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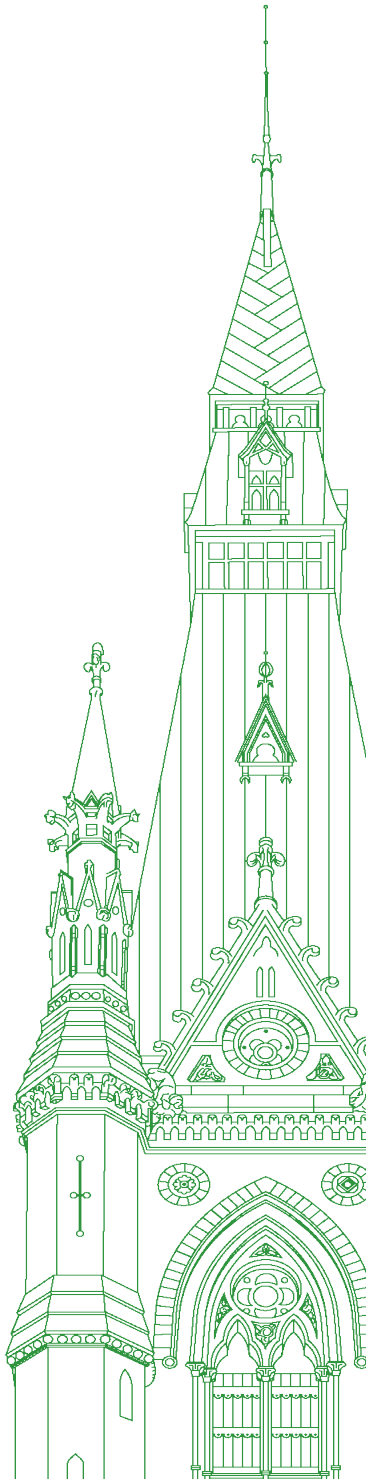

Chair: Ms. Lena Metlege Diab

Standing Committee on Justice and Human Rights

Tuesday, October 3, 2023

● (1700)

[*English*]

The Chair (Ms. Lena Metlege Diab (Halifax West, Lib.)): Welcome, everyone. We are now in public.

We are pleased to welcome the Minister of Justice and Attorney General of Canada, the Honourable Arif Virani, to our committee for the first time.

Minister, welcome.

With the minister are the following from the Department of Justice: Shalene Curtis-Micallef, deputy minister and deputy attorney general of Canada; Matthew Taylor, who's been here a number of times before, general counsel and director of the criminal law policy section; and Joanna Wells, acting senior counsel, criminal law policy.

[*Translation*]

Thank you very much.

[*English*]

Again, welcome.

Minister, you are with us for an hour today. You have the floor for 10 minutes. As usual, you can begin with your opening remarks, which will be followed by questions from the members.

The floor is yours.

[*Translation*]

Hon. Arif Virani (Minister of Justice and Attorney General of Canada): Thank you very much, Madam Chair. I'd like to begin by congratulating you on being elected chair of this committee.

This is my first time here as the minister, but it's not my first time here on the committee. I'm a regular. I'd like to thank the committee for giving me the opportunity to be here to discuss Bill S-12, which proposes a series of reforms to the national sex offender registry and to the Criminal Code provisions pertaining to publication bans.

The publication ban reforms would give victims of criminal offences more autonomy with respect to publication bans and enhance their right to ongoing information. The reforms with respect to sex offenders would give more teeth to the national sex offender registry and be consistent with the Supreme Court of Canada's 2022 decision in R. v. Ndhlovu.

[*English*]

I am very pleased to see the committee recognize the urgency of this issue and begin a prestudy of this legislation. I thank you sincerely for doing that and taking that initiative. As you know, we are under a court-imposed deadline. If the legislation before us does not receive royal assent by October 28, sex offenders will no longer be able to be added to the sex offender registry. That is an outcome that I believe none of us wants to see happen.

I'll begin by discussing the reforms in this legislation that have been proposed by the victims and survivors of sexual assault and also by their advocates. I'm very grateful for the lived experiences that victims and survivors shared with my office as Bill S-12 was being developed. Very much thanks to their leadership, Bill S-12 will help craft a criminal justice system that better serves the needs of victims in Canada.

[*Translation*]

Bill S-12 advocates a victim-oriented approach that empowers victims. It accomplishes this by requiring that courts and attorneys verify whether victims wish to be protected by a publication ban, and if so, that they be informed of the impact of a publication ban and their right to request its revocation or alteration.

[*English*]

Bill S-12 aims to eliminate the threat of prosecution for individuals when they share their own identifying information. Victims and survivors should not be prosecuted for telling their own stories. That is fundamental to the conception and understanding of this bill.

I want to thank committee members for showing leadership on the subject of publication bans. I know that this issue was examined by this very committee during last year's victims of crime study, and many people in this room right now were participants in that study. I also know that many of you have met with and listened to members of a group call My Voice, My Choice, as well as other advocates. Support for these reforms, thankfully, crosses partisan lines. We now have the opportunity to get this package across the finish line in a timely manner that respects the deadlines imposed by the Supreme Court.

Upon further review of Bill S-12, the Senate made amendments to the publication ban reforms to respond to the concerns it heard from witnesses during the bill's study. While these Senate amendments have generally led to a more robust bill, I am concerned about some of the amendments and would like to draw your attention to two of them.

First, an amendment was made by the Senate that would require the prosecutor to inform victims and witnesses who are subjects of a publication ban about the circumstances under which they could legitimately disclose information without facing legal consequences. While I appreciate the objective of a change of that nature, it does raise serious questions about prosecutorial independence and conflicts of interest.

Some of the very Crown attorneys who would be providing that advice would be the same individuals who would ultimately be handling a prosecution. I am very conscious of the fact that in this committee we have no less than three former prosecuting Crown attorneys, and I'm sure they may share some of the concerns that I have with respect to this proposed Senate amendment. In fact, I have already received correspondence from some provincial attorneys general raising this very concern.

Second, I am also concerned with the amendment to clarify what is or is not captured by a publication ban. As amended by the Senate, Bill S-12 currently specifies that individuals who are protected by a publication ban may disclose information about themselves as long as they do not identify another person who is protected by the same publication ban. The problem here is that sometimes there are victims or witnesses who are subject to different publication bans and who still may wish to keep their identities private.

I want to move now to other components of Bill S-12, so I'm moving away from the Senate amendments.

Another victim- and survivor-centric element of Bill S-12 relates to information that is received from the courts. Under the Victims Bill of Rights, victims can decide whether they want to stay informed about all case developments, like appeals or parole. They can also decide that they do not want to be contacted about the case. They have the right to move on and to not have to hear about it again.

Bill S-12 significantly simplifies and streamlines the process for registering for information by requiring judges to ask victims their preferences and by making receipt of ongoing information a simple box to tick on a form. I am grateful to the advocates who brought this issue to light, and would like to emphasize that this measure is a key priority of the federal ombudsperson for victims of crime.

I now want to outline the measures in Bill S-12 that relate to the national sex offender registry.

In response to the Supreme Court's decision in Ndhlovu, Bill S-12 proposes to replace automatic registration with a presumption of registration, meaning that an order to comply with the registry must be imposed in all cases involving a sexual offence, unless the offender can show that registration would be grossly disproportionate or overbroad. However, the bill would retain automatic registration for two categories. The first is repeat sexual offenders. The second is those who commit sexual offences against children and are sentenced to two years or more of imprisonment, on indictment, even in the case of a first-time offender in that category.

Restricting automatic registration to these situations reflects current social science evidence that these categories of individuals are at a higher risk to reoffend in a sexual manner. This responds directly to the Supreme Court's judgment in Ndhlovu that automatic registration is only justified for individuals who pose an elevated risk of reoffending. The court has called for the tailoring of this provision, and that is the tailoring we have done.

It is my view that including these individuals on the registry will always be related and proportionate to the objectives of the registry. Sexual offences against children are despicable crimes that I condemn in the strongest terms, and I presume all parliamentarians would condemn in the strongest terms. I'm speaking to you not just as the Minister of Justice or a member of Parliament from Toronto, but as the father of two young boys.

In addition, we know that repeat sexual offenders—that's the second category of those who would be automatically registered—are five to eight times more likely to reoffend than individuals who have non-sexual criminal histories.

There is another piece in the Ndhlovu decision that relates to mandatory lifetime registration. What Bill S-12 proposes to do is to allow a court to order lifetime registration for certain individuals. We are talking about people convicted of more than one designated offence in the same proceeding, where the offences demonstrate a pattern of behaviour that shows an increased risk of sexual recidivism. This addresses the concerns of the Supreme Court, while allowing lifetime registration in appropriate cases.

● (1705)

[*Translation*]

In addition to the proposals resulting from R. v. Ndhlovu, there are also some amendments whose purpose is to strengthen the offender registration regime as a whole and to make it more effective. These amendments include a requirement for registered sex offenders to give prior notice of at least 14 days for any travel, as well as a specific destination address. This gives the police more time and information to assess risks, and where required, to alert their international partners responsible for enforcing the act of an individual's travel plans.

[*English*]

Other key amendments include the addition of more offences for which an individual could be required to register, including the non-consensual distribution of intimate images and sextortion, and a new arrest warrant to address non-compliance with an offender's registration obligations.

What I'm saying is that we not only revisited the issue of the sex offender registry, making it compliant, in my view, with the Supreme Court's guidance, but we are actually improving the registry, including the number of offences that would be captured by the registry.

The new arrest warrant is critical from a law enforcement perspective. Again, this is not a partisan issue but an issue that all of us take seriously. What I would emphasize to you is that many stakeholders have talked to my office about this bill, including law enforcement stakeholders such as the RCMP and the Canadian Association of Chiefs of Police.

What I will say to you is that they've said they would like the sex offender registry to be maintained. They see it as a very valuable tool for fighting crime, including for repeat sexual offenders. What they said to me—which was quite shocking, and I'll share it with you—is that the stats vary on a weekly basis. Between 46 and 75 times per week in Canada, names are added to the sex offender registry. That is quite staggering, but it would be more staggering to lose the ability to do that and keep Canadians safe.

[*Translation*]

I will conclude by saying that I'm convinced all of the reforms proposed in the bill would strengthen the national sex offender registry, comply with the Canadian Charter of Rights and Freedoms, and make the criminal justice system more responsive to the needs of victims of crime.

[*English*]

I hope that all parties in this committee and all parties in the chamber can work together to pass this legislation in the coming weeks, since time is of the essence.

Thank you, Madam Chair.

[*Translation*]

The Chair: Thank you very much, Minister.

Mr. Moore, you now have the floor for six minutes.

[*English*]

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Madam Chair.

Minister Virani, congratulations on your appointment. This is, no doubt, the first of many visits you'll have to the justice committee. We welcome you.

Minister, there's something I would like you to address at this committee. Since 2015, violent crime in Canada is up 39%, homicide is up 43%, gang-related homicide is up 108%, aggravated assault is up 24%, assault with a weapon is up 64%, sexual assaults—which go to the root of the issue that we have today—are up 71% and sex crimes against children are up 126%.

You're new as minister, but you are not new to the file, having served for some time as the parliamentary secretary to the minister of justice. There's a quote you gave that I'd like you to address. These are Statistics Canada numbers that I just listed. You said, “I think that empirically it's unlikely” that Canada is becoming less safe.

In the face of that non-partisan Statistics Canada information and hearing what, I'm sure, you're hearing from your constituents—the same as all members of Parliament are—which is that they feel Canada has become less safe, do you still stand by your statement that Canada is not becoming less safe in the face of those statistics?

● (1710)

Hon. Arif Virani: Thank you, Mr. Moore, for that question. Thank you for the work you've been doing on this committee for many years.

What I'd say to you is that there is a distinct problem with safety and crime in Canada right now. What I would say to you, with respect to the statistics that you've just read, is that I've been briefed on those statistics. I've seen those statistics, including things like the crime severity index, and I agree with you that we have a problem with crime in this country, particularly since the pandemic.

What I would say to you is that my fundamental job is to ensure that Canadians feel safe in their homes, in their communities, at work, at play and in their schools. That's one of the reasons I've been very pleased in the first two weeks of Parliament to have two justice bills come up for debate. One deals with bail reform, which all parties gave unanimous consent to and which will help keep Canadians safe, and the second would restore the sex offender registry, which will help keep people safe, specifically from sexual assault and sexual assault against children, which you highlighted in those statistics.

Is there a problem? Yes. Will this bill help address this problem? Absolutely.

Hon. Rob Moore: Thank you, Minister.

One thing I would take issue with...and I say this only because, for every witness we've ever had at this committee with regard to safety and restoring justice to our justice system in all the studies we've had, I haven't heard any of them blame the pandemic, as you seem to have just done, for this stratospheric rise in crime in Canada.

What I've heard them blame are policies that were deliberately instituted by your government, such as Bill C-75, which created the catch-and-release or revolving door to our bail system that's putting offenders back on the street, and Bill C-5, which says that if someone commits a sexual assault, they can serve their sentence from their home rather than from a prison as they should.

Minister, would you acknowledge that the measures that have been taken by your government—like Bill C-5 and Bill C-75—also could have an impact on rising rates of crime in Canada?

Hon. Arif Virani: Mr. Moore, this is where you and I will differ in terms of perceptions.

I believe that Bill C-5—and I was the parliamentary secretary at the time that was implemented—was meant to do multiple things, including addressing delays in the court system that were being pointed out by the Supreme Court in R. v. Jordan. It addressed things like reverse onus on bail for intimate partner violence. That is something that we not only believe in as a government but have doubled down on in terms of expanding the scope of reverse onus provisions in the current bail reform bill, Bill C-48. What it also did was entrench certain principles about bail that codified Supreme Court jurisprudence.

With respect to Bill C-5, Mr. Moore, again I will categorically disagree with you. Bill C-5 was about easing the overrepresentation of indigenous and Black persons in the Canadian justice system, in the criminal justice system. The effect of some of the mandatory minimum penalties that were enacted by the previous government under Stephen Harper was to overincarcerate indigenous folks on a sixfold basis and Black persons on a twofold basis.

On a day on which we've elected, for the first time in Canadian history, a Black Speaker of the House of Commons, I'm going to stand by our efforts to reduce racism in our system and stand by the efforts to reduce overrepresentation.

Hon. Rob Moore: Minister, thank you.

The decision that we're addressing here.... The Supreme Court stated that someone who is on the registry, an offender, is eight times more likely than the general population to commit a sexual offence. That is why a mandatory listing in the sex offender registry of those who are convicted of sexual offences and a mandatory lifetime listing of those who have multiple offences are so essential.

It was a 5-4 decision. In the dissent, it says:

> It is also clear that it cannot be reliably predicted at the time of sentencing which offenders will reoffend. In the face of that uncertain risk, Parliament was entitled to cast a wide net.

Have you given consideration to casting a wider net? What has been carved out in Bill S-12 are some fairly narrow provisions that would result in mandatory listing in the sex offender registry when previously any conviction for a sexual offence was listed.

Have you considered casting a wider net?

● (1715)

The Chair: We're at six minutes. We're out of time, I'm afraid.

Hon. Arif Virani: Would you like me to respond to that?

The Chair: I'm going to ask Madam Dhillon to start, and I'm going to leave it for her to decide if she would like you to answer that question.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Madam Chair. I would like to congratulate you on your new role. It's my first time speaking in committee in this session.

As well, to our minister, thank you so much for coming. Welcome to committee. It's nice to see you here. You may want to briefly answer the previous question or I can ask my own.

Hon. Arif Virani: I would be happy to. Thank you, Ms. Dhillon.

First of all, to Mr. Moore, the important takeaway from Bill S-12 is that the vast majority of individuals will remain registered. That's the first point.

I say that because there's an automatic registration in two categories, and for everyone else you're going to get registered unless you can demonstrate a rebuttable presumption why you shouldn't because it would be overbroad or grossly disproportionate. That's important.

Have we given it careful thought? Absolutely, we have, but the most reflection that I gave to the bill was simply the fact that the Supreme Court said, in its majority view, that lacking any judicial discretion is a violation of the charter under section 7, because it's overbroad and doesn't meet the minimal impairment test under section 1. Therefore, we had to make changes, and we've carefully tailored those changes in a manner that I believe conforms to the charter.

Thank you, Ms. Dhillon.

Ms. Anju Dhillon: Thank you, Minister.

You spoke about something incredibly important that is long overdue.

It's sextortion, which destroys lives not just in that moment but forever. It creates chaos in somebody's life and oftentimes leaves them in a very dark, negative place. I would like you to please tell us if these crimes have impacted Canadians in recent years and how this reform will help Canadians in cases of sextortion.

Thank you.

Hon. Arif Virani: Thank you, Ms. Dhillon. That's a really important question, because it shows us, as parliamentarians, demonstrating that we're supple enough to respond to the needs as they exist right now. Sextortion is a very problematic situation that's affecting children and young people and also adults around this country.

The statistics that I've been shown from the Canadian Centre for Child Protection, Ms. Dhillon, indicate that they've received 3,400 reports of sextortion in the last year alone. That's 65 children victimized per week. That is unacceptable. Again, I speak to you as a father as well as a parliamentarian and the Minister of Justice that, with the advent of the Internet and smart phones, a lot of things happen, and sometimes unbeknownst to us. The fact that people are being made vulnerable in this manner is problematic.

The acute response in this legislation is that now those who must be registered on the sex offender registry will include offences such as sextortion itself. That's really critical. There is a rebuttable presumption, so you will be included unless you can demonstrate why you shouldn't be. That will help keep those kids safe.

Ms. Anju Dhillon: Talk to us a little bit about why it would be detrimental if the deadline of October 28 were not respected.

Hon. Arif Virani: I'll just say, Ms. Dhillon, that this deadline is looming. It's at the end of the month. It would be detrimental, because the law enforcement community has reached out to me about bail, and we've responded with the bail package. They've reached out to me with respect to the sex offender registry. They've said that this registry provides them information that allows them to keep Canadians safe, particularly from sexual predators.

If by October 28 we do not have royal assent on this bill, we will lose the ability to add names to that registry. That is detrimental, particularly when you consider the staggering statistic I put before you that between 40 and 70 individuals every week are being added to this registry. It shows you the number of sexual offences that are being committed in Canada. It also shows you the need to make sure that we have a database of information to help law enforcement keep people safe from repeat offenders.

● (1720)

Ms. Anju Dhillon: Thank you very much.

Can you talk to us quickly about the compliance warrant? What would it allow? How has law enforcement reacted to this?

Thank you.

Hon. Arif Virani: The compliance warrant is an interesting one. The law enforcement community reached out and said that they not only want this registry, but they also want the ability to act on the registry. They said it's sometimes difficult to get offenders to provide the registry with their information or to update their information.

Bill S-12 will create a situation that authorizes the police to seek a warrant to arrest an offender who is non-compliant with their registry obligation and to bring them to a reporting centre to facilitate compliance. That's an important step. We don't want to have a situation where people are out there believing they can just flout the law. This compliance warrant measure allows us to provide an additional enforcement tool for law enforcement to maintain the integrity of the registry itself.

Ms. Anju Dhillon: Thank you.

I think I'm out of time.

The Chair: Thank you very much.

Monsieur Fortin is next.

[*Translation*]

Mr. Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Thank you, Madam Chair.

Good afternoon, Minister. I too would like to congratulate you on your appointment as Minister of Justice. The members of the Standing Committee on Justice and Human Rights will be pleased to work with you.

As you mentioned, we are at the pre-study phase with Bill S-12, because it has not yet been referred back to us. I agree that it's a good idea to proceed in this manner. You were right to point out that the end-of-the-month deadline set by the Supreme Court of Canada would mean that it would no longer be possible to add sex offenders to the national sex offender registry, and that this would be problematic. We agree.

However, can you explain why the bill was only introduced in the Senate on April 26, 2023, when the Supreme Court decision dates back to October 28, 2022, almost a year ago? That means there were six months between the time the Supreme Court ruled that the act had to be amended and the introduction of the bill. Can you explain why it took so long, Minister?

Hon. Arif Virani: Thank you, Mr. Fortin, for your kind words and for your very important question.

In order to prepare the bill and respond to the Supreme Court of Canada, many groups and organizations had to be consulted. Indeed, we consulted 31 such groups, including police organizations and Crown lawyers, representatives of victims groups, women's groups, defence lawyers groups, child protection groups and groups representing the 2SLGBTQ and other communities. All of these consultations took time.

Time was also needed to draft a bill that would not only respond to the Supreme Court, but also broaden the application of current statutes to address issues like sextortion and the non-consensual sharing of a person's images. This was something we added after consulting people.

Mr. Rhéal Éloi Fortin: I understand what you're saying, and it makes sense to me. I'm sure that all kinds of consultations are needed before a bill like this one can be drafted. However, while everyone around the table agrees that it was urgent, it took six months to get around to introducing the bill. The Senate nevertheless managed to do some relatively rapid work on it because the bill was adopted on third reading on June 22, just prior to the summer recess. The Standing Committee on Justice and Human Rights could have been consulted during the summer to speed things up, but it wasn't. My understanding is that it had to go through the House and that this was complicated.

What I'm personally most unhappy about is how long it took for the bill to be introduced after everyone across Canada had become aware of the fact that there was an urgent situation. The Supreme Court told us what had to be changed, but six months were spent on consultations. Your explanation strikes me as credible, but I'm not sure that it's enough. In terms of credibility, I think the government was negligent for the first six months. And now, there's a push for the Standing Committee on Justice and Human Rights to speed things up and set things right. I'm displeased about it and just wanted to point that out to you.

Having said that, as I have approximately two minutes left, I'd like you to explain something to me. You mentioned in your opening address that there might be a conflict of interest if Crown attorneys were to be required, as stated in the bill, to inform victims of the consequences of a publication ban and of any failure to comply with the ban. I find this conflict of interest rather surprising and wonder whether you could take a minute to explain to me why this is a conflict of interest. Isn't the Crown attorney supposed to be making sure that everyone understands what's going on? I had always understood that the Crown attorney had nothing to prove. That being the case, I don't understand why there would be a conflict of interest. I'll let you explain it and even perhaps suggest an alternative solution.

● (1725)

Hon. Arif Virani: Okay. There are several aspects involved in answering this, Mr. Fortin.

When we talk about conflicts of interest, it's one thing to explain what a publication ban is to a victim or to someone in court, but quite another matter to explain that if you do this or that, you might find that you have failed to comply with the ban. In such situations, the attorney is there not only to provide objective and neutral information, but also to give advice to the victim. It's the same office, and possibly even the same attorney, who may be there during the trial, if there is one, with the same people. Perhaps Mr. Caputo, Mr. Brock or Mr. Mendicino, who have experience in this area, could add further details.

In connection with your first point, I would say that in instances where lifting a publication ban is desired in a particular set of circumstances, such as empowering a victim, the situation is rather sensitive. Publication bans are often used to protect the interests of victims, while ensuring that they are empowered and able to make their own decisions. To address contexts like these, more time was needed to draft the bill.

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

[*English*]

Next up is Mr. Garrison.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Madam Chair. I'd certainly like to welcome you to your role as chair in our first public meeting.

Of course, I'll echo the comments about welcoming the minister here today. With his previous experience on the committee, I'm sure he'll be willing to come back and speak to us many more times. As he's a new minister, there are several things I'd like to talk to him about, such as decriminalizing HIV non-disclosure, decriminalizing sex work, reforming our extradition laws and the bill that's before the House, Bill C-40, on the miscarriage of justice. However, I do accept the urgency with which we're dealing with Bill S-12, so I will limit my comments and questions to Bill S-12 today.

I fully accept the urgency of maintaining the sex offender registry, but I thank you, Minister, for emphasizing that Bill S-12 not only preserves the registry but also improves the registry. We have had some cases in my riding where people have been added to the sex offender registry and no one in the community would reasonably believe that they should have been added. Sometimes those are people who are neurodiverse or who have intellectual disabilities and have ended up in the sex offender registry. I have spoken with advocates and those people. This bill will provide an opportunity, or that's the way I see it, for a judge to decide whether all those people should automatically be added.

I just wondered if you were aware of those kinds of cases.

Hon. Arif Virani: Let me say, first of all, thank you for your kind words, Mr. Garrison, and thank you to you and your colleague Laurel Collins for the extensive work both of you did in addressing the publication ban piece.

Absolutely, I've heard about those cases, and I think that's why it's important. It dovetails a bit with Mr. Moore's earlier question and the idea of judicial discretion being an important backstop. I found it a bit troubling that the public safety committee study in this Parliament in 2010 suggested that there were two types of discretion at the time—prosecutorial and judicial—and suggested getting rid of prosecutorial, while maintaining judicial.

The government at the time under Stephen Harper decided to get rid of all discretion altogether, and we now see the Supreme Court's response to that decision. Safeguarding the discretion but providing guardrails and criteria that surround it is really important, and one of the guardrails in the legislation is the age and personal characteristics of the victim.

A judge needs to turn their mind to exactly that type of situation to determine whether the presumption should be rebutted and a person should not be added in a given context.

● (1730)

Mr. Randall Garrison: One of the results we've seen is that, sometimes, the limited resources we have and the limited resources law enforcement have are wasted when they're applied in a universal kind of manner, rather than picking out those who are at most risk of reoffending.

I also want to say the second aspect of this bill is also urgent. Certainly, in the study on victims in this committee, we heard from the victims of sexual assault about what, I think, people haven't really thought about, which is people who were prosecuted for talking about their own sexual assault cases.

Sometimes, this is a question of agency for them. They feel there's nothing shameful for them in what happened, and they would like to be able to speak about it. Sometimes, some of those victims felt it was a matter of public safety and that other members of their family or community needed to know about the case. By "publication ban", we think of putting it on TV or putting it in a newspaper, but the publication ban meant that they couldn't talk about it with other people.

I wonder if you're familiar with those prosecutions and restrictions on victims.

Hon. Arif Virani: I absolutely am, and I'm informed by some of the work that was done at this committee.

Perhaps you were here when Morrell Andrews testified at this committee in October, last year. Her quote was:

> Begging for my right to speak was humiliating. The court's dignifying the offender with an opportunity to argue why I should be permanently silenced was infuriating, dehumanizing and traumatizing. I told myself to remember what it felt like to be shattered by the legal system, and that one day—for myself, for others I have met and for those who would come after us—I would try to do something about it.

I think this bill is doing something about it.

Being a victim is never easy. We don't need to revictimize victims. What we're doing through this legislation, I believe, is empowering victims to take control of their own narrative. There are some guardrails surrounding that issue, and they're required when a publication ban being lifted might affect another individual, but fundamentally, this is about empowering victims and other witnesses who have already been traumatized and ensuring that we no longer traumatize them again.

Mr. Randall Garrison: Again, people are somewhat surprised by the number of cases. I wonder if you have any figures on the number of times publication bans have been imposed in Canada.

Hon. Arif Virani: I don't have that, and Mr. Taylor is whispering in my ear that he doesn't have that either.

Mr. Randall Garrison: I kind of knew the answer to that question. It's something I wish we had. We tried to find out before. I'm not quite sure why that's such a difficult problem, but I guess if we have some more time with the officials, we will be asking about it again.

Certainly, the number of people I've talked to and we've heard from at the committee is quite large in terms of publication bans. Most of those people argue that publication bans were really informed by an archaic view of sexual assault being shameful for the victim. Therefore, there is an urgency that these bans not be imposed going forward.

I wonder if you share the sense that not only is the sex offender issue urgent, but it's also urgent that we make the other half of the changes in this bill.

Hon. Arif Virani: I would agree with you, Mr. Garrison, on the urgency of addressing publication bans.

As I mentioned to Monsieur Fortin, if you take a nuanced view of how publication bans have operated, sometimes they're an overly blunt instrument that disempowers a victim. What we're trying to do is ensure—in the case of therapy or speaking with friends, for example—that the victim has the ability to pierce through the publication ban without being subject to the threat of potential prosecution. I think that's what this bill fundamentally does, and that's really important in the provisions.

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

Thank you, Minister, as well.

We will now move into our second round for five minutes. I will go to Mr. Caputo.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you, Madam Chair.

Welcome to your new role, Minister, and congratulations on your new role.

Minister, you said at the outset that sex offences against children are despicable and you condemn them in the strongest terms. I think we all would at this point. You've also spoken about Bill S-12 and its role in the protection of children.

I take it that you would support the elimination of house arrest as a sentencing option for those who are convicted of sexual offences against children.

Hon. Arif Virani: Thank you for the question, Mr. Caputo.

What I would say is that it's really important that we have different tools available to ensure that judges have the ability to impose sentences that meet the crime, so to speak, or that are proportionate to the crime. I think what's important is that in instances of....

I believe where you're going is this notion of a conditional sentence order. Conditional sentence orders are available in only very rare situations. One would have to be sentenced to incarceration of less than two years. Most importantly, they only apply to offenders who do not pose a threat to public safety. In the context of a child sex offender, if a judge believes that the person poses a threat to public safety, the notion of house arrest is not on the table pursuant to legislation that's been passed by Canada.

● (1735)

Mr. Frank Caputo: Minister, I want to go back to that. You talked about the denunciation and the denunciatory element, and you're talking about public safety. There's an element of justice here as well. You're talking about public safety. We can talk about CSOs a lot here in the next few minutes, but strictly from a justice perspective, the person who is the victim of the sexual offence, the child, is suffering and literally imprisoned psychologically for life.

Are you saying that the punishment for the person who offended against the child—the child who is imprisoned for life psychologically—should be that they serve house arrest for under two years? Is that your position?

Hon. Arif Virani: That is not my position. I want to make sure that the record is clear. A person who has been convicted of a sexual offence against a child is actually subject to a mandatory minimum penalty. Therefore, a conditional sentence order is not available to them. The possibility of house arrest doesn't exist. I'm advised of that by my officials.

Mr. Frank Caputo: If I have your position correct, your position is that a person cannot get a conditional sentence for a sexual offence against a child. Do I have that right?

Hon. Arif Virani: Child-specific sexual offences are subject to a mandatory minimum penalty, which renders them ineligible for a conditional sentence order. That's my position.

Mr. Frank Caputo: Okay—and those haven't been struck down.

Let's say section 151 of the Criminal Code. I'm thinking back to a case that I asked you about, where a mother offended against a seven- or eight-year-old child. The judge reasoned that it was the first time it had happened and imposed a conditional sentence order after trial, so there was no mitigating value. It was overturned on appeal. I believe the charge was under section 151, but I don't recall that the appeal was on the basis that the sentence was illegal. It was that it was not proportionate. To my understanding, and maybe the official can correct me—I would defer to Mr. Brock—a number of those mandatory minimums have been struck down.

Is it your position that a person cannot get a conditional sentence order under, say, section 151 of the code, or section 271, sexual assault, if that is a sexual offence against a child? Is that your position?

Hon. Arif Virani: I'm going to defer to Mr. Taylor with respect to the two provisions you just cited.

The broad-scale proposition about child sexual offenders is that people who are convicted with respect to a sexual offence against a child are subject to a mandatory minimum penalty. Anyone who is subject to a mandatory minimum penalty is not eligible for a conditional sentence order, such as house arrest.

I think the important aspect, to respond to you, Mr. Caputo, is that I share your concern about anyone who would commit a sexual offence against a child. That is why I want the sex offender registry restored. That is why we've made sure to double down on the idea of an offender against a child being subject to an automatic registration and not subject to the judicial discretion.

Mr. Frank Caputo: I'm sorry. I have only 30 seconds, Minister.

If there is any wiggle room on this, where somebody for a sexual offence against a child, including Internet luring under section 172.1, sexual interference or a sexual offence, for there to be a conditional sentence order, would you be prepared to plug that—yes or no?

Hon. Arif Virani: I think it's important to...and if you're making an oblique reference to your private member's bill, I'd be—

Mr. Frank Caputo: I'm not. I'm just asking generally.

Hon. Arif Virani: Fair enough, Mr. Caputo.

Mr. Frank Caputo: We have five seconds. Is it yes or no?

Hon. Arif Virani: I would be open to looking at any aspects that will help keep children safe in this country, yes.

I would invite Mr. Taylor to perhaps respond to the specific provisions cited by Mr. Caputo.

The Chair: Yes, please, go ahead. It's an important question. If you don't have an answer today, you're also coming back on Thursday, I understand.

Mr. Matthew Taylor (General Counsel and Director, Criminal Law Policy Section, Department of Justice): It's as you wish. Perhaps I can just very quickly confirm what the minister said.

Paragraph 742.1(b) is the rule that says if an offence is subject to a mandatory minimum penalty, it is not eligible for a conditional sentence, and in section 151, which Mr. Caputo referenced, it's punishable by mandatory minimum penalties.

The Chair: Thank you very much.

Mr. Frank Caputo: Sir, was that offence—

The Chair: No, no, no.

Voices: Oh, oh!

The Chair: I will now move to Madame Brière for five minutes.

[*Translation*]

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Madam Chair. Congratulations on your election.

Good afternoon, Minister. Thank you for joining us and congratulations on your new appointment.

It would appear that in practice, it can take a long time before victims can meet a judge or a justice of the peace and obtain all relevant information about their right to lift a publication ban. Not only that, but neither the court nor the attorney is required to inform victims that a publication ban has been imposed. It is therefore difficult for victims to comply with a ban when they don't even know that it has been imposed.

In your opening address, you pointed out that the sentence for failing to comply with a ban is sometimes harsher than the offender's sentence. Who informs victims of their right to request a publication ban, and when is that done?

● (1740)

Hon. Arif Virani: This situation is addressed in several parts of the bill, Mrs. Brière.

As I previously mentioned, the first thing to be done is check a box on the form indicating that victims are to be informed about what will be happening henceforth. The second thing is that victims may request that a publication ban be lifted. There are circumstances in which such a request must be granted, but from time to time, a hearing may be necessary if the anonymity or personal details of another person, another witness, for example, is affected by this request.

The important thing for everyone to remember is that this bill will empower victims and witnesses and enable them to control and communicate their own information when required, by complying with a few conditions.

Ms. Wells, do you have anything to add on this?

Ms. Joanna Wells (Acting Senior Counsel, Criminal Law Policy Section, Department of Justice): No, that covers it.

Mrs. Élisabeth Brière: Thank you very much.

During the victim rights study, you were asked to make the publication ban request process much easier.

When the ban continues, does it also apply when the person is in therapy or speaking with friends, for example? In other words, are victims required to comply with the ban when they are in therapy or engaging in personal discussions?

Hon. Arif Virani: That's interesting, Mrs. Brière, because it pertains to everything I mentioned about the Senate. The Senate proposed eight or nine things. As I mentioned in my opening address, we truly want to give people the freedom to speak with their families, friends or health professionals such as therapists.

[*English*]

From what I understand of the Senate amendments, the aim is to broaden the divulging of information or disclosure that could be possible. We want to make sure that we have guardrails there such that the information is disclosed for certain purposes but not for any purpose.

That's what I was driving at in my opening remarks. It's important to really tailor the response accordingly.

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

Hon. Arif Virani: The patient-therapist relationship is extremely important, and can help a victim to begin the rehabilitation process and also go to trial.

[*English*]

It can actually enhance reporting requirements when people understand that they won't be subject to the blunt force of an overly comprehensive publication ban.

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

Can someone other than the victim also request the lifting of a publication ban, like a spouse, a relative or, in the event of death, a victim's adult child?

Hon. Arif Virani: I'm certain it can't be done by the accused. It applies only to a victim or a witness.

[*English*]

I will defer that question to Mr. Taylor, because I think he had further clarification.

● (1745)

[*Translation*]

Mr. Matthew Taylor: Based on the wording of the bill, it's for the victim or the person protected by the publication ban, and therefore not for the accused, as the minister explained.

[*English*]

The Chair: Thank you very much, Madame Brière.

We'll now move to two and a half minutes with Monsieur Fortin.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, Madam Chair.

In my earlier questions, Minister, I requested an explanation of the conflict of interest which you felt would prevent a Crown attorney from clearly explaining the ins and outs of a publication ban to a victim. I also asked you a subsidiary question, which was to suggest some alternatives. I would now like to hear what you have to say on this.

You no doubt recall that back in the day, when you were a member of this committee, we heard victims complain that they didn't know what was going on, that they were not aware of the existence of publication bans, and that they didn't quite understand how it all worked, or how to lift such a ban if they wanted to. If the Crown attorney is not the person who explains all this to victims involved in a trial, who is, and how would it work?

Hon. Arif Virani: Thank you very much.

According to this bill, it's up to the judge to ask the attorney whether the victim has been consulted to determine whether they want a publication ban, or at least, whether everything possible was done to contact the victim. This requirement is clearly stated in the bill. It gives a—

Mr. Rhéal Éloi Fortin: I don't want to be rude, but you know how it works. Time is running out.

That being the case, my understanding is that you agree on the idea that the Crown attorney should explain to victims that they can obtain a publication ban and how the process works, and also how to lift such a ban. All of that would be explained.

Hon. Arif Virani: That's correct, Mr. Fortin.

I'd also like to point out that a number of provincial governments have already told me that they found the conflict of interest I mentioned problematic. They say that while it's possible to speak with victims, giving them legal advice on what can and cannot be done under the ban could lead to a conflict of interest.

Mr. Rhéal Éloi Fortin: I agree with you on legal advice, but I believe that explaining things to victims is the Crown attorney's role. I understand that you are more or less in agreement with this, because it's already in the bill.

Thank you, Minister.

Hon. Arif Virani: You're welcome. Thanks.

The Chair: Thank you very much, Mr. Fortin, you have 25 seconds left.

Mr. Rhéal Éloi Fortin: You told me that I had two and a half minutes, and my time has run out. However, I could continue.

The Chair: No, that's it.

Voices: Oh, oh!

The Chair: Mr. Garrison, you have the floor.

[*English*]

Mr. Randall Garrison: Thank you very much, Madam Chair.

We've heard a couple of times around the table today about what victims want from people. I think that if we listen carefully to our victims study, and if we look at the literature on victims, it's not always tougher sentences that victims are looking for. Certainly, in my previous work in criminal justice, it was almost always that victims were looking for the same thing to not happen to someone else.

Mr. Minister, I'd like you to talk about the two parts of this bill as they contribute to public safety through the prevention of future offences.

Hon. Arif Virani: I think the prevention of future offences piece is critical, because it's enhancing the agency and autonomy of a victim to come forward in a manner that complies with the law and that will empower people, particularly women—if we're being frank with the statistics—to share their stories with women, other women and children, so that they can protect themselves. That's important.

I think it's also important that people feel.... If they're coming forward and entering into a criminal justice system that is sometimes fairly traumatizing just to enter into, if they feel a more welcome reception vis-à-vis their autonomy, their dignity and the ability to control their information, that can enhance reporting, which in and of itself is a good thing. It gives us a better handle on the situation, as we share the concerns about crime generally, but it also gives us a better handle on how to address the situation.

I think there are multiple reasons why this could be beneficial if it's implemented correctly. Ultimately, it's about confidence in the criminal justice system—confidence that it will be addressing the needs of victims. That is something I've heard a lot about from this committee in my previous incarnation, and that is something we need to be attentive to.

Mr. Randall Garrison: That's great.

Thank you, Madam Chair. I'll end my questions there.

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

We will now go to Mr. Brock for four minutes.

● (1750)

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Madam Chair.

Thank you to all the witnesses in attendance.

Let me use my brief opportunity here to publicly congratulate you, Minister, on your new role. I'm looking forward to having you appear on many occasions.

I want to start off by discussing the narrative of your government, sir, and some talking points that you have used and that your predecessor, David Lametti, used to justify and sell, in my view, Bill C-48 as an important piece of legislation not only to restore public confidence in the administration of justice but also to make our communities safer.

I've heard repeatedly in the House that one of the hallmarks of Bill C-48 is that you've listened. You listened to stakeholders, you listened to premiers, and you listened to chiefs of police and presidents of police associations in forming the specific language to tighten up the reverse onus provisions in the Criminal Code and to add to the reverse onus provisions in the Criminal Code. However, you'll agree with me, sir, that it wasn't just additional reverse onus provisions as they relate to additional firearms offences that these stakeholders were asking for. There was actually a laundry list of other items they asked for that did not find itself in Bill C-48. Not knowing what the agenda is from your department, I don't think you're bringing forward any legislation to even contemplate encompassing the other asks.

With that being said, the provincial governments and the police associations have asked for a thorough review and reform of Canada's bail system. They asked for a definition of “serious prolific offender” or “repeat violent offender” within the confines of Bill C-48. They specifically asked that bail hearings for serious firearms offences be heard by a judge of a provincial court or a superior court as opposed to a justice of the peace, that obligations be strengthened with sureties and that there be consequences for failing obligations.

My ask of you, with the limited amount of time that I have, sir, is why this government, why your department and why you personally have ignored those significant additional measures that the stakeholders are asking for to improve community safety and to restore confidence in our justice system.

Hon. Arif Virani: Thank you, Mr. Brock, for the question.

I'd put it to you simply that no one is being ignored by me or by my department with respect to the conversation about community safety.

What I would underscore for you is that the conversation on bail reform started with a letter that came from the premiers to the Prime Minister after an FPT that occurred in October 2022. That letter had a very specific ask, and we added to that ask in terms of developing the legislation. To the one firearms offence listed there, we added another three.

You and I share the same province, the province of Ontario. Doug Ford's government and Doug Downey, as the AG, have been very complimentary in terms of what we've been doing and very supportive in terms of what we've been doing.

What I found unique about the situation is that we had the support behind that bill of all 13 leaders of the provinces and territories in this country, as well as all of the law enforcement community. That continued even as we saw it make its way through to the Senate. It's now in the Senate. David Eby's government continued to lobby for its quick passage even while it was being studied in the Senate.

I think it's important, in terms of the list you're mentioning, to also underscore—and you as a former prosecutor will know this—that when it comes to setting in place the structure and the architecture, that's the Criminal Code and that's for federal parliamentarians. When it comes to the administration of justice and things like bail enforcement, that's the responsibility of the provinces, pursuant to the administration of justice under the constitutional division of powers.

What we've seen is that we've put money in place, including $330 million for guns and gangs enforcement, that is helping provinces do exactly that. There's some complementarity there, but in terms of my willingness to explore other options for keeping communities safe, as a guy who represents a riding in Toronto that has seen violence, particularly on the TTC, I am committed to that. It is my fundamental duty to keep Canadians safe.

Bill C-48 goes in a direction that will do just that. It's an important piece of legislation that got all-party support, which is a good thing. I think there are more areas of collaboration, and I'm willing to collaborate in those areas.

The Chair: Thank you very much for that.

Mr. Larry Brock: I figured that my time would be up. Thanks.

The Chair: You were out of time for sure, Mr. Brock.

I'm now going to go to Mr. Housefather for four minutes.

[*Translation*]

Mr. Anthony Housefather (Mount Royal, Lib.): Congratulations on your appointment, Minister.

And congratulations to you too, Madam Chair, on your new role.

It is indeed a pleasure to be back once again on the Standing Committee on Justice and Human Rights, because it's one of my favourite House of Commons committees.

● (1755)

[*English*]

Mr. Minister, I want to ask you about an amendment that was made by the Senate. You voiced some discomfort with a couple of the Senate amendments or mentioned some issues with respect to them.

I have a concern about one that was made with respect to the variation or revocation of applications in proposed subsection 486.51(3). I don't expect you to remember the bill perfectly by heart, so I'll read it to you, mention what I'm concerned about and ask if you might react to it, so that we will be governed in our deliberations accordingly.

It now states:

> If the court is of the opinion that varying or revoking the order that is the subject of an application referred to in subsection (2) may affect the privacy interests of any person other than the accused who is the subject of any order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that person, the court shall hold a hearing to determine whether the order should be varied or revoked.

My concern is in reference to "the privacy interests of any person other than the accused", which was added by the Senate. It seems to me to imply that the accused actually has some privacy interests that are being ignored by this section, but then some accused and their lawyer may argue they have privacy interests in other sections throughout the act. I don't think we want to recognize that the accused has a privacy interest in these matters.

Could you guide us on that and let me know if you or the officials share that concern about this language being introduced?

Hon. Arif Virani: I would say to you, Mr. Housefather, it's duly noted. I think it's important to take a close reading of the legislation.

I share a concern if there's any ambiguity insofar as the target of this regime under Bill S-12 is meant to be the victims or witnesses, but to the exclusion of the accused. We are not concerned with the privacy interests of the accused here. Any Senate amendment that would purport to raise that issue is unnecessary ambiguity that doesn't conform to the objectives of the bill.

Mr. Anthony Housefather: This is just my feeling having read it. I think it creates ambiguity and doubt, because we're not talking in the rest of the bill about the privacy interests of the accused, but there we're saying this is irrespective of that. It seems to imply that there is a privacy interest.

Thank you. I'm sure my colleagues and I can discuss that among ourselves.

I appreciated Mr. Garrison's previous question asking for some numbers. I'm sure you don't have this number, but I was wondering, on average, how many people are transferred to Canada under the International Transfer of Offenders Act to serve their sentences for a criminal offence committed abroad.

That's mentioned in this act. Do we have any idea how many people this affects, those who have committed designated offences, including those in section 490.011 of the code?

Hon. Arif Virani: My officials advise me that we do not have that data. We could ask the Minister of Public Safety if it might be available from him or his department, and we could endeavour to provide that to you, if that material is available.

I'll say anecdotally that the provisions that relate to sex offenders on the registry and potential travel of 14 days to a different location have been very well received by our American counterparts. Attorney General Garland and Secretary Mayorkas have indicated that they are very appreciative of this effort to keep our continent safer from sexual predators.

Mr. Anthony Housefather: I totally agree.

I just want to end by saying I very much appreciated your answer to Mr. Brock before about your commitment to keeping people safe, children safe and victims safe, because I think that's our commitment in all parties. I appreciate what you said.

The Chair: Thank you very much, everyone.

That concludes our time with you, Minister. Thank you very much for sharing the information, knowledge and expertise you have with respect to this bill.

We will adjourn, but before we do, at the next meeting, the officials will be returning for the first hour, and the second hour will be with witnesses.

Thank you very much. Have a pleasant evening, everyone.