That the Standing Committee on Public Safety and National Security be instructed to undertake a review of the Criminal Records Act and report to the House within three months on how it could be strengthened to ensure that the National Parole Board puts the public's safety first in all its decisions.

So we do have a responsibility that's been given to us by the House in order to report back. We believe that today is part of the order that has come to this committee.

Appearing before us today, we're very pleased to have the Honourable Vic Toews, the Minister of Public Safety.

[*Translation*]

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

[*English*]

The Chair: May I introduce our guests? Then we'll go to you.

We have the Honourable Vic Toews, who is the Minister of Public Safety. We thank you for attending again today. It seems like you've been here fairly regularly.

He's accompanied by officials from the Department of Public Safety and Emergency Preparedness. Ms. Mary Campbell is the director general of the corrections directorate, and Daryl Churney is the acting director of the corrections policy division.

As the chair of this committee, I want to thank all of you for being here today and helping us in our deliberations.

Before we move, I think Madam Mourani had some kind of a point of order or privilege or something. We will entertain that very briefly, please.

[*Translation*]

Mrs. Maria Mourani: No, it's not a point of order. I just wonder if we could, before the witnesses begin, take 30 minutes, for instance at 5 o'clock, to debate a motion that I tabled here on July 5, 2010. It is the motion that the Committee blames Mr. Richard Fadden and asks for his dismissal to the Prime Minister.

I would like us to deal with this motion which has been dragging on the Order Paper for too long. I would like us to devote 30 minutes to it.

[*English*]

The Chair: Well, I'll tell you what we're going to do. We have this minister. Until then, at the break, we'll discuss this, and then we'll either go to that committee business or we'll go to the minister.

The problem is we have asked Ms. Campbell and the department to stay for that second hour. So they are here in regard to that. That's what they were invited to do and that's why we have them.

If you need more than 15 minutes, we'll maybe discuss that at the five o'clock break. But otherwise we usually put committee business to the end of the day.

All right. Minister Toews, we look forward to your comments and we will—

[*Translation*]

Mrs. Maria Mourani: Mr. Chairman, it could be 15 minutes as well, it doesn't bother me.

● (1535)

[*English*]

The Chair: Yes, I think we'll talk about that and we'll decide that. That's the first I've heard of it now, so we will at the break here. Thank you.

Minister Toews, thank you.

Hon. Vic Toews (Minister of Public Safety): Thank you, Mr. Chair.

It's always a pleasure to appear before you and this committee. I know you have a particular interest in issues of public safety, having served as the critic for Public Safety for a number of years. I know you did an admirable job in that respect, and I'm sure you are putting that knowledge to good use, as you are now entrusted with this very important position as chair of this committee.

I will say that after I and 30 separate individuals have appeared at eight committee hearings answering questions on G-8/G-20 costs, the chance to finally discuss government legislation is indeed a welcome opportunity. I'm grateful to contribute to your review of Bill C-23B, the Eliminating Pardons for Serious Crimes Act.

I have with me a number of senior officials, whom you have already introduced. I will defer to their knowledge in specific areas when it's appropriate in order for the committee to get all the facts necessary for consideration.

With your permission, I have a short opening statement, after which I would be happy to answer any questions the committee may have.

Before I continue, I want to acknowledge the spirit of cooperation that all honourable members have demonstrated in strengthening Canada's pardon system. Together we've made some important progress in addressing serious shortcomings in the legislation, things that were a very real concern for Canadians, and things that the House was able to pass prior to rising for the summer break of Parliament.

With the amendments to the Criminal Records Act, passed in June, the Parole Board of Canada now has the authority to exercise discretion and to deny a pardon application in cases where the evidence clearly demonstrates that granting one would bring the administration of justice into disrepute. The board must weigh this decision, taking into account factors such as the nature, gravity, and duration of the offence, as well as the circumstances surrounding the commission of the offence, and of course the applicant's criminal history. You will recall that under the former legislation there was little difference in the criteria to differentiate between a pardon for an indictable offence and summary conviction offences.

Offenders must now show that there is a measurable benefit to granting them a pardon. The onus is on the applicant to demonstrate to the Parole Board of Canada that a pardon will contribute to their rehabilitation as a law-abiding citizen. Those amendments also increase the length of time before someone convicted of a serious crime is eligible to apply for a pardon. Anyone convicted, by indictment, of a sexual offence against a child or of a serious personal injury offence is required to wait 10 years, instead of the previous five, before they can apply for a pardon.

We have worked in collaboration with the other parties to make solid initial progress. In passing these amendments, we've also shown our respect for the wishes of victims and many other law-abiding Canadians. We believe more can be done, and I trust we can continue in the spirit of cooperation to make further improvements to the legislation.

Mr. Chair, to understand why Bill C-23B is important, we need only to go back to April of this year, when Canadians learned that sex offenders can have their records set aside if they meet the requirements and they have adopted a law-abiding life. Canadians reacted. Many were concerned.

A good part of Canadians' reactions was connected to the word “pardon”. One of the dictionary definitions of “pardon” is forgiveness. The other meaning, which is “remission of illegal consequences of crime or conviction”, is closer to what the act intended. The perception of forgiveness has prevailed, and in very serious cases in particular it has been very difficult for victims to contemplate forgiveness when the harm or injury is still being suffered by that victim.

● (1540)

This is why this bill would change the terminology. The Parole Board of Canada would no longer grant offenders a pardon, but rather a suspension of record. This change will provide a more accurate and understandable description of what in fact is being granted and an opportunity to start over with what amounts to a clean slate.

It affirms the fact that a person's criminal record will be kept separate and apart, but it makes clear that the record has not been erased. That is one important amendment contained in this bill.

A second amendment is directed at protecting the most vulnerable of our citizens, our children. While Bill C-23A made some improvement in this area, we believe more should be done.

As you will recall, the amendments passed in June provided that those convicted of a sexual offence related to a minor and prosecuted by way of indictment must now wait 10 years to apply for a pardon. In the case of those who commit a sexual offence against a minor and are prosecuted by summary conviction, the waiting period is now five years. The amendment proposed in Bill C-23B would go further and make anyone convicted of an offence involving sexual activity relating to a minor ineligible for a suspension of record.

I emphasize that this provision would not be all encompassing. If the offender can demonstrate that he or she was close in age to the victim, which is similar to some of the other provisions we have in the Criminal Code, and that the offence did not involve a position of trust or authority or a threat of violence or intimidation, a suspension of record could be granted in that circumstance.

This bill would also deny a suspension of record to anyone convicted of more than three offences prosecuted by indictment. We believe this is a reasonable cut-off point.

A final amendment contained in this bill would require the Parole Board of Canada to submit an annual report on its activities with regard to suspensions of record to the Minister of Public Safety. This report would be tabled in Parliament and therefore available to all Canadians. The report would let Canadians know how many applications the board received for suspensions of record for both summary convictions and indictable offences, as well as the number of suspensions ordered and refused for both categories of offences. The report would also list suspensions of record ordered by offence and by the applicant's province of residence.

The goal of this amendment is quite simple, and I trust honourable members will agree that greater transparency is always a good idea. We believe this is information that Canadians should be able to access. It's also information that parliamentarians need in order to determine whether the system is working as it should. This report would not contain any personal information.

Mr. Chair, in addition, the government will be bringing forward various technical amendments to this legislation in order to reconcile Bill C-23A and Bill C-23B. The reconciliation has to occur, given the fact that those two bills were split off, and it would appear that presently, unless that reconciliation takes place, there would be some inconsistencies if the House simply adopted Bill C-23B.

In conclusion, Mr. Chair, we are all aware that certain provisions of the Criminal Records Act have been the subject of considerable debate in recent months. We have all read the editorials and the letters to the editor and we have listened to the calls on the talk shows. I know how many e-mails and calls I have received on the subject.

There is no question that the subject of pardons touches a nerve with Canadians. The amendments we are proposing in this bill are a reasoned response to the very reasonable concerns of Canadians. With the simple replacement of one word, these amendments would take a great deal of the emotion out of this debate and more accurately identify what in fact is being accomplished. Together with the previous amendments to the Criminal Records Act, they will help further ensure that suspensions of record are granted only to those who have earned them. They will provide Canadians with more information about the workings of an important part of our justice system.

I thank you, Mr. Chair. I thank committee members in advance, and I look forward to our discussions.

● (1545)

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

We will now proceed with the first round of questions, a seven-minute round, and we'll go to Mr. Holland.

Mr. Mark Holland (Ajax—Pickering, Lib.): Thank you, Mr. Chair.

And thank you, Minister, for your appearance today.

Minister, I hope you can appreciate the need to proceed cautiously on this. I was glad that we divided the bill into two sections. We were able to find a compromise on one half, and now we are dealing with the second half. You'll recall that we originally thought this was dealt with when Minister Day made a number of changes back in 2006. There was a sensational case, we were told it was fixed, and now we're back here.

My concern, Minister, is not with sexual offences against children. I think you get 100% agreement on that. It's not with changing the term “pardon” to “record suspension”. I think that's a good move and one that's supportable. My concern is that there might be a number of individuals caught up in this bill who either weren't intended to be caught up in it or for whom it could be very destructive to be caught in it. I'll give you some examples and maybe you could respond.

Suppose, for example, you have a single mother working hard to make ends meet. She makes a desperate decision, a dumb decision, to write a fraudulent cheque. That could be a hybrid offence, which could be indictable. Suddenly, a 20- or 21-year-old single mother, who makes a bad decision in trying to put food on her table, one she shouldn't have made, is in a position where now she is ineligible to get her record cleared until her mid-30s, potentially. That would mean that she's going to be—

Hon. Vic Toews: I'm sorry, I missed that.

Mr. Mark Holland: She may be ineligible to get her record cleared until her mid-30s. You have 10 years, but you have to wait until you serve your time and you've gone through the whole process before that 10-year clock begins ticking. And we know how nearly impossible it is to get a job with a current criminal record.

Another situation would be a young person, maybe 18, 19 years old, who makes a dumb decision and takes marijuana to a party. Because it's a hybrid offence, and part of it may be an indictable offence, this person is now going to be caught up in the same situation.

My concern, Minister, is that with people like that, in those kinds of situations, who I'm sure we would both agree we want to see do better, we would shut the door to getting them back into society. We'd shut the door to their being able to get jobs and make meaningful contributions to our society.

I can go through some other examples, but I'm wondering how we ensure that this bill doesn't catch folks like that.

The Chair: Minister?

Hon. Vic Toews: Thank you.

I note your examples. I think there are some assumptions in them that the committee needs to consider.

You're a lawyer with undoubtedly a fair bit of experience in the criminal courts. I was a prosecutor for a time. In all the years I've prosecuted, I can honestly say that I would never have proceeded on a hybrid offence by way of an indictable offence if there was the option of going summary on a first offence, unless there were horribly aggravating circumstances. So I think the scenario you're putting forward is very remote and probably not possible. In my experience, I can't think of a case where a prosecutor would have proceeded by way of an indictment in that, shall I say, Jean Valjean kind of situation.

I think the balance we have struck here is a fair one; we have given a certain amount of discretion. The 10-year period would not apply in situations where the crown proceeds by way of a summary conviction offence, even though the person, for example, would have had to give his fingerprints. As I understand it, in the hybrid situation, you still have to provide fingerprints.

● (1550)

Mr. Mark Holland: This concern has also come to me from the folks at the National Pardon Centre. They foresee that this situation could happen. So I guess the fact that they say it's probable and you say it's unlikely still leaves the door open to it being a possibility. That's very concerning. I don't think we want—and I'm not hearing from anything in your speech that you're seeking—to catch people I've just described in that kind of scenario. I'm worried about that door being open.

The second point I want to comment on deals with schedule 1 offences. Somebody convicted under a schedule 1 offence will never be eligible for a pardon. There's not even 10 years; they're right out. Some of the things included in here are voyeurism, making obscene phone calls, mailing obscene materials, and indecent acts. It could be argued that a university student streaking during frosh week—again, something they shouldn't be doing—isn't necessarily an act from which you should never be allowed to recover. You'd never be allowed to get your record cleared. So I'm concerned about that. Maybe you could speak to that concern.

The other concern is on the three strikes rule. Going back to my earlier point about indictable offences, take the example of a young person 18 or 19 years old—I use them as an example because it's often most tragic and life-destroying when they can't get a chance to clear their name—who commits three offences in one night. They're charged with three separate things, even though it happened in one night. Suddenly they'll never be eligible for a pardon, even though what had happened transpired in one evening—one mistake. I don't think we want to catch up folks in that situation either.

Perhaps you can comment on those two points.

Hon. Vic Toews: I think those are, quite frankly, good questions. I have stated publicly already that if I were assured that multiple offenders could not take advantage of the pardon system, I would consider another proposal. But we have to draw the line somewhere. While the generosity and tolerance of Canadians is a good thing, their concerns about crime have to be respected.

I was very surprised, in my rather extensive discussions with Canadians about this issue, that they felt people should not get more than one chance, never mind four chances, which this essentially gives. So the public attitude is quite hardened in respect of this situation.

If this committee can find something that will address the concern of multiple offenders taking advantage of the system, yet address the situation you've raised, it would be worthwhile for the committee to consider. In the meantime, I haven't found anything better than what has been proposed.

On the sex offences, as I noted in my comments, the individual streaking would not attract that kind of automatic bar, even if it somehow came within schedule 1. I'm not exactly sure about all of the offences—they're all listed here in front of me. But in my opinion, if the offender could demonstrate that there was no victim—unlike in a personal assault on a child—and the offence didn't involve a position of trust or authority, they would still be eligible for a pardon.

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

We'll go to Madam Mourani.

[*Translation*]

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

Welcome, Mr. Minister. Thank you for being here.

I must admit that I would have appreciated having you appear at a meeting where we could have discussed Mr. Fadden's allegations concerning ministers and municipal officials in British Columbia who might be under the influence of foreign countries.

You have asked to appear before us about this matter, considering that Mr. Fadden suggested, when we met him—

[*English*]

The Chair: Madam Mourani, that is not the reason why the minister is attending today, as much as you wish it was. He's here on another bill today, so try to make your comments on Bill C-23.

● (1555)

[*Translation*]

Mrs. Maria Mourani: It is just my preamble, Mr. Chairman.

So, I would have appreciated if you had appeared before the Committee to discuss this issue, particularly because Mr. Fadden gave you his report on this matter. You know how important it is for all those office holders—

[*English*]

The Chair: We have Mr. Rathgeber on a point of order.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): As you know, we have the minister for only a short time. If Ms. Mourani does not have any questions concerning the bill before the committee, I'd ask that you go to the next questioner.

The Chair: We've had close to a two-minute preamble on an issue that is not relevant to what he's here for today.

[*Translation*]

Mrs. Maria Mourani: Mr. Chairman, this is my preamble and I shall ask my question after that.

[*English*]

The Chair: Your preamble was too long. It's not relevant to the discussion today. I'm not used to you going too long, but in this case you have.

You can continue on this bill.

[*Translation*]

Mrs. Maria Mourani: I am disappointed and astonished to not have had an opportunity to hear you about what's happening with Mr. Fadden and also the content of that famous report.

That's it for my preamble.

Let us talk now about this bill. You yourself said, at the outset, that part of the initial bill has already been adopted. I think that we have covered, in good faith, the essential part of the initial bill which dealt not only with serious sexual offences, but also sexual crimes as a whole and serious personal injury offences.

Would you agree with me that we have already dealt with that part?

[*English*]

Hon. Vic Toews: We dealt with Bill C-23A.

[*Translation*]

Mrs. Maria Mourani: Very well.

I'm a bit worried about something in Bill C-23B. There is a complete ineligibility to record suspension not only for all Schedule 1 offences, but also under the three-strike rule. It means that someone who has been indicted on voyeurism charges—not by way of summary conviction but by indictment—who is then picked up for smoking marijuana and commits a minor theft after that will never be eligible for a record suspension.

Is that interpretation not correct, Mr. Minister? Have you followed me?

[*English*]

Hon. Vic Toews: Yes, I have. I was just checking on some of the facts.

On the issue of voyeurism, all I can indicate is that it's a very significant precursor to more dangerous actions. We've had a very recent case that gripped the attention of Canadians and illustrates exactly what voyeurism can lead to—not in every case, but it's certainly a very dangerous indication of something disturbed in the individual.

[*Translation*]

Mrs. Maria Mourani: Yes, but it's not systematic, Mr. Minister.

[*English*]

Hon. Vic Toews: I'm not saying that in every case a voyeur goes—

[*Translation*]

Mrs. Maria Mourani: That is the sense of my question. Schedule 1 includes a large number of offences that are not only offences against minors. If you say that it will only apply to offences against minors, we shall all agree. However, the list includes indecent exposure; a host of other offences are included.

Maybe Madam could tell us how many offences are included: 20, 30?

[*English*]

Hon. Vic Toews: Schedule 1 is quite extensive, but it doesn't preclude the granting of a suspension of record in every case. As I indicated, if the individual can demonstrate that he or she was close in age to the victim, or the offence did not involve a position of trust or authority or the threat of violence or intimidation, a suspension of record could be granted. That is my understanding of schedule 1.

● (1600)

[*Translation*]

Mrs. Maria Mourani: When we read section 9, it refers to every person convicted for an offence under Schedule 1. The three-strike rule is not even mentioned. Under section 9, if you have committed an offence listed in Schedule 1, you are not eligible for a record suspension.

For example, if you are a 30-year-old man looking at a woman who is taking her clothes off in her home and that her furious husband lodges a complaint against you for voyeurism, you will get a criminal record and you will be considered a sexual offender.

Mr. Minister, people who have committed offences listed in Schedule 1 will be included in the sexual offenders database. So everything is linked.

[*English*]

Hon. Vic Toews: I got your point, but it's wrong. The right interpretation of the law is under clause 9 in proposed subsection 4(3). If you go to proposed subsection 4(3) it says:

> A person who has been convicted of an offence referred to in item 3 of Schedule 1 may apply for a record suspension if the Board is satisfied that

And then we get into these conditions that they weren't in a position of trust, they weren't in a position of authority, they were close in age to the victim, there was no threat of violence or intimidation. Then a record of suspension could be granted. So the parole board in fact then considers the circumstances and says, "Look, in this type of a situation the conditions have been met, the person can make the application, and we will determine on the facts whether it's applicable or not."

So in the case of the voyeur, there is no automatic preclusion of applying for that suspension of record.

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

We'll now move to Mr. Davies.

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

Mr. Minister, I'll pick up right there, because with the greatest of respect, I believe you're incorrect about this. And it could be a question of sloppy drafting, but Bill C-23B says, in proposed subsection 4(2):

> (2) Subject to subsection (3), a person is ineligible to apply for a record suspension if he or she has been convicted of
>
> (a) an offence referred to in Schedule 1;

Now the exception you refer to, subsection 4(3), says “A person who has been convicted of an offence referred to in item 3 of Schedule 1”—it's not schedule 1, but item 3 of schedule 1—“may apply for a record suspension if the Board is satisfied that” the person was not in a position of trust, the person didn't use violence, and less than five years....

I'm looking at the schedules, and there are three pieces to schedule 1. There's 1, “Offences”; 2, “Offences”; and 3, “Offences”. Item 3 of schedule 1 is a very short version. The offences that are being referred to here in section 1, voyeurism, etc., are not covered by the exception to which you refer. So I would ask you to perhaps revisit that. It could be what you intend, but the way it's drafted now, it is not schedule 1; it is item 3 of schedule 1 that allows that exception.

Hon. Vic Toews: All right. I don't want to get into too much of the detail. Certainly you've heard what my intentions are.

In speaking to Ms. Campbell, she indicates that in fact is the impact of the law as drafted, the way I've explained it. Perhaps that is something you might want to raise with Ms. Campbell after I leave here, or she can take up your time now. It makes no difference to me.

Mr. Don Davies: Sure, we can ask her.

Hon. Vic Toews: But you've heard what my intentions are in the bill, and I'm trusting Ms. Campbell and the justice department drafters, that the intention is respected in the way the legislation is drafted.

Mr. Don Davies: Okay, fair enough. So you don't mean that anybody who's convicted of an offence in schedule 1 would never be precluded from making an application for a pardon.

Hon. Vic Toews: In certain cases.

Ms. Mary Campbell (Director General, Corrections Directorate, Department of Public Safety and Emergency Preparedness): If I could just clarify very quickly, clause 9—

Mr. Don Davies: Actually, Ms. Campbell, I will ask you questions when you're here after the minister. We only have the minister for—if the minister doesn't want to answer, I'll move on to a different question.

Hon. Vic Toews: I'm going to defer that to Ms. Campbell—

Mr. Don Davies: Then we'll ask Ms. Campbell after.

Hon. Vic Toews: —because I don't think your interpretation is correct. Ms. Campbell has the correct interpretation.

Ms. Mary Campbell: The minister's faith is well placed.

Mr. Don Davies: Okay. I can read, and I'm a lawyer too, and it says item 3 of schedule 1. Item 3 means something. You act as if those words are not there, with respect.

Mr. Minister, last June the New Democrats worked with the government to pass what I think we all agree are important changes to strengthen the pardon system in Canada. The NDP pushed to fast-track the proposal to give the National Parole Board discretion to deny pardons in any case of an indictable offence or an offence by summary conviction if it involved a sexual offence against a child, if this would bring the administration of justice into disrepute.

The NDP also pushed...in fact it was our party that insisted the list include manslaughter, which is the provision that ensured Karla Homolka would not be eligible to apply for a pardon this summer. Thanks to all parties' work on this issue, under the Criminal Records Act it is in effect today.

I think it can be said that the parole board now has the discretion, which you properly identified it was lacking before, to deny pardons for any kind of serious offence, as all indictable offences or sexual offences involving children are.

I'm wondering, Mr. Minister, isn't it better for the National Parole Board to have that discretion to grant or deny pardons in individual cases where it's appropriate, or not to do so, rather than have arbitrary categories like more than three indictable offences, or a certain offence, and you're precluded forever from having a pardon? There are varying factors. Not all offenders are exactly the same.

● (1605)

Hon. Vic Toews: I agree that not all offenders are exactly the same.

I remember that discussion about manslaughter. I believe what happened in that case was that the Bloc said they didn't want to see anyone denied a pardon if the offence was a sentence of less than two years. I think the original intent was always to have manslaughter there. I recognize that we did have a very good discussion among all parties, and I'm very grateful to all parties for moving that ahead.

I disagree that a judicial tribunal, whether it's a court or an administrative tribunal exercising quasi-judicial functions, should have the discretion to allow the granting of a sentence or an order where it's clearly contrary to the public interest.

Our government is very clear that there are certain mandatory minimum prison sentences where we say that it would be inappropriate, from a public policy point of view, to grant a house arrest, for example. From a public policy point of view, in the situation with first- and second-degree murder, there should be mandatory periods of ineligibility for parole—mandatory.

Similarly, our government has come to the conclusion that the cases in which we are saying there are no valid public policy reasons to grant a pardon...in this particular case, I think it is justified. At least the rights of the victims outweigh the interests of the convicted criminal, who has deliberately broken the law. I have indicated that I'm very firm on the issue of the sexual offences.

There are certain exemptions. You've indicated you might have some concern about the drafting. I'm willing to have my officials look at it.

With respect to some of the other ones, I'm not as flexible.

Mr. Don Davies: Mr. Minister, pardons are an important part of our corrections system. We're talking about people who come before the parole board after three, five, or ten years of doing what society has asked them to do. I think they are the success stories of our justice system. These are people who are saying they have committed no crime, they have kept a good repute, and they've paid their debt to society. We all know the stain a criminal record has on people.

Wouldn't you agree, sir, that it is important to preserve that feature of our criminal justice system so that people have an opportunity to redeem themselves and to re-enter society as good people? Those people can have their pardon revoked if they ever commit a crime again. Isn't it good to give that as part of our corrections system? Shouldn't we be encouraging that?

Hon. Vic Toews: Generally speaking, I agree with you. However, there are certain exceptions in which I believe it is not in the public interest to grant a pardon to certain types of criminals, and I would suggest especially multiple offenders or those in positions of trust who abuse children. Quite frankly, I do not believe there's any appetite among the Canadian people for giving those kinds of people any opportunity for a pardon because of the unspeakable crimes they have committed.

● (1610)

The Chair: Thank you, Mr. Minister.

We'll now go to the government side.

Mr. Lobb, go ahead, please.

Mr. Ben Lobb (Huron—Bruce, CPC): Thank you for appearing today, Mr. Minister and also for your willingness to appear many times in this fall session.

The first thing I wanted to get to was with regard to the point you made in your opening speech—and I thought it was an important point—about the changes you're now making around pardons and the suspension of records. I wondered if you could tell the committee and tell the viewers at home who are watching what you learned during your consultations and in talking with victims regarding that change in language.

Hon. Vic Toews: Well, I have to say that Canadians and victims' advocates have been overwhelming in their support for our pardons legislation. In fact, if we look at the bill as it was originally presented, some well-known victims, especially those who as children suffered at the hands of predators, have suggested that we have not gone far enough. But they have in fact supported this legislation because they believe it's an important and substantive step forward.

So, generally speaking, they have been overwhelming in their support of our pardons legislation, and I think that was evident when we passed Bill C-23A, which advanced the most critical aspects of pardon reform.

I would note at that point, Mr. Lobb, that many of these victims' organizations were very concerned. Indeed, I read in the newspaper how many pundits said we will never see Bill C-23B come up again and that the issue was dead. Many victims' groups were very concerned about that. They contacted me personally or my political staff so we could assure them that we would bring this bill forward. They see this as a minimum that government should be doing to respect the rights of victims.

So victims were pleased to see the first group of reforms go forward, and we are following through with our commitment to bring the second group before committee here. I've heard some concerns. Some are technical drafting concerns, in my opinion, but it doesn't change my commitment to the principle we're advancing in Bill C-23B.

Mr. Holland raised an issue, and I've simply said that if you, as a committee, can find a way to make sure that multiple offenders do not abuse the pardon system, I would be open to considering something like that, but I haven't seen anything better. Canadians out there are telling me that we don't give offenders third and fourth and fifth and sixth and multiple chances.

There are some circumstances in which, even for multiple offenders, we need to look at the situation. But generally speaking, I don't want to break faith with those victims who have trusted our government to do the right things to advance their interests over the interests of the criminal. So I'm committed to doing that.

Mr. Ben Lobb: I recently spoke with a victim of a sexual crime. She's now an adult, but it occurred in her youth. I want you to talk a little about the part about being ineligible for a suspension of record for sexual crimes against minors.

I know that her pain is still there. She has not forgiven the person who committed those crimes against her yet. She still has the pain.

I'm sure that's what you heard in your consultations, as you've mentioned already. Maybe you can talk about that piece and the significance of being ineligible for a suspension of record.

Hon. Vic Toews: What I've heard from victims is that it would be presumptuous of governments to say to a criminal, “we forgive you”. Essentially, that's not the role of a government; that's the role of an individual. That's the role of a victim, but that's not the role of the government.

Government is there to ensure there is a fair system, to ensure that justice is done, that people are properly convicted under the rules. But the issue of the abuse of children by sexual predators is something these people live with for the rest of their lives.

So the elements we're moving forward include laws that would make any individuals convicted of sexual offences towards children ineligible for a pardon. I don't think anyone who has not lived through that experience will ever be able to understand what these victims feel. Certainly, as a former prosecutor, though I was one for only a short period of time, I can tell you that is something you never forget.

● (1615)

Mr. Ben Lobb: Also, in your opening statement you commented on the number of meetings taking place this fall regarding the G-20. In my opinion, from the questions I saw asked, I thought they were a waste of time when we could be dealing with important legislation such as this bill.

Is there a level of frustration amongst yourselves that this is taking so long to be discussed in committee?

Hon. Vic Toews: Well, it's not my role to question the priorities of this committee. You're in very good hands with this chair. I know he is leading you as much as cats can be herded. I respect his abilities.

My frustrations may not coincide with the priorities of the committee. I will leave that type of discussion to you. I do not want to get into a partisan debate, especially on a bill as important as this one.

But thank you, Mr. Lobb, for that.

The Chair: I almost hate to cut you off there, Mr. Minister. You had another 30 seconds and could have gone on a little longer, but that's fine.

We'll go back to the Liberals.

Mr. Kania, please.

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

Welcome back, Minister.

I actually see this as a relatively non-partisan issue. I don't know why it was necessary for Mr. Lobb to throw out that G-8/G-20 question. I could easily throw out the question, "Why did we have two prorogations?" We could been here earlier as well. So I don't think that was quite necessary.

Going to the bill, I want to analyze it from a public safety perspective. I have no problem with changing the terminology from "pardon" to "record suspension". That's fine. The three strikes for not qualifying for a pardon are also fine.

In clause 1, the phraseology is "Eliminating Pardons for Serious Crimes Act". Do you think that making obscene phone calls and being convicted of that is a serious crime that would, in essence, not allow somebody to receive a record suspension?

Hon. Vic Toews: That's a good question.

I'm not exactly sure how one classifies and categorizes them, but these offences are almost the initiating offences. I don't know if you remember the debate on the animal cruelty legislation, where people said we had to tighten up the animal cruelty legislation because that cruelty is an indication of, let's say, a child being very disturbed and able to commit very difficult and dangerous offences down the road.

The types of sexual offences like obscene phone calls and voyeurism can in fact be a good indicator of where individuals are going if they are not properly supervised and stopped. That's why I think it's important, and that's why the legislation in this case still recognizes the opportunity to grant a record suspension where there is no child victim, or in cases where they are close in age or there is no position of trust or issue of authority.

I don't know if the term is predicate offences, but I'm referring to the offences that move someone along the continuum. That's why it's important.

Mr. Andrew Kania: I have two practical areas that I'd like to address.

First, on page 8 of your presentation you talked about the purpose of this pardon system, soon to be called "record suspension". You say, and I think it's a fair summation, that it's "an opportunity to start over with what amounts to a clean slate".

Going to that point, I agree with you that some convicted persons should not have this opportunity. We've discussed that, the three times up or the persons with schedule 1 offences. I'm fine with that. But this bill contemplates it being acceptable for some people to get a record suspension. For some people, it's never; for some people, it's a yes.

So my question for you is that in the circumstances where it's contemplated as being acceptable for some people to get these record suspensions, what's the public safety rationale to extend the waiting time for the summary offences from three years to five years, and for the indictable offences from five years to ten years? How does that extension itself help public safety? Specifically, do you have any learned studies or objective empirical evidence that somehow suggests that by putting those extensions in, you're actually solving a pre-existing problem?

● (1620)

Hon. Vic Toews: I think the reason for extending the ability not to get a record or a suspension of a record for a longer period of time does act as a deterrent for that individual from actually committing another offence, if they're sincere about moving past that time and getting on with it.

It has been felt that three years is simply not enough time to make that assessment. The five years, in the case of indictable offences, is simply not enough time to make that assessment, recognizing, though, that there should come a time when these individuals should be in a position to apply for that suspension of record.

Mr. Andrew Kania: I understand that's the rationale, but my question was more focused on whether you have any empirical evidence to suggest that the extension of time was necessary to solve a pre-existing problem.

Can you provide to the committee any form of empirical evidence that you have relied upon in making this decision?

Hon. Vic Toews: I don't have any empirical evidence before me that I can cite. I think this is a broader public policy position that we take.

It's the same reason we believe that mandatory minimum prison sentences are appropriate in certain circumstances. People can talk about whether a mandatory prison sentence facilitates deterrence or denunciation, but what is clear is that it incapacitates a criminal and that individual cannot then commit those crimes.

I think a similar philosophy is applicable in this case, and for that reason I'm very supportive of an extension. You could ask exactly the same question: Why increase it to five? Why not go down to one? Why not allow the person to make an application the day after?

This is a judgment call we have to make as policy-makers, as parliamentarians. We bring our experience to this job to make that determination. I wouldn't agree with a one-year extension. I wouldn't agree with a two-year extension. I don't agree with a three-year extension.

Where do we go from that? Do we agree on four years? Do we agree on five years? I think five years is good. Everything I know about the criminal justice system and my experience in life tells me that five years is a pretty good compromise from never giving it or giving it immediately.

The Chair: Thank you, Mr. Minister.

We'll go to Mr. Rathgeber, please.

Mr. Brent Rathgeber: Mr. Minister, thank you for your appearance here today and for your other appearances during this session.

My friend Mr. Kania wanted some empirical data and I have some. In 2006-07 the parole board issued over 14,000 pardons and denied only 103 applications.

Would you agree with me, Mr. Minister, as many victims' groups have told me, that up to this point and up to this proposed legislation and the bill that passed in the dying days of the spring session, that the pardon system at least had the appearance of being a rubber stamp system?

Hon. Vic Toews: Mr. Rathgeber, I think you're exactly right. I think the general impression of Canadians, of our existing pardon system, was one of shock that the National Parole Board, under the legislation it applied, simply rubber-stamped applications.

This is not to take anything away from the National Parole Board. We provide them with the legislation. They followed the legislation.

In 2006, when our colleague Minister Day looked at the issue, it was suggested that these changes could be made through administrative measures. It's clear from the experience between 2006 and 2009-10 that administrative provisions were not enough in order to accomplish the policy goals that we wished to accomplish.

So to move it away from a rubber stamp or simply an administrative system to what is now, I believe, quasi-judicial in terms of the decision-making process is very important. I think that will go a long way in convincing Canadians that there is a purpose for the pardon system, that the parole board puts thought into its decisions, and where a pardon would bring the administration of justice into disrepute, the board will in fact deny a pardon.

● (1625)

Mr. Brent Rathgeber: Thank you.

Many of us were moved by the compelling and very tragic story of Sheldon Kennedy, and I think he may be appearing in front of this committee in the days to come. I know you've met him. I'm curious as to what part, if any, his tragic story played in the drafting of this legislation.

Hon. Vic Toews: I have to say that Mr. Kennedy and Mr. Fleury were very important individuals in the drafting of this legislation. To bare your soul the way those two individuals have had to do over the last number of years is quite remarkable. That we have individuals who can speak out in an articulate and a clear and firm way about what it means to be a victim in these circumstances is truly impressive and very moving.

It's not just Mr. Kennedy or Mr. Fleury I'm worried about disappointing; I'm worried about disappointing all of those other victims they're speaking on behalf of, victims who will never come to this committee, who will never speak out. I think what they have done on behalf of Canada and on behalf of victims is very important.

Mr. Brent Rathgeber: Many victims' groups have written letters to members of this committee, and I know you've consulted with many of them: Victims of Violence, the Canadian Resource Centre for Victims of Crime, the Kids' Internet Safety Alliance, the Canadian Crime Victim Foundation. The list goes on and on.

Are you aware of any victims' group that opposes this proposed legislation?

Hon. Vic Toews: No, I'm not. I know that certain victims' groups are not satisfied that we've gone far enough, but they are supportive of the general principles we have put in place.

I think the individuals who have expressed certain concerns were actually quite shocked when they saw our government moving ahead with this. I think there was a belief that no one would ever do anything about it. It was with that kind of sense that many of these individuals approached us. They wanted as much as they could possibly get, because they felt they had to speak out very strongly and forcefully to get these changes made.

Generally speaking, in answer to your question, I am not aware of any victims' group that says this is the wrong direction to move in.

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

I know the minister has to leave right at 4:30. We still have a couple more minutes, so I would go back to Mr. Kania.

Mr. Andrew Kania: Thank you, Mr. Chair.

Minister, I have a two-part question. Here is part one.

You mentioned offenders who have offended multiple times as providing one of the rationales for amending legislation in this manner. I'd ask you—not today, as I assume you don't have it with you—to table whatever documentation, data, or whatever you're relying upon to support the assertion that it's necessary to amend this bill because of that problem. There must be something.

Let me just get the second part out.

The other thing is this. The purpose of the legislation—I read this before—as you indicated it was in your speech, on page 8, is an opportunity to start over with what amounts to a clean slate. I'd like to know whether, if somebody gets a record suspension, they will be able to say when asked, as on a job application, that they do not have a criminal record. And when a criminal record search is done, will the record suspension show, will the previous record show, or will they actually have that “clean slate” that is enunciated here as the purpose?

● (1630)

Hon. Vic Toews: Nothing in the amendments that we are making here today will change in substance the impact of a suspension of record. It will be identical to a pardon in that sense. So whatever you could say before under a pardon, you can say exactly the same thing under the suspension of record. There is nothing that has changed in that respect.

I might caution individuals who have received a suspension of record and who cross into the United States that the American authorities do not recognize either our pardons or our suspensions of records. They will be asked “Have you ever been arrested?” or “ Have you ever been convicted, even if you've received a pardon?”—or now, “a suspension of record”. You'll have to disclose that even in those circumstances.

So nothing in a practical way like that will change. What this does is simply change when you're entitled to apply and the criteria the board will consider.

In respect of your issue with multiple offences by an offender, if you'll allow me just a minute before I conclude, Mr. Chair—if that's all right...?

The Chair: Yes, go ahead.

Hon. Vic Toews: The issue here is the integrity of our pardon system or suspension-of-record system. Individuals should not have the right to expect that this clean slate will be given to them.

Canadians have told me very clearly and have told our government very clearly that there comes a point in time when individuals should not be allowed to take advantage of what is not a right but a privilege. That point comes at some particular time, after committing a number of offences.

You heard me address your colleague on this issue earlier. I know you indicated that you didn't have any problem with the three or four convictions. Some have mentioned that some fine-tuning may need to be done there.

I want to say that in the spirit of cooperation that we've been able to develop in this bill, if you can come up with something that carries out the purposes of this act without taking advantage of the goodwill of Canadians in granting this privilege, I will seriously consider it.

The Chair: Thank you very much, Mr. Minister, for your time. I know you have other commitments this afternoon, so we thank you for your attendance here.

We are going to suspend momentarily, and then we will deal with Ms. Mourani's motion in which she wants to change the orders of the day.

We will suspend for one moment.

● (1630)

(Pause)

● (1635)

The Chair: I'll call this meeting back to order.

At the beginning of the meeting today, Ms. Mourani came with a motion to change the order of the day, the schedule or agenda for today. From checking on the procedure for that, I will say that it would suggest we move immediately to the vote. It is a non-debatable motion.

Ms. Mourani, very quickly, with no preamble, just state that you want to move to five o'clock for committee business; then we will take the vote.

[*Translation*]

Mrs. Maria Mourani: I would like us to set aside time to examine the motion that I tabled in July. I hope we could devote at least 30 minutes to it, but I am ready to accept 15 minutes. I would like us to have the opportunity to discuss it.

[*English*]

The Chair: I think the point is that I'm willing to give you that 15 minutes at 5:15., if that's all right, but to switch it up to five o'clock when we have guests here is what gave me a problem. It does not appear as committee business today.

My sense is that when we have a motion that has been brought forward, you can call it at any time.

Mr. Holland.

Mr. Mark Holland: Just on this point, I'm not going to support it for today, the reason being that we have Madame Morin coming on December 8. I think the appropriate time to deal with motions would be on December 8, after we have heard from Madame Morin, not today.

We also have a longstanding motion. My understanding is that when we began a new session and elected a chair—

The Chair: Okay. We're going into debate here.

Mr. Mark Holland: No, I have a question. This is an important procedural question, through you to the clerk, if I could, Mr. Chair.

When we begin a new session in September, do we not start over then with motions? Or do those motions that were given prior to September continue?

The Chair: If they're still on the order paper from—

Mr. Mark Holland: I don't have a problem dealing with the motion. I just think it's more appropriately dealt with after Madame Morin speaks. There are two motions—

The Chair: Unfortunately, Madame Mourani has the opportunity to bring her motion at any time. Appropriateness is left up to her, when it's her motion.

You have that choice. With a vote, you can move it ahead to five o'clock, if it carries. If not and you want to continue with it today, then we'll discuss it at 5:15 p.m., if you decide you want it today. Otherwise, this is non-debatable.

Mr. Davies.

Mr. Don Davies: Mr. Chairman, I just have a question.

I think you've expressed this in two different ways. Is the motion before the committee to move at five o'clock into future business, or is it to move into future business to deal only with that motion?

The Chair: It's to deal only with that motion, because we do not have future business or committee business on the agenda for today.

Mr. Don Davies: So we have to go into future business or committee business at that time.

The Chair: We would go to committee business.

Mr. Don Davies: I would also make my motion to issue the summons to Madam Morin, which I think needs to be dealt with in a timely fashion. I made that motion last meeting.

I would suggest that we go into future business at five o'clock to deal with both of these motions, have a discussion, and at least vote on the motions.

The Chair: We're going to do this without debate.

All in favour of Madam Mourani's motion to move at five o'clock to debate on that motion?

(Motion negatived)

Mr. Don Davies: Mr. Chair, I have a motion to go into future business at five o'clock to debate my motion to issue a summons to Madam Morin for December 8, which I've given notice of and raised. I would make that motion.

The Chair: We have committee business at 5:15. You want to take away from the time we already have.

Mr. Davies has the right to change the agenda, the standing orders, for today.

All in favour of Mr. Davies' motion to go to five o'clock?

(Motion agreed to)

The Chair: So we will go at five o'clock.

Ms. Campbell.

● (1640)

Ms. Mary Campbell: Thank you, Mr. Chair. It's a pleasure to be here again.

Mr. Churney and I are quite flexible on the matter of the committee's schedule. Whatever suits the committee today, or on any other occasion, it's not a problem for us.

I don't have any statement to make, although I think there's a lot of confusion about clause 9. I'd be happy to address that or answer questions.

The Chair: Thank you, Ms. Campbell.

We're going to continue to the first round with Ms. Campbell, which means a seven-minute round. We'll start with the Liberal Party.

Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Thank you.

I'm sorry I wasn't at the presentation made by the minister. I apologize if this question was asked, but on page 9 of the minister's presentation there is the statement that the bill "affirms the fact that a person's criminal record will be kept separate and apart, but makes clear that the record has not been erased".

I don't understand how that could be done. How can that be accomplished? It seems there are two competing principles here. How can you, in legislation, guarantee that a person's record will be kept separate but not erased? How can that be accomplished?

Ms. Mary Campbell: In the physical management of records, that's done by the RCMP through the CPIC system. This has been the status quo since the Criminal Records Act was enacted. By keeping the records sealed and apart, in the ordinary course of duties, a police officer checking CPIC would not see a record that has been pardoned, but the record would not have been obliterated from the electronic system. It would still exist somewhere.

Of course, there are hard-copy records of the conviction. It's not a complete purging of the record, but it strictly limits access to that record. That's what is meant by keeping it separate and apart.

Mr. Alan Tonks: I see.

On the whole issue of indictable offences, would an indictable offence, say, possession of marijuana, be a matter of record? How would that figure into the bill? Would that be identified as an indictable offence?

Ms. Mary Campbell: I don't have my statutes in front of me, so I would have to check. That would normally be an offence under the Controlled Drugs and Substances Act. All offences are either purely indictable, purely summary conviction, or are a hybrid, which is to say the crown can elect which way it wants to proceed. I don't recall off the top of my head what possession of marijuana is, but we could certainly find out.

Mr. Alan Tonks: I'm just struggling, and not that I've had any experience with that particular pursuit, but the bill suggests that there would be offences that would be taken into consideration that would have that 10-year trigger associated with them. I guess my question would be...and I do accept that the information isn't totally available. Using that as an example, it would appear that this offence—I don't know what the word is I'm looking for—in itself wouldn't appear to be the kind of offence that would prevent a reasonable amount of time to apply for a suspension of record.

● (1645)

Ms. Mary Campbell: The act as amended by Bill C-23A provides for a 10-year waiting period in the case of a serious personal injury offence—possession of marijuana would not qualify under that definition—or offences referred to in schedule 1, which are child sex offences that were prosecuted by indictment. I cannot see possession of marijuana falling within a 10-year waiting period. It would fall within either a five-year or a three-year waiting period.

Mr. Alan Tonks: Okay. How is that decision made?

Ms. Mary Campbell: It's made initially in the prosecution, in the laying of charges, as to whether an offence is indictable or summary. So by the time the matter reaches the parole board for consideration about a pardon, that decision has already been made in the criminal court system.

Mr. Alan Tonks: Okay. Thank you.

The Chair: You have another minute and a half, if you want.

Mr. Kania.

Mr. Andrew Kania: I will go back to some of the questions I asked the minister in terms of statistics and empirical evidence, because we touched upon that and the minister mentioned rationalization for offenders with multiple convictions, and that that was a problem. I'd like to know if there is any empirical evidence that could be provided or has been considered in terms of making that decision.

As well, as a general concept, there's been movement from the three years to five years on summary convictions and five years to ten years on indictable convictions. Again, the same question, was it a policy decision because they just didn't like it, or was there actually some empirical evidence showing that there was a problem that needed to be solved and that's why the changes have been made?

Ms. Mary Campbell: Certainly, we would be pleased to provide the committee with anything we have from our researchers.

I do recall that in relation to sex offences—because I have some world-renowned sex offender researchers working for me—sex offenders in general are characterized as reoffending at a lower rate than people think, but over a longer period of time. So for a sex offender, it's not unreasonable to think about a 10-year waiting period, because in fact you do see the activity continuing over that period of time.

I certainly can provide that research, as well as anything else the group has about violent recidivism survival rates, so-called.

The Chair: Thank you very much, Ms. Campbell.

We'll move to Madame Mourani.

[*Translation*]

Mrs. Maria Mourani: It is Mr. Gaudet's turn.

[*English*]

The Chair: I apologize, Monsieur Gaudet.

[*Translation*]

Mr. Roger Gaudet (Montcalm, BQ): Thank you, Mr. Chairman. I do not speak often, but I do like to take the floor once in a while.

I have a question concerning the Minister's presentation. This is what he says on page 4 of his presentation:

> With the amendments to the Criminal Records Act passed in June, the Parole Board of Canada now has the authority to exercise discretion and deny a pardon application in cases where the evidence clearly demonstrates that granting one would bring the administration of justice into disrepute.

I see a problem here. I would like to have an example of what this would mean, an explanation of how the Canada Parole Board could bring the administration of justice into disrepute.

[*English*]

Ms. Mary Campbell: I'm going to let my colleague Mr. Churney speak to this in part. Mr. Churney is making his committee debut today, so I hope you'll ease him in gently.

The kind of situation that I think Parliament was thinking of when Bill C-23A was passed with that language was a situation that would shock the conscience of people, that the offence was of such a gravity—and perhaps there was a plea bargain involved—that the conviction and the waiting period do not adequately reflect the seriousness of what actually transpired and the harm done to the victims.

I think that's the kind of situation. However, there has been some work going on in developing some regulations to flesh that out.

Mr. Churney, would you like to add anything?

Mr. Daryl Churney (Acting Director, Corrrections Policy Division, Department of Public Safety and Emergency Preparedness): As Ms. Campbell just said, there is some work to develop regulations right now that would supplement or support that concept of bringing the administration of justice into disrepute.

I think the concept we're trying to get at is looking at situations where there is an ongoing serious level of harm, either financially to the victim or emotionally or physically. There would be some kind of major, substantive, ongoing type of harm or injury.

That's the concept we're working on to develop regulations that the board could use to support their decision-making on that point.

● (1650)

[*Translation*]

Mr. Roger Gaudet: I'm having trouble understanding what you mean. It is as if the Canada Parole Board was judging the judge. You will have to explain to me the difference. If a judge hands down a sentence, it would be inappropriate to revise that sentence; you should only be following the regulation.

From what you are saying, you are going to pass judgement on the judge who judged the offender. I see a problem here. There are going to be two justice systems: the Parole Board and the judge. This requires an explanation. If it is the way it works, I will be voting against it for sure.

So that's my question.

[*English*]

Ms. Mary Campbell: It's a very important point. I don't think the intention of Parliament in passing that was to set up a second guessing of the original conviction and sentence.

As Mr. Churney is indicating, though, the judge at the time may have accepted a plea bargain—for example, where a number of elderly people were defrauded of their life savings. The judge accepts a plea bargain and imposes the sentence that counsel have recommended. That's the fair and appropriate sentence, but at some later point, when it comes time for a pardon to be considered, it may be that the suffering of those victims is still so severe, so egregious, that notwithstanding the good conduct of the offender in the interim, it may be a compelling case where issuing a pardon would meet the test that Parliament has articulated.

I think Parliament's intention was that it would be a rare situation. As you have said, it's not appropriate to re-judge or re-sentence. It is in those limited circumstances where there is potentially some ongoing suffering or harm that was not contemplated or expected.

The Chair: Continue, Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: I'm waiting for the translation. Don't take it personally, but I am not satisfied with your answer.

I don't think that the Parole Board can override a judge. In certain cases, maybe… If a person has been sentenced to 15 years and has been waiting five years to ask for a pardon, or if that person did nothing wrong in the last 20 years, I cannot accept that you deny her a pardon just because it is going to shock people.

This is not justice in my mind. I have not found the right word for it, but this is not what I call justice.

[*English*]

The Chair: Mr. Davies, you have seven minutes.

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

I want to move to proposed paragraph 4(2)(b) in the bill we're studying, which says:

> a person is ineligible to apply for a record suspension if he or she has been convicted of
>
> (b) more than three offences each of which either was prosecuted by indictment or is a service offence

The point is that this bill would say that anybody convicted of more than three indictable offences would be forever barred from applying for a pardon.

I'd like to ask about the situation where someone in their early twenties one night gets involved in a transaction that results in multiple convictions. Someone steals a car, gets impaired, and hits someone who gets injured.

Would you agree with me that it's possible that someone could have three convictions by indictment early on in their life who may benefit from a pardon?

● (1655)

Ms. Mary Campbell: Yes.

Mr. Don Davies: You would agree with me that this legislation would permanently bar that person from applying for a pardon. Is that right?

Ms. Mary Campbell: It's really up to the government and to Parliament to set the demarcation line. You asked if it is possible for a person in that situation. Yes, it is possible. As to whether it's appropriate to set the demarcation line at more than three, I think that's clearly a decision for Parliament to make.

Mr. Don Davies: We've heard from the minister that he's not in possession of any empirical evidence that would suggest there's a public safety component. If I could fairly characterize his evidence, I would say he feels a political reaction.

I'm wondering if you've seen any data that would indicate that our communities would be safer or that offenders would benefit by a provision that restricts pardons to only those who have three or fewer convictions.

Ms. Mary Campbell: I would have to double check to give a definite answer.

I can give you one statistic today that has been provided by the parole board. Of all the files processed by the board for pardons, they've been able to ascertain that 25% of the files relate to persons with more than three convictions. It gives you an idea of the magnitude of people with multiple convictions beyond three.

In terms of other characteristics of that group, it's something I would have to look at.

Mr. Don Davies: Extrapolating from that, we're aware that a very high percentage of pardons are granted, and we've dealt with some of the reasons why we've tried to tighten that up. Would it be fair to say that about one-quarter of the people who are currently applying for pardons would not be entitled to even apply under this legislation were we to pass it?

Ms. Mary Campbell: Based on the statistics we've been given, that would appear to be the case.

Mr. Don Davies: I've done a bit of research. Out of all of the pardons granted in the last 10 years, more than 50% of the pardons are granted to people who have been convicted of one of three offences: a Narcotic Control Act offence, which would include marijuana possession and similar crimes; impaired driving; or low-level assault. Does that jibe with your understanding of the statistics?

Ms. Mary Campbell: I think that's roughly correct, yes.

Mr. Don Davies: I can't leave without going back to my favourite piece of statutory language. I want to give you a chance, Ms. Campbell, to explain this to us.

The minister keeps saying that offenders who are convicted of a sexual offence against children are not forever barred from applying for a pardon. Some of those offences include things like exposure. They're not necessarily among the most heinous crimes against children, but of course some are listed there.

My reading of the section we're currently asked to support says that:

> (3) A person who has been convicted of an offence referred to in item 3 of Schedule 1 may apply for a record suspension if the Board is satisfied that
>
> (a) the person was not in a position of trust
>
> (b) the person did not use...violence...and
>
> (c) the person was less than five years older than the victim.

I would put to you that as the bill currently stands, it's only offences in item 3 of schedule 1 that would qualify that person to apply for a pardon. If they were convicted of an offence not in item 3 of schedule 1, this legislation would bar them from doing that. Am I reading that correctly?

Ms. Mary Campbell: As long as you don't stop me after I say yes, you're reading it correctly.

Mr. Don Davies: I'm so tempted.

Ms. Mary Campbell: You are reading it correctly, but I do want to say, in fairness to everyone and to assist the committee, that obviously clause 9 of Bill C-23B is, to put it simply, quite a jumble. What you find in clause 9 are some elements that were adopted in Bill C-23A, so the committee might well, at some point, feel they don't have to deal with those again.

There are some elements that are new. Therefore, I think the committee will want to consider those, and there are some elements that you may wish to adopt but they would need some technical amendment.

I would also say that the references to the schedules at this point are perhaps a little confusing. There are two schedules to the Criminal Records Act. The first one, schedule 1, is child sex offences. So item 1 under schedule 1 is all the offences that are specifically child sex. On the face of it, they're child sex.

Item 2 is offences involving a child victim but are not, on the face it, necessarily child sex. For example, voyeurism could be against an adult, but this captures only those against a child.

Of course, item 3 refers to offences that no longer exist.

You're quite correct that the exemption as it currently reads refers to only item 3 of schedule 1. Indeed, yesterday I said to Mr. Churney that that seems odd, and asked, why is that? We need an explanation.

I think what we're trying to piece together is, is that in fact the intention of the bill to apply to the entire schedule, or is there a reason why we would only refer to item 3?

I'm beginning to hear from Mr. Churney and colleagues that it may in fact be that it's only item 3, because by definition, in the Criminal Code substantive offences, one cannot be convicted if they fall into one of the exemptions. So we'd have a double exemption going that would not make sense; it would be duplicative.

I still need to confirm that with my Department of Justice colleagues, because obviously we want the committee to understand and to proceed with confidence that it's either item 3 or the entire schedule. All I can say is that we are looking at that. Your reading is perfect. The minister's statement of his intention is also perfect. We need to technically go back and make sure that it's been captured properly.

● (1700)

The Chair: Thank you very much.

Seeing the clock at five o'clock, we will suspend this portion of the meeting and move to future business.

We want to thank you again, Ms. Campbell, for attending as our guest today and helping us to work through this bill. I think we made some really good headway on this today. We've seen some areas where all parties want to work together to see this amended.

We thank you for coming and for your help. I usually say this to our guests; f you have other submissions that you would like to make, if you want to help clarify some of those...item 3, section 1, section 2, whatever, you could submit something in writing or get a hold of our clerk to make those clear.

We will suspend for one moment, and then we will go in camera.

[*Proceedings continue in camera*]

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