



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

44th PARLIAMENT, 1st SESSION

Standing Committee on Justice and Human Rights

EVIDENCE

NUMBER 078

Thursday, October 19, 2023

Chair: Ms. Lena Metlege Diab



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• (1540)

[*Translation*]

The Chair (Ms. Lena Metlege Diab (Halifax West, Lib.)):
Welcome everyone.

[*English*]

I call this meeting to order.

Welcome to meeting number 78 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of October 5, 2023, the committee is meeting to proceed to the clause-by-clause study of Bill S-12, an act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act.

Pursuant to the Standing Orders, today's meeting is taking place in a hybrid format. Members are attending in person in the room and remotely by using the Zoom application. Those attending via the Zoom application have been tested and the interpreters are okay with their sound.

I need to make a few comments for the benefit of the witnesses and the members, and these are quite important. Some of them are standard and I say them all the time, and others pertain just to clause-by-clause consideration.

First, please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone to active your mike and mute yourself when you are not speaking. I remind you that all comments should be addressed through the chair.

For those in the room, if you wish to speak, please raise your hand and I will recognize you. For those of you on Zoom, please use the “raise hand” function. The clerk and I will manage the speaking order as best as we can, and we do appreciate your patience and understanding.

We have justice department officials with us today to provide answers to technical questions throughout our study.

Welcome again, Mr. Matthew Taylor, general counsel and director, criminal law policy section, and Madame Joanna Wells, acting senior counsel, criminal law policy section. Thank you so much for being here. I really value your being here, and I'm sure the members will as well.

We're ready to start clause-by-clause consideration of Bill S-12. Please listen to this, because we have not done it in a while, and on the committee there are a number who.... I certainly haven't done it as a chair, so I'm going to go slowly to ensure that I recognize everyone I need to and give everybody an opportunity and provide you with the information I have.

This is how the committee will proceed through clause-by-clause study.

As members already know, this is an examination of all the clauses in the order in which they appear in the bill. I will call each clause successively, and each clause is subject to debate and a vote. If there are amendments to the clause in question, I will recognize the member proposing it, who may explain it. The amendment will then be open for debate. When no further members wish to intervene, the amendment will be voted on.

Amendments will be considered in the order in which they appear in the bill or in the package each member received from the clerk. Here, please note the following, and this is really important: Amendments must be submitted in writing to the clerk of the committee.

The chair—that's me—will go slowly to allow all members to follow the proceedings properly. Amendments have all been given a number in the top right corner to indicate which party submitted it, and there's no need for a seconder to move an amendment. Once you move an amendment, you will need unanimous consent to withdraw it.

During debate on an amendment, members are permitted to move subamendments. These subamendments must be submitted in writing; there are no verbal ones permitted from the floor. They do not require the approval of the mover of the amendment. Only one subamendment may be considered at a time, and that subamendment cannot be amended. When a subamendment is moved to an amendment, it is voted on first. Then another subamendment may be moved, or the committee may consider the main amendment and vote on it.

Once every clause has been voted on, the committee will vote on the title and the bill itself.

Finally, the committee will have to order the chair to report the bill to the House. That report contains only the text of any adopted amendments, as well as an indication of any deleted clauses.

Before I start, I want to thank in advance members from the legislative clerk's office, who are here with me. They will be providing support to me on any issue that might arise on the procedure.

Ladies and gentlemen, here we go.

Shall clause 1 carry?

(Clause 1 agreed to)

(On clause 2)

The Chair: I call clause 2.

PV-1 is deemed moved, pursuant to the routine motion adopted by the committee on December 16, 2021.

Shall PV-1 carry?

Go ahead, Mr. Moore.

• (1545)

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

Could the officials who are here from the department provide some clarity on what this Green Party amendment would do exactly?

The Chair: Please go ahead, Mr. Taylor.

Mr. Matthew Taylor (General Counsel and Director, Criminal Law Policy Section, Department of Justice): Thank you for the question.

In the current subsection 486.4(1), the language specifies “victims” and “witnesses” in the stated law. It appears to us that the amendment proposes to replace the reference to “witness” generally with “witness under the age of 18”. That appears to be done to mirror subsequent subsections of section 486.4.

The implication of that, from our perspective, would be that it would have the effect of excluding the ability of a court to make a publication ban under section 486.4 for adult witnesses. The general starting point is that all witnesses and victims of sexual assault—primarily sexual assault—fall within the scope of this provision. There are mandatory rules for child victims, adult victims and child witnesses.

Therefore, if you limit it to witnesses under the age of 18, as is proposed, adult witnesses would have to rely upon section 486.5 of the Criminal Code.

The Chair: Mr. Brock is next.

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

Mr. Taylor, I was somewhat confused by the language in this particular amendment because, to your point, the code already provides necessary direction to the court when dealing with witnesses and victims under the age of 18. The order is actually mandatory; it's not discretionary. In the way this is drafted, the word “may” provides a discretionary exercise, which kind of defeats the original purpose for which the code was drafted.

Would you agree?

Mr. Matthew Taylor: Certainly the purpose of section 486.4 was to provide certainty to victims and witnesses in the sexual offences listed that if an application for a publication ban was made, it would be given.

You will know—as you've heard—that the reason for that was to encourage the reporting of offences that are historically under-reported.

The Chair: We will go to Mr. Garrison, please.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Madam Chair.

We have a large number of amendments before us today and we are working toward a deadline for getting this bill approved in Parliament. I have a concern, because the Senate has already passed it, that if we make extensive changes, we will endanger meeting that deadline.

I'm not going to say this many times today; I'm going to say it once. I'll be voting only for amendments that I think are essential.

We heard from some witnesses about some things that we definitely need to do. However, we have a large number of other amendments here, and I'm concerned that this will result in a delay when it comes to the House dealing with the Senate.

The Chair: Thank you.

Go ahead, Mr. Maloney.

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): Based on the questions we heard, I think it's... I appreciate the spirit in which these amendments were tabled. I am empathetic and understand where they come from. I think we all are. Well, I know we all are.

However, to echo what Mr. Garrison just said, I think we should....

I will be voting against this amendment and some of the others for the same reason. I think, in the interest of time, we should move on.

The Chair: Can I call for the amendment, please?

Shall PV-1 carry?

(Amendment negated)

The Chair: Thank you.

Shall PV-2 carry?

We'll go for a recorded vote.

(Amendment negated: nays 6; yeas 5)

The Chair: Next we have CPC-1, which is on page 3 of the package.

Would the member like to move that, please? I don't know which member it is, so you decide.

• (1550)

Hon. Rob Moore: I will move that.

The Chair: Okay, that is moved by Mr. Moore.

Shall CPC-1 carry?

Can we have a recorded vote, please, Mr. Clerk?

(Amendment negatived: nays 6; yeas 5)

The Chair: Next we have CPC-2 on page 4 of your package.

Would someone like to move the amendment?

Mr. Larry Brock: I can move that, Madam Chair.

The Chair: Thank you, Mr. Brock.

Shall CPC-2 carry?

(Amendment negatived on division)

The Chair: Would a member like to move CPC-3, please?

Mr. Tako Van Popta (Langley—Aldergrove, CPC): I will.

The Chair: Mr. Van Popta, thank you so much.

Shall CPC-3 carry?

[Translation]

Mr. Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Madam Chair, I'd like to comment on CPC-3, please.

The Chair: Please go ahead.

Mr. Rhéal Éloi Fortin: I was looking at the amendment, and the purpose is to change the language describing the time limit. The Criminal Code stipulates that witnesses and the victim be informed of the order “at the first reasonable opportunity”. Bill S-12 uses the wording “as soon as feasible”. CPC-3 would change that to “immediately”.

I understand the idea is to make sure it's done as soon as possible, and obviously, I agree with that. The word “immediately”, however, is open to interpretation. How soon is “immediately”? Is five minutes too late?

Clearly, it doesn't make sense for the prosecutor to interrupt the judge to inform the witness in passing that there is an order. I think “immediately” should be interpreted as being done as soon as feasible, as soon as possible, at the first opportunity.

I don't think the amendment is helpful. I actually think it would have the opposite effect and complicate things by opening the door to contradictory rulings, given that the courts could interpret the word “immediately” in all sorts of ways.

I think the language Bill S-12 uses, “as soon as feasible”, is reasonable. If we really want to change it, we're going to have to indicate what exactly “immediately” means. We could say that witnesses and the victim have to be informed as soon as feasible, but within 48 hours or something like that. Otherwise, the word “immediately” can't be enforced. It can't be done at the very moment the judge says it.

The French version even says “*immédiatement*”. It's the same word. I think we need a time period, however short it is.

The Chair: Thank you, Mr. Fortin.

I now call the vote on the amendment.

[English]

Shall CPC-3 carry on division?

• (1555)

[Translation]

Mr. Rhéal Éloi Fortin: No. I'm voting against the amendment.

The Chair: Thank you.

[English]

(Amendment negatived)

The Chair: PV-3, on page 6 of your package, is deemed moved.

Madam May, I see that you're there, but you weren't tested.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): I had trouble getting connected to you today.

Do you want to test my microphone now?

The Clerk of the Committee (Mr. Jean-François Lafleur): Yes, Madam May, please go ahead.

Ms. Elizabeth May: I'm just trying to see if I'm on screen or....

[Translation]

Let's see whether it works when I speak French.

I'm sorry I missed the chance to comment on the amendments that have already been defeated, but I'm here now.

It's working.

[English]

Should I proceed at this point, Madam Chair?

The Chair: Yes. Would you like to say a few words on PV-3?

Ms. Elizabeth May: Yes, I'd like to make it clear, Madam Chair, that I'm only here before the justice committee because.... I am getting feedback. It is unpleasant. Can someone fix it at your end?

I'm only here because your committee, all of you members here today, passed a motion through which I am required to show up with my amendments to committee rather than being able to exercise the rights I would ordinarily and otherwise have at report stage before the House as a whole. I'd just like to put it on the record every time that I'm put through this process. It's not my choice or my desire.

I now have, under the terms of your motion, the right to speak to my amendments. This amendment, again—

The Chair: Ms. May, I need to let you know what I've been told.

You're signed on three times in three different names on the screen. That could perhaps be why we're having difficulties. They are instructing me to tell you to please sign off all three of them.

Ms. Elizabeth May: I will, as long as I won't lose my rights to speak to this amendment, as I lost my rights to earlier ones due to technical problems.

I'll leave and come back, Madam Chair, or hopefully when I leave one, I'll come in on the other.

The Chair: You've left one of them, so that's a good sign.

Ms. May, I'm going to suspend for five minutes. I think it's only fair. Beyond that, there's not much else I can do.

Ms. Elizabeth May: I'm here now.

There's still a technical problem.

The Chair: I'm suspending for five minutes.

• (1555) _____ (Pause) _____

• (1600)

The Chair: The meeting is called to order again.

It's been exactly five minutes, and we will proceed.

Ms. May, you have the floor to speak on PV-3, please.

Ms. Elizabeth May: Thank you, Madam Chair, and again I offer my apologies for the technical difficulties.

I am of course bringing forward amendments today based on testimony the committee has heard. I know that my friend from Esquimalt—Saanich—Sooke has spoken on the floor of the House as well of the extraordinary work of the group My Voice, My Choice. This amendment comes from their testimony and their evidence before this committee.

Madam Chair, we haven't been on the same committee together before, so just to explain “PV” for people, this was an old designation chosen by the House because, of course, “Green Party” would be G-3, and then it would look like a government amendment, so it became “Parti Vert”, which leads to PV-3.

The reason I'm putting forward this amendment is to meet the situations that have existed in real life, extraordinary as they are, when victims find themselves subject to publication bans without knowing. Of course, the purpose of Bill S-12 in this section is to fix that, so the amendment I'm putting forward at this point would add after subsection (2) in section 486.4 wording to make it clear that the prosecutor may make an application for an order only after obtaining the written consent of the victim or witness who was the subject of the order or after demonstrating that all reasonable attempts to communicate with the victim or witness have failed. The point is that there must not be a time when a publication ban is applied when the victim has not been made aware of the fact that this is being brought in.

I hope that's a clear and good summary. Thank you, Madam Chair.

• (1605)

The Chair: Thank you very much.

Go ahead, Mr. Caputo.

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

My understanding from experience is that the publication ban occurs by operation of law. The question I think we have to grapple with as a committee is this: Do we want something within the amendments that says there is a requirement to let victims know of their right to set aside the ban? That's the fundamental question here. We have a number of amendments here. I'm not sure, just gauging the people in the room here, whether that is palatable, because we would need a subamendment or we would just cut to the chase and say, no, that's just not something we're open to. I know that might not be conventional, but that's my sense.

The Chair: Shall PV-3 carry?

Do you want me to get a recorded vote? Okay, please go ahead, Mr. Clerk.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

The Chair: Thank you. PV-3 is defeated.

Now we're on PV-4.

Shall PV-4 carry? Would you like a recorded vote, or is it on division?

We will have a recorded vote, please.

[*Translation*]

Mr. Rhéal Éloi Fortin: I'd like to comment on the amendment, first, Madam Chair, if I may.

The Chair: Yes.

Mr. Rhéal Éloi Fortin: The problem—

[*English*]

Ms. Elizabeth May: Under the terms of the motion that this committee passed, I do believe that I have a right to speak to PV-4 to explain the reasons that it is being put forward before it's summarily defeated.

[*Translation*]

The Chair: Just a moment, Mr. Fortin.

[*English*]

Madame May, you didn't put up your hand, so I didn't know, and it's not necessary by the rules, so it's up to you. Do let us know if you want to speak. I'll let Monsieur Fortin...

[*Translation*]

Mr. Rhéal Éloi Fortin: If Ms. May wants to go first, that's fine. It's up to you, Madam Chair. I'm ready to go, but I have no objections if Ms. May wants to go first.

The Chair: Thank you, Mr. Fortin.

[*English*]

Ms. May, would you like to say a few words on it before Monsieur Fortin speaks?

Ms. Elizabeth May: Yes. I'm very surprised that the last amendment was defeated, because I did think that the committee was aware—as I thought the minister was aware—that Bill S-12 will need amendments in order to meet the goals of ensuring that victims are not subject to publication bans without their knowledge. Therefore, the amendment again here is attempting to ensure, as are others before you, that the rights of the victims are reflected in their advance knowledge of, and permission for, publication bans apply to them.

I am disappointed. I appreciate very much the support from a number of colleagues around the room, but I don't understand why we wouldn't want to ensure that these amendments that go to the issues raised by My Voice, My Choice are all carried.

[*Translation*]

The Chair: Mr. Fortin, you may go ahead now.

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

The only reason I voted against the previous amendment was the language it used, since obtaining written consent from a victim is nearly impossible.

The language in PV-4 is also problematic, specifically where it says “if any witness...or the victim wishes to be the subject of an order”. The subject of an order is not the victim—rather, it's the victim's identity. The disclosure of the facts and all the evidence submitted during the trial are the subject of an order, not the victim themselves.

The English and French versions have the same problem. In certain places in the Criminal Code, it's referred to properly, but here, the language is problematic:

[*English*]

“the victim wishes to be the subject of an order”.

[*Translation*]

No victim who is asked whether they wish to be the subject of an order would say yes.

I think we just need to reword it to indicate that the judge must inquire whether the victim wishes to have their identity be the subject of an order, say, or whether the victim wishes to have all the proceedings and facts revealed during the trial be the subject of an order. As I said, the subject of an order is not the victim.

● (1610)

The Chair: Thank you, Mr. Fortin.

[*English*]

I will now ask the question. Shall Amendment PV-4 carry?

Some hon. members: Agreed.

The Chair: Would you like a vote on that?

Some hon. members: Yes.

(Amendment negatived: nays 7; yeas 5 [*See Minutes of Proceedings*])

The Chair: Thank you. Amendment PV-4 is defeated.

Next I have amendment G-1. Would the member please move the amendment?

Mr. James Maloney: I so move.

The Chair: It is moved.

Shall amendment G-1 carry?

[*Translation*]

Mr. Rhéal Éloi Fortin: Madam Chair, I want to speak in opposition to G-1.

The Chair: Yes, go ahead.

Mr. Rhéal Éloi Fortin: As I see it, there's a problem with G-1, and the committee heard a lot about it from witnesses: Does it put the Crown prosecutor in a conflict of interest situation when explaining the ins and outs of the order to the victim? Some say no, and others say yes. Personally, I think the Crown prosecutor can't simply inform the victim that a publication ban was issued and say nothing else. If the victim asks what that means, the prosecutor shouldn't be able to tell the victim that they have to look it up and figure it out on their own, because the Crown prosecutor's job is just to inform the victim that a publication ban is in place.

I don't think the amendment says enough. I don't think it's respectful of victims and their rights. The Crown prosecutor should explain to victims what a publication ban is or designate someone to make sure the victim is properly informed. I don't think it's right to give victims so little consideration that they are simply informed in passing of the order's existence with no explanation as to what that means, being told they have to find the information themselves. I don't think the language is comprehensive enough.

I think Bill S-12 uses better language that is more respectful of the rights of victims and witnesses.

[*English*]

The Chair: Go ahead, Mr. Moore.

Hon. Rob Moore: Thank you, Madam Chair.

I tend to agree with Mr. Fortin. What we've heard in our testimony around victims of crime and around this legislation is that victims are feeling left out, in the dark, and they are crying out for more information. I will note that My Voice, My Choice, who are people with lived experience, advocated that this provision should remain in the bill, so I will be opposing this amendment. It is important that as much relevant information as possible be disclosed to the victims.

The Chair: Go ahead,, Mr. Brock.

Mr. Larry Brock: I too am leaning towards opposing this, Madam Chair, unless I can be persuaded by the Liberals as to the justification behind the amendment.

I also agree with Monsieur Fortin. Our job as legislators is to be entirely clear when we are amending or passing legislation, and the way that this is drafted is so vague. It is rife for litigation. It does not indicate in any respect, with any specifics, how a prosecutor is supposed to discharge that particular onus.

I will add very briefly that I disagree with our Attorney General and some of the other witnesses, who opined that this is a dangerous area in terms of how prosecutors are conducting their business in terms of their relationship and discussions with victims.

I consulted with my colleague Mr. Caputo. I can recall, for the years that I was prosecuting where I was dealing with very sensitive matters and dealing with victims, that I had to supply those victims with a myriad of informational points with respect to the process. I view this as a process-driven avenue for a prosecutor to share that particular information.

I think it's incumbent that we strengthen the language, not weaken it and not make it so vague that it's unenforceable.

Thank you.

• (1615)

The Chair: Thank you.

Go ahead, Mr. Maloney.

Mr. James Maloney: I appreciate what both Mr. Caputo and Mr. Brock have said, and I respect the fact that they're both experienced prosecutors, but we did hear evidence about this potential conflict that the prosecutor could be in.

I will defer to your experience, but I don't see the wording of this proposed provision as preventing someone in your prosecutorial shoes as being unable to provide that myriad of information. In fact, it's intended to be a safeguard from those who may not perhaps have the experience that you may have in that situation.

I think it addresses the issue that was raised by a number of witnesses we've heard over the last two or three meetings.

The Chair: Mr. Housefather is next.

Mr. Anthony Housefather (Mount Royal, Lib.): Thank you, Madam Chair.

I would tend to agree with Mr. Maloney. I think that this is really putting the prosecutor in a very sensitive position of going beyond providing information and essentially providing legal advice.

I would see a real issue if there were a breach of the protective order and the same prosecutor who had given advice was then supposed to prosecute the person to whom they'd given advice, and the person would argue that the prosecutor had told them certain things and they were relying on what the prosecutor told them, creating a real conflict of interest situation.

I would tend to lean toward supporting this government amendment, because I think otherwise it really creates an issue of confusion and potential conflict of interest.

Thank you, Madam Chair.

The Chair: Go ahead, Mr. Moore.

Hon. Rob Moore: Thank you, Madam Chair.

Having heard the rationale for the amendment, I'm more convinced than ever that either the government needs to withdraw it or we need to oppose it.

What we heard from witnesses is that they're crying out for information. The prosecutor—and we have former prosecutors as resources here on our committee—is in a position to provide that information. We're talking about information related to the publication ban, meaning the effects and the circumstances under which someone may disclose information.

What we heard at committee is that people are relying on the prosecutor for these kinds of information. When we heard that some prosecutors could do this and that some prosecutors who are trained to do it could provide that information...well, that's the exact point.

What we've heard is there's an uneven application. Some people are made more aware than others. Sometimes there's a prosecutor who would provide this information, and sometimes there's one who wouldn't. This bill ensures that Parliament is making its viewpoint known that this information should be provided to victims.

Having heard the rationale for the amendment, I'm more convinced than ever that the amendment should be defeated. I would hope that the government would actually withdraw the amendment.

The Chair: Just to make it clear so people know that I am noticing everybody who's putting their hand up, I have Mr. Caputo, Monsieur Fortin and then Mr. Brock. They can start lining up.

Go ahead, Mr. Caputo, please.

Mr. Frank Caputo: Thank you, Madam Chair.

I think we have to remember what legal advice is. Legal advice is advising somebody about potential courses of action and the pros and cons of those courses of action and advising someone as to what the person may wish to do.

In my view, this provision actually says, "This is the information you must provide." It doesn't encourage or discourage a course of action. It doesn't say, "You should apply to set aside the publication ban" or "You should not apply to set aside a publication ban" or "These are the things you should consider." That, to me, would be legal advice.

For instance—I'm trying to recall now—we used to have to send out letters under the B.C. Victims of Crime Act that would say, "This is a victim impact statement," and it wouldn't be uncommon to say what can go into a victim impact statement.

For instance, a victim impact statement cannot have information as to the proposed punishment or what the victim believes should be a punishment. That is objective. You can't do that. This is the form a victim impact statement can take. Suggesting whether you should submit one or how you should express yourself is getting in-to advice.

I think that this is the exact same thing. I could see it taking the form of a letter saying, "This is what a publication ban is. These are your rights as a victim under the publication ban. This is what you can do. This is what you can't do. Do as you wish. Get legal advice if you wish."

Thank you.

• (1620)

[*Translation*]

The Chair: Do you have a comment, Mr. Fortin?

Mr. Rhéal Éloi Fortin: I won't waste the committee's time. Mr. Caputo took the words right out of my mouth.

The Chair: Thank you.

[*English*]

We'll go to you, Mr. Brock, followed by Mr. Maloney.

Mr. Larry Brock: Thank you, Madam Chair. I just want everyone at this committee to remark not only on the evidence that we've heard from victims and victim groups but also from some members of this particular committee who have been around for a couple of years.

We've heard from a number of victims over the course of my tenure as a new parliamentarian, and the message was extremely consistent from the victims: It was that they feel that the Crown attorneys and the criminal justice system are completely unresponsive to their needs.

They want information. They want to feel part of the litigation. They want to feel part of the team. It's for that very reason that I'm asking the Liberal bench to consider amending this to strengthen it or to simply to delete it. The victims want to have information shared by the Crown. They don't want a Crown attorney to simply say that the order has been made but that they can't say anything because they'll put themselves in a conflict of interest.

Crowns have an obligation to the community. They are public servants. They are ministers of justice, but they cannot and should not exclude witnesses in discussing pertinent and really relevant information, which this currently is.

Thank you.

The Chair: Thank you.

Go ahead, Mr. Maloney.

Mr. James Maloney: Briefly, I don't disagree with what Mr. Caputo and Mr. Brock have said. I just interpret the language used in the section prior to the amendment as being restrictive.

The amendment in no way restricts anybody with a prosecutorial hat from providing that information, whereas the language in there, as I see it, puts a prosecutor in a situation of having to provide in-

formation that is going to elicit questions from the person they're talking to, which could then take them down the road of putting them into that conflict, and that's what we're trying to avoid.

The Chair: Okay. I am going to call the question now.

Colleagues, shall G-1 carry?

Mr. Clerk, can we please have a recorded vote?

(Amendment agreed to: yeas 6; nays 5)

The Chair: I will now move to PV-5. That is deemed moved.

For your information, if PV-5 is adopted, PV-6 cannot be proceeded with.

Go ahead, Ms. May.

• (1625)

Ms. Elizabeth May: Thank you, Madam Chair.

Dear colleagues, I do hope everyone will give this amendment a real chance. It should not create any issues for anyone, regardless of whatever party you're with.

This amendment is so clearly in the victims' interests, and it doesn't create a burden in terms of locating a victim to get their awareness of an order before issuing it. This is simply to ensure that when the order has been made—as you can see here—a copy of the order is provided to them.

We know from cases in real life of people who've survived sexual assault that this is an extraordinary reality. To survive a sexual assault, to go to the police, to successfully apprehend the perpetrator, to actually achieve a court decision that there has been a sexual assault and the perpetrator is sentenced.... It's to ensure that the victim is aware that they've been placed under a publication ban, so they can't use their own name. We must at least be sure that the publication ban is something they are aware of so that they don't inadvertently, after all of that, fall afoul of the law and end up being fined or sanctioned for violating a publication ban by using their own name.

I beg of you to please pass amendment PV-5. It's very straightforward.

Now, I'm not allowed, under the terms of your order, to participate in debate, so I'm just anticipating any questions. This is very straightforward and I do hope that my colleagues will see fit to accept this amendment.

The Chair: Thank you very much.

Shall PV-5 carry?

Ms. Elizabeth May: Is there not going to be a recorded vote?

The Chair: There can only be a recorded vote if somebody asks. I don't feel it's my—

Ms. Elizabeth May: I know I'm not allowed to do that.

An hon. member: With all due respect, Madam Chair, you can't just assume.

Hon. Rob Moore: Well, they said "no" and we said "yes", so I would like a recorded vote.

The Chair: If you ask, you can have it, for sure. I don't believe that I as chair should be telling you to have a recorded vote, which I did before.

My apologies for doing that before. If somebody requests it, by all means, but it's not up to the chair.

(Amendment negated: nays 6; yeas 5 [*See Minutes of Proceedings*])

The Chair: PV-6 is deemed moved.

Shall PV-6 carry?

(Amendment negated)

The Chair: We're on PV-7.

Ms. Elizabeth May: Chair, I have an absolute right, under the terms of the motion....

I'm sorry, but I was trying to get my hand up. The functions are very difficult. I just get a hand up and get off mute to beg for something that in most committees, I have to say, is more automatic, which is to have a right to speak before my amendment is defeated.

I'm so sorry, Madam Chair. I'm sorry to be emotional, but I was so shocked there—

The Chair: I can tell you that I had my eyes glued to the screen and I did not see your hand.

Ms. Elizabeth May: I couldn't get it up in time because of the little cursor thing wobbling all over. It doesn't always go directly to "raise hand". It's a little more difficult. I'm sorry, Madam Chair.

The Chair: We will continue with PV-7.

If you want to put your hand up, please do.

Ms. Elizabeth May: What happened to PV-6?

The Chair: I believe everybody on the committee voted against it. This one did not need a—

Ms. Elizabeth May: I'd like to see a recorded vote.

The Chair: I don't believe you have the right to request of the chair to have a recorded vote.

Ms. Elizabeth May: I know that the people from My Voice, My Choice, who are watching this, would like to know who votes against their amendments. My amendments come from their testimony.

The Chair: Ms. May, every member voted against PV-6.

I'm now going to move to PV-7, please. PV-7 is deemed moved.

Go ahead, Ms. May.

Ms. Elizabeth May: Thank you.

Again, this business of deeming my motions moved is all because the larger parties didn't like the rights that I do have to put

these amendments forward if I chose to do so. If you didn't have this motion in place at your committee, I would be able to move all of these amendments in the House in full session, and then we'd be able to have the debate.

The witnesses from My Voice, My Choice have made it very clear why they feel Bill S-12 needs improvements. This is one of those improvements, and I'm hoping this time.... I know it doesn't seem very likely that the amendment will be accepted, but I do urge the committee to consider this as a minor improvement to the overall scheme of Bill S-12, in the interests of the victims, who otherwise find themselves under these publication bans without their knowledge.

Thank you, Madam Chair.

• (1630)

The Chair: Go ahead, Mr. Maloney.

Mr. James Maloney: Can I just say something, Madam Chair, very quickly? It's for Ms. May's benefit because of her technical problems at the outset of the meeting.

There was consensus around the table, Ms. May, that we all are very supportive and we understand and are grateful to My Voice, My Choice, but the amendments as presented are not ones that everybody can accept. It's not in any way a reflection on them as a group nor on any of the individuals we heard at this committee. I think it's important we get that on the record and understand that before we move on.

The Chair: Thank you.

Shall amendment PV-7 carry—

[*Translation*]

Mr. Rhéal Éloi Fortin: I'd like to comment on PV-7, Madam Chair.

The Chair: All right. You didn't raise your hand, but you can go ahead.

Mr. Rhéal Éloi Fortin: My apologies, Madam Chair.

According to PV-7, the judge cannot make an order if doing so goes against the wishes of the victim or a witness. Consider a case involving several witnesses or victims, for instance, three rape victims. It's possible that one of them doesn't want the order, but the other two do. In that case, the judge wouldn't be able to make the order. In my eyes, that's a real problem.

We can't adopt PV-7 in its current form, because it allows just one witness to veto the order despite the wishes of the other witnesses.

I'm sorry, Ms. May. That's not against you.

Ms. Elizabeth May: I understand, my friend.

[English]

Madam Chair, is it possible for me to respond to Monsieur Fortin's comments?

The Chair: Yes, go ahead.

Ms. Elizabeth May: Thank you.

Very briefly, the publication order is a question of the individual's name. Each individual has their own name, so if each individual has to agree that their name be listed or not listed, that is their right, and it doesn't mean that no one can be listed. A publication ban could apply to one but not the other, but in each case the victim or witness would have to agree that they would like to have the publication ban apply to them or not. It's a question of their personal name and whether their name is on the order.

The Chair: Thank you.

[Translation]

Mr. Rhéal Éloi Fortin: Madam Chair, may I respond to Ms. May?

The Chair: Yes, you may respond to everyone here.

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

Ms. May, it's the same problem I laid out earlier, the language used to describe the ban. This refers to the victim being the subject of the order. If it referred instead to the victim's identity, indicating that the publication of the person's name can't be prohibited, that would be acceptable. This, however, concerns prohibiting a publication ban if it goes against the wishes of a witness. I repeat, this cannot apply when a number of victims or witnesses are involved.

The language would need to be more specific. I agree with you that it's necessary to protect the identity of a person who doesn't wish to have their name disclosed, but it's also important to respect the wishes of someone who does want to have their name disclosed.

The Chair: Thank you everyone.

[English]

I'm going to call the vote.

Take a recorded vote, please, Mr. Clerk.

(Amendment negatived: nays 7; yeas 4 [See *Minutes of Proceedings*])

The Chair: PV-7 is defeated.

I will now move to PV-8. If PV-8 is adopted, PV-9, NDP-1, G-2, G-3 and G-3.1 cannot be moved due to a line conflict.

• (1635)

Mr. James Maloney: I'm sorry. Can you repeat that, Madam Chair?

The Chair: Yes, I will. It's very technical, very procedural, very legal. Here we go.

We're now dealing with PV-8, and it is deemed moved.

If PV-8 is adopted, then PV-9, NDP-1, G-2, G-3 and G-3.1 cannot be moved due to a line conflict. I'm going to read where the law is. As *House of Commons Procedure and Practice*, third edition,

states on page 769, "Amendments must be proposed following the order of the text to be amended. Once a line of a clause has been amended by the committee, it cannot be further amended by a subsequent amendment as a given line may be amended only once."

We are now going to speak to PV-8.

I note, Ms. May, you have your hand up. As the mover, you can speak. Then, Monsieur Fortin, you can follow her.

Ms. Elizabeth May: Technically I'm not the mover because of the strangeness of this procedure with which I am being forced to comply, since otherwise I lose my other rights. I'm not the mover; it's "deemed moved". Yes, it's my amendment, but it is a very strange process, Madam Chair, I agree.

This amendment is attempting to deal with, again, ensuring that people who are witnesses or victims are given access to exercise their own rights under this section. This clarifies the application process to vary or revoke a publication ban. It's under section 486.5, which is on the discretionary publication bans.

The two categories are in the first part of my amendment. If a witness under the age of 18 or a victim who's subject to an order made under section 486.4 asks the prosecutor to have the ban varied or revoked, the prosecutor shall, as soon as feasible, make the application to vary or revoke that order on their behalf. If the court, for any reason, is unable to act, another court can vary or revoke the publication order.

The point here is to make sure that when a victim or witness who is the subject of a publication ban tries to have it removed, wants it varied or wants it revoked, there is a requirement that the prosecutor act on their behalf quickly, and that if they're not for any reason able to get to that court, another court shall hold the hearing as quickly as possible and determine whether the publication ban should remain in place; or, again—this is at the request of a witness under 18 or a victim subject of the order—that they have access to justice in getting the publication ban varied or revoked.

[Translation]

The Chair: Go ahead, Mr. Fortin.

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

I have a problem with PV-8 for three reasons.

First, proposed subsection 486.41(4) is overly restrictive. It says “the court shall consider” the factors listed. The court already considers a certain number of factors when issuing a publication ban. I think the same factors should be considered when the ban is being varied or revoked. With all due respect, limiting the factors that the court can consider paves the way for decisions that make no sense.

The second problem with PV-8 has to do with proposed subsection 486.41(5), which reads as follows: “The applicant is not required to provide notice of the application to vary or revoke the order to the accused.” How, then, will the court go about holding the accused responsible for violating the order or the varied order? The accused shouldn't have a say in whether an order is necessary or not, but the accused should be notified of publication bans, so that they can be held responsible for violating a ban where applicable.

Third and finally, PV-8 would replace a number of provisions in Bill S-12, including limitation provisions, those stipulating when a publication ban would not apply. Those provisions, which appear under the headings “Limitation” and “Limitation — victim or witness”, are needed, however.

With all due respect to Ms. May, I honestly think PV-8 would be much more detrimental than it would help victims.

• (1640)

The Chair: Thank you, Mr. Fortin.

[*English*]

Ms. May, the rules are not clear. I'm sure you probably know them better than we do here. I see you have your hand up again.

I'm going to have to use discretion, depending on the time we have available and the number of clauses.

Ms. Elizabeth May: If I could speak to Mr. Fortin's—

The Chair: If I time you for 30 seconds, can you do that?

Ms. Elizabeth May: In 30 seconds on PV-8, this amendment applies only to when a witness or a victim who is subject to an existing publication ban order seeks to have it changed. Of course their rights are protected, because they are in the driver's seat. This amendment gives them further opportunity to ask the court to vary or revoke the order.

Of course I hear what you're saying, Mr. Fortin, which is that there already are considerations the court will take into account, but this is looking at the privacy interests of the victim, the freedom of expression for a victim or a witness—

The Chair: Ms. May, I've been very generous. I'm going to call the vote for amendment PV-8.

I hear all “no” votes.

(Amendment negatived)

The Chair: We'll go to PV-9.

Mr. James Maloney: Madam Chair, Ms. May will appreciate this. I'm not trying to pre-empt what she is saying.

PV-9 and NDP-1 are very similar, but—

The Chair: I was going to read that, actually. May I?

Mr. James Maloney: What I'm about to say may actually help you or solve a problem for you, anyway.

Through the machinations of the procedure, which I don't pretend to always understand, PV-9 ended up prior to NDP-1. I agree with the spirit of both amendments, but I have some subamendments to NDP-1. They would not change the essence of it, but I have some language changes that may help.

I raise that now only because the changes were to the wording of NDP-1, not PV-9. Maybe the clerk can help steer me through that problem.

• (1645)

The Chair: Okay, members, we're going to do this pretty slowly. I have it on authority that I can do this.

If I can have unanimous consent to dispose of PV-9, then it can be disposed of.

Ms. Elizabeth May: That's not allowed, Madam Chair. That is not allowed under the motions that committees have. It's enough to take away my rights at report stage; you can't subsequently take away my rights summarily at committee.

I'm sorry. This is not something that you can do.

The Chair: You can speak to it, but I do have the right to ask for unanimous consent after you speak to it.

Ms. Elizabeth May: That's right. All I have is the right to speak to it.

The Chair: Absolutely.

Go ahead.

Ms. Elizabeth May: I can't vote on it. I can't do anything else but speak to it, so thank you, Madam Chair.

By the way, if this committee would like to remove that motion altogether and allow me to present my amendments on future legislation at report stage, that's fine with me.

Okay, Madam Chair, very quickly, PV-9 is to ensure that people who are acting in a role of support to those who are victims are not criminalized if they are communicating information to provide assistance to the victim or the witness.

I know this amendment is quite similar to NDP-1. The reason it's first in the package is that we got it in first. Although NDP-1 is a different attempt to do the same thing, I do think the language here, with all respect to the other amendment, is stronger. The effort here is to ensure that when it's not the purpose of the disclosure to make the information known to the public but to provide support to the victim or the witness—and this is the category of people we're looking at—then legal professionals, counsellors, medical professionals or people in a relationship of trust with the witness or victim are not to be criminalized when acting in their interest.

Thank you, Madam Chair.

The Chair: Can I call the vote?

Go ahead, Mr. Garrison

Mr. Randall Garrison: Thank you, Madam Chair.

I'll try to restrain my comments to this. I think that all the people around the table have heard testimony from victims. Some of us have dealt with them for a number of years before this bill came here, so there are obviously differences of opinion about what we can accomplish in it, given the time frames we are dealing with and the Senate.

That said, PV-9, NDP-1 and the additional motion brought forward by the government are all very similar and try to accomplish the same thing. I've seen the government's motion. I believe it more simply accomplishes the same goal that's in PV-9 and NDP-1. I would ask the committee to defeat both and deal with the government's substitute motion on this section.

[Translation]

The Chair: Go ahead, Mr. Fortin.

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

I support NDP-1 and PV-9 except for one thing. One or the other would need to be amended because there's a mistake in proposed paragraph 486.4(4)(c), which would be added to the Criminal Code through an amendment to clause 2 of the bill. It reads, "the disclosure of information is made for the purpose of providing support to the victim or witness by legal professionals, counselors, medical professionals or persons" and so on. It's the reverse, though. Instead of "by", it should say "to". The idea is to protect the victim's right to speak to their psychologist, doctor, lawyer or counsellor without violating the publication ban.

The French version is the same. It says, "*par un professionnel du droit*", instead of "*à un professionnel du droit*".

Respectfully, I propose that PV-9 be amended by replacing the word "by" with "to" in the English version, and "*par*" with "*à*" in the French version. I'll let the English experts deal with the English version, of course, but in French, at least, I recommend replacing "*par*" with "*à*".

• (1650)

The Chair: Thank you very much.

[English]

I'm now going to ask if PV-9....

[Translation]

Mr. Fortin, did you submit your subamendment in writing?

Mr. Rhéal Éloi Fortin: No. I only noticed the mistake a little while ago. It's a drafting issue, so I wanted to make you aware. If the committee wishes to adopt the amendment as is, I'm fine with that, but we have to be consistent. I'll let you decide whether the wording should be amended or not.

It's not a substantive change. We all want the same thing. It just fixes a minor drafting problem.

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Madam Chair, I think our amendment would fix the problem Mr. Fortin raised.

The Chair: Very good.

Mr. Rhéal Éloi Fortin: Which amendment is that?

The Chair: I believe it's G-3.

[English]

Mr. James Maloney: No. It's a separate document that the clerk has. It was sent to everybody at the beginning of the meeting, so everyone should have a copy of it.

A subamendment was provided to the clerk, which was distributed to the members immediately prior to or at the outset of the meeting.

[Translation]

Mr. Rhéal Éloi Fortin: I don't think I got it, Mr. Maloney.

[English]

Mr. James Maloney: It would probably be in your email, Monsieur Fortin.

Mr. Rhéal Éloi Fortin: I don't see it. I'm sorry.

The Chair: The clerk is telling me that he has sent it to everyone.

Go ahead, Mr. Housefather.

[Translation]

Mr. Anthony Housefather: I think there's some confusion, so I'd like to clear things up.

Mr. Fortin, proposed a subamendment to PV-9. He's right, and I agree with him, but the amendment will probably be defeated anyways, so I don't think we should waste time on it.

The government submitted a new amendment that covers the same things as PV-9 and NDP-1, and it would fix the problem Mr. Fortin raised. The French version is right.

Does that clear things up?

Mr. Rhéal Éloi Fortin: It does. I haven't seen the amendment, but if it fixes the problem, that's good.

Again, I'll just say that I don't disagree with the substance of the amendment. I agree with that. I just want to make sure that it's drafted properly.

Mr. Anthony Housefather: Yes, of course.

[English]

The Chair: Allow me, then, as the chair, to ask if PV-9 shall carry.

(Amendment negatived: nays 7; yeas 4 [See Minutes of Proceedings])

The Chair: I have a new NDP-1. Does the member want to move it?

No. That one is gone.

I have amendment G-2.

Mr. James Maloney: There is the new amendment being proposed in lieu of NDP-1, which is—

• (1655)

The Chair: It has to go in order.

Mr. James Maloney: Is now not the time to do it?

The Chair: Now is not the time. We're on G-2.

Mr. James Maloney: I move the amendment.

The Chair: Shall G-2 carry?

[*Translation*]

Mr. Rhéal Éloi Fortin: No.

I wanted to comment on G-2, Madam Chair.

The Chair: Very well. In that case, you need to raise your hand, Mr. Fortin.

Mr. Rhéal Éloi Fortin: Yes, I know, Madam Chair, but we're moving so quickly. I'm trying to keep up. I'm looking for the motions that were apparently sent out earlier. They aren't motions, actually, but regardless. I don't want to waste the committee's time.

Once again, I have to point out a lack of clarity in the wording of G-2, which also appears in G-4. Respectfully, G-2 and G-4 have the same problem, in my view. I realize the amendment pertains to the English version, but whether it's in English or French, the provision will be used by the courts to interpret the law.

The wording proposed in the amendment, “who is the subject of the order” does not take into account the fact that it is not the victim who is the subject of the publication ban. Rather, it is the victim's identity. Saying “who is the subject of the order” makes it seem as though the order applies only to the victim. The victim would be ordered not to disclose x or y , but it would not apply to, say, journalists, the public, court clerks or other lawyers in the courtroom. That's not what we want. The publication ban applies to everyone. Everyone is the subject of the order, but the order protects the beneficiary, as opposed to the subject. It's understood that the victim is the beneficiary of the order.

Here's what I propose to make it more clear. Instead of saying “who is the subject”, we could say “whose identity is the subject of the order”.

If the government members agree, it could be a subamendment.

[*English*]

The Chair: I'm going to....

Shall amendment G-2 carry?

[*Translation*]

Mr. Rhéal Éloi Fortin: No. I can't vote in favour of it because the wording is a problem.

No matter, I don't want to waste the committee's time.

[*English*]

The Chair: Does it carry on division?

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

The Chair: Thank you.

On amendment G-3, can I ask...?

Mr. James Maloney: It is so moved.

(Amendment agreed to)

The Chair: We have a new G-3.1, but we're going to ask that it be read, because it was a submitted new.

Mr. James Maloney: Sorry; is this different from the one that was distributed by email?

The Chair: No, but there's a bit of confusion as to how they distributed it, so if you don't mind.... Is it a long one?

[*Translation*]

Mr. Rhéal Éloi Fortin: Madam Chair, I didn't get the amendment. I looked all over, but I cannot find G-3.1. If it did go out, I don't know where or when.

The Chair: I'm going to have the clerk tell you when it was distributed.

The Clerk: Mr. Fortin, an email went out at 4:16 p.m. containing four motions to amend. The amendment doesn't appear as G-3.1. The mover would need to read the reference number in the top-left corner. It's a series of numbers. That should help you find the right one.

Mr. Rhéal Éloi Fortin: We get a tremendous number of emails every day. It's hard to do our job if amendments aren't properly identified. We are moving fast. I realize we are in a rush, and I have no intention of delaying the committee's work, but I do think we need to do things properly.

[*English*]

The Chair: Mr. Maloney, proceed once you're ready.

Mr. James Maloney: All right.

I'm advised by the clerk that the number on the document may help Mr. Fortin. It's 002-003-13(a).

[*Translation*]

Mr. Rhéal Éloi Fortin: I'm opening the document right now.

• (1700)

[*English*]

Mr. James Maloney: The French version is 002-003-16a. I'm going to read the English version, for which everybody will be grateful.

Some hon. members: Oh, oh!

[*Translation*]

Mr. Rhéal Éloi Fortin: Madam Chair, what I'm saying is serious. I don't think anyone thinks our work is useless or that it should be rushed. It's true that we're in a hurry, but we have to do the job properly. I think I'm right to ask that we identify the documents correctly. There's nothing funny about that.

If I don't understand what we're talking about, I can't work intelligently. Now, my job as a member is to work intelligently, out of respect for the witnesses we've heard, out of respect for the victims and out of respect for the population as a whole.

The Chair: You're absolutely right, Mr. Fortin.

Did you find the document?

Mr. Rhéal Éloi Fortin: Yes, I have it in front of me.

The Chair: Very well, thank you.

Mr. Maloney, can you read the English version of the amendment?

[*English*]

Mr. James Maloney: It is that Bill S-12, in clause 2, be amended by replacing line 13 on page 3 with the following:

make the information known to the public, including when the disclosure is made to a legal professional, a health care professional or a person in a relationship of trust with the victim or witness.

[*Translation*]

Mr. Rhéal Éloi Fortin: Madam Chair, please allow me a moment to understand the text.

I agree. This does solve the problem I raised earlier. This amendment refers to the situation where “the disclosure is made to a legal professional ...”. This wording satisfies me.

Thank you, Mr. Maloney.

The Chair: Thank you, Mr. Fortin.

[*English*]

I'm going to call the question.

Shall amendment G-3.1 carry?

(Amendment agreed to)

The Chair: Shall clause 2 as amended carry?

(Clause 2 as amended agreed to [*See Minutes of Proceedings*])

(On clause 3)

The Chair: Mr. Maloney is moving amendment G-4. Thank you very much.

Shall amendment G-4 carry?

[*Translation*]

Mr. Rhéal Éloi Fortin: No. Let me reiterate the comments I made earlier, Madam Chair.

The victim is still said to be “the subject of the order”, whereas it is not the victim who is the subject of the order, but rather his iden-

tity. This is an important distinction. There are lawyers around the table; I can't believe no one finds this problematic. It's serious.

I just wanted to make that comment, but you can make of it what you will.

[*English*]

The Chair: Thank you, Mr. Fortin.

Shall G-4 carry?

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

[*Translation*]

The Chair: Thank you.

[*English*]

Shall G-5, moved by Mr. Maloney, carry?

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

The Chair: We have one that was distributed.

[*Translation*]

Mr. Fortin, this is amendment G-5.1. Have you found it?

Mr. Rhéal Éloi Fortin: I haven't had time. I do the same work as you, so obviously I don't have time to deal with three at once.

Can anyone tell me which number this is?

The Chair: It's 003-003-37a_FR.

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

[*English*]

The Chair: Go ahead, Mr. Maloney.

Mr. James Maloney: Thank you.

The new language is that Bill S-12 in clause 3 be amended by replacing line 33 on page 3 with the following:

to the public, including when the disclosure is made to a legal professional, a health care professional or a person in a relationship of trust with the victim, or witness or justice system participant.

[*Translation*]

Mr. Rhéal Éloi Fortin: That's fine with me, Madam Chair, for the same reasons as before.

Thank you, Mr. Maloney.

The Chair: Thank you, everyone.

[*English*]

Shall G-5.1 carry?

(Amendment agreed to)

The Chair: Shall G-6 carry?

I hear noes and and I hear yeses.

Mr. Clerk, can we have a recorded vote, please?

• (1705)

Hon. Rob Moore: Madam Chair, this amendment deletes lines that state the prosecutor's role in informing a victim or witness about the effects and circumstances of a publication ban. That is the exact opposite of what was asked for by witnesses who appeared. They wanted an increased role and an increase in the information provided, so Conservatives will be voting against this amendment.

The Chair: Thank you.

[*Translation*]

Mr. Fortin, you have the floor.

Mr. Rhéal Éloi Fortin: I completely agree with Mr. Moore. We had the same discussion earlier, so I don't want to repeat it in full. However, victims are asking for more information, and here we're saying that we're going to inform them as little as possible. We're going to tell them that a publication ban has been issued and that it concerns them, but we're not going to tell them what it is, and we're going to tell them to figure out the rest. I find this disrespectful of the victims.

The Chair: Thank you, Mr. Fortin.

[*English*]

Shall G-6 carry?

I think I heard yeses and noes.

Mr. Clerk, can we have a recorded vote on G-6?

(Amendment agreed to: yeas 6; nays 5)

(Clause 3 as amended agreed to)

(On clause 4)

The Chair: We are now on amendment G-7, moved by Mr. Maloney.

Shall G-7 carry?

[*Translation*]

Mr. Rhéal Éloi Fortin: No.

[*English*]

An hon. member: Yes.

The Chair: I'm not sure what I'm hearing. Can we have a recorded...?

Go ahead, Mr. Moore.

Hon. Rob Moore: It's no, Madam Chair, for these reasons.

I don't understand how, having Bill S-12, we now see the government making amendments. What this amendment would do would give more consideration to the privacy interests of the accused when contemplating the privacy interests of a person subject to a publication ban. That is not what we heard at committee. That's the exact opposite of what we heard at committee. We had victims who went through the worst possible situations in their lives. They feel revictimized by the justice system.

I don't understand where this amendment is coming from when the government is amending its own legislation.

Conservatives will be voting against this amendment.

The Chair: I have Mr. Brock.

Mr. Larry Brock: Thank you, Madam Chair.

I wholeheartedly endorse my colleague's comments. I wish to put on the record as well that the only way I see this actually having any impact—and this is currently what happens routinely before the court—is that the privacy interests of the accused generally will occur in terms of publication bans when identifying the accused might compromise the integrity and privacy interests of the victim.

In other words, if a victim has been sexually abused by the accused in a familial relationship, it's automatic that in those situations the privacy interests of the accused have application and, in those situations, their name plus the name of the victim would be subject to a publication ban. This particular amendment does not speak to that, and I think for broader reasons it should be defeated.

The Chair: Mr. Garrison is next.

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

I don't read this amendment the same way. What I read this amendment doing is precisely what the Conservatives are talking about. It removes any ability of the accused, by not including them in this clause, to make use of privacy rights in a case like this. I think it actually accomplishes exactly the opposite of what the Conservative members are arguing.

I guess I'll be fair to the government. This was a government bill that was amended in the Senate, so this has gotten quite complex, because it has already been amended in the other House and comes back to us with those amendments in place. This I think clarifies the original intention, and I think it does what those who are survivors wanted: to make sure that the accused can't make use of privacy rights in these proceedings.

• (1710)

[*Translation*]

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

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

I, too, am against the way it's presented. The proposed wording in the bill to which the amendment relates specifies that the court that made an order, or any other court, is required to vary or revoke the order when requested, “unless the court is of the opinion that to do so may affect the privacy interests of any person other than the accused.”

Through amendment G-7, it is proposed to remove “other than the accused.” This means that the court will make the order and will have to take into account the accused's right to privacy. If a victim says that the order should be modified for this or that reason and the court is of the opinion that this will harm the accused, it will not be able to modify the order.

I agree with what Mr. Garrison was saying. It's true that the text is complex and that you have to take the time to read it carefully. However, if you read it carefully, you realize that amendment G-7 would have the effect of protecting the accused, to the detriment of the victim. It would give the accused a say in whether or not the publication ban is modified. Again, I think this is counterproductive. I say that with all due respect.

The Chair: All right. Thank you for your comments.

[English]

Shall G-7 carry?

(Amendment agreed to: yeas 6; nays 5 [See Minutes of Proceedings])

[Translation]

Mr. Rhéal Éloi Fortin: I can't believe it.

[English]

The Chair: Shall clause 4 as amended—

Mr. Rhéal Éloi Fortin: Is G-7 defeated?

[Translation]

I'm sorry, Madam Chair, but I didn't quite understand. Did you say that the amendment had been defeated?

The Chair: No, no, Mr. Fortin. On the contrary, the amendment is adopted.

[English]

Shall clause 4 as amended carry?

(Clause 4 as amended agreed to)

The Chair: That's carried. Thank you.

We have clause 5 and clause 6. There are no amendments submitted for either of those clauses. Can I get unanimous consent to group them together for the vote and ask if clauses 5 and 6 shall carry?

Some hon. members: Agreed.

The Chair: Okay. Both of those are carried—

Hon. Rob Moore: You asked for unanimous consent to group them, just to be clear. Now we would consider them.

The Chair: Then let's consider them now.

Shall clauses 5 and 6 carry?

(Clauses 5 and 6 agreed to)

(On clause 7)

The Chair: We have CPC-4.

Can somebody please move that?

Hon. Rob Moore: Thank you, Madam Chair. I'm going to move this amendment.

This goes to the heart of our justice system in how it treats the victims of sexual offences and how it protects our communities.

The sex offender registry, prior to the Supreme Court decision, required the automatic registration of individuals who had committed certain sexual offences. There are nine members of the Supreme Court. A five-to-four decision, with a very strong dissent, found that this automatic listing violated the Constitution. They gave the government a year to respond. Now we're up against that deadline. That deadline is at the end of this month.

What has come back with Bill S-12 does not go far enough, in my opinion. For example, for an automatic listing now on the sex offender registry, if you read the dissent in the Supreme Court decision, you see that they said that judges were not properly exercising their discretion by excluding individuals. The federal registry had only a 50% inclusion rate. That was the same as in Ontario, where, when it was left to discretion, there was only about 50% inclusion. The Supreme Court found that an offender on the registry is eight times more likely to offend than someone in the general public. There is a pressing reason to have sex offenders on the sex offender registry. That has been established.

This is what Bill S-12 says, under proposed subsection 490.012(1). In order for someone to be automatically listed, it requires that:

- (a) the designated offence was prosecuted by indictment;
- (b) the sentence for the designated offence is a term of imprisonment of two years or more; and

—this is key, that “and” word—

- (c) the victim of the designated offence is under the age of 18 years.

That is how an automatic listing on the registry would take place. This is far too narrow. That is why I've introduced our amendment, which would delete proposed paragraphs 490.012(1)(a) and (b) on page 11 of the bill, so that all designated offences, regardless, proceeding by way of summary or indictment, if they are committed against a child victim—someone under the age of 18—will require mandatory registration. We heard testimony that suggests that this would meet the decision laid out by the Supreme Court.

I would urge members to consider broadening this piece of legislation so that we can protect child victims of sexual offences, protect our communities against sex offenders and require the mandatory listing in the sex offender registry of individuals who commit an offence against a victim who is under 18 years of age. That is what this amendment does.

• (1715)

The Chair: Before anyone else speaks, I have two things. One is that we will go until 6:30 p.m. if we don't finish tonight. We have the room until 6:30. We might be able to finish in 10 minutes.

The other thing is that, procedurally, if CPC-4 is adopted, then CPC-5 and CPC-6 cannot be moved due to a line conflict.

Go ahead, Mr. Caputo.

Mr. Frank Caputo: On a point of order, Madam Chair, I believe unanimous consent is required to push the meeting beyond its time. I would love to stay here, but both Mr. Brock and I do have flights.

It's rather unfortunate that we are here. This has been said so many times. The decision came down on October 29, 2022, and here we are rushing. We'll have to pick it up at some other time.

The Chair: I will get advice from the table on that and get back to you. It's not up to me. I do know that we received notice that we have until 6:30 p.m.

Let me get advice, but let's continue with the.... We may not need it.

We're on CPC-4.

Mr. Frank Caputo: I'll just be clear that I would like to stay but I cannot.

The Chair: Does anyone wish to speak on that one?

I have Mr. Brock on CPC-4.

Mr. Larry Brock: Madam Chair, thank you. I just wanted to add something for discussion.

I believe we heard some evidence—perhaps Matthew Taylor or Ms. Wells can weigh in on this—that in practical terms, the vast number of convictions of sex offenders involving children under the age of 18 proceed by summary conviction. As the Criminal Code is set out, if proceeding by summary conviction, the maximum penalty is 18 months. In my view, as a former prosecutor, whether it's a history of sexual offending or a one-off involving a child, whether it's a judge with or without expert evidence from the defence or from the Crown.... In my respectful view, a low risk is still a risk, and that's the same language that came from the dissenting opinion of the Supreme Court of Canada.

Let's take a look of the identity of the justices who were part of that dissenting opinion. We have the chief justice of the Supreme Court of Canada. We have Justice Moldaver, who is now retired. Matthew Taylor and Joanna Wells can confirm—because I know my colleague Mr. Caputo can certainly confirm this—that he was considered the expert. He was the dean insofar as criminal jurisprudence was concerned.

I agree it's dissenting and it's not binding, but I take that language very seriously. This particular bill broadens that net to ensure that all of those offenders, whether their cases proceed by indictment as contemplated by Bill S-12 or by summary conviction, will be captured by the Sex Offender Information Registration Act

Am I correct, Mr. Taylor?

• (1720)

Mr. Matthew Taylor: Thank you for the question. I don't have the specifics for the charging breakdown for summary conviction versus indictment. We talked previously, and Ms. Wells talked previously, as to why the criteria have been set the way they've been set.

Certainly, in a case in which the Crown believes there is a risk and it wants the mandatory registration, it has the option to proceed indictably. However, importantly—and Ms. Wells can supplement—even in cases in which they proceed summarily, they will be presumptively registered. They are on the list unless the offender can demonstrate why they shouldn't be on the list.

The Chair: Are there any more speakers on this one? Seeing none, I'm going to ask for the vote.

Shall CPC-4 carry?

(Amendment negatived: nays 7; yeas 4)

The Chair: We now have CPC-5.

Is there a mover for this one? Is it Mr. Caputo?

Mr. Frank Caputo: Yes.

The Chair: Before you move it, if CPC-5 is adopted, CPC-6 cannot be moved due to a line conflict.

Mr. Frank Caputo: May I just add, please, Madam Chair?

• (1725)

The Chair: Yes, please.

Mr. Frank Caputo: I'm just going to echo the sentiments, again, of Mr. Brock. I think that if we were to go and look....

Candidly—it may not surprise people around the table—I'm a bit of a nerd. I still read a lot of case law because I find it interesting, and I also want to know what we're dealing with, especially in areas like this.

When it comes to B.C. Court of Appeal decisions and B.C. Supreme Court decisions, for instance, I frequently read the decisions. I can tell you that it is not uncommon but actually very common to have sentences for offences under subsection 163.1(4) of the Criminal Code—which is the possession of child sexual abuse and exploitation materials—be under two years or for the cases to not be proceeded with by indictment, and that sometimes is done by consent.

When we look at this and consider whether or not that person should be registered, at the end of the day, not only has somebody victimized that child, but that child has been revictimized, in the case of possession of those materials, time after time after time. Research tells us that the person who has done so is at an elevated risk, a substantial risk—not even just a 50%-plus, but a substantial and elevated risk—to offend. Somebody who is seeking out that material is seeking it out for a reason, and in my view, there is often an escalation of what somebody does. Usually the offending behaviour does not decrease, but it will increase. I don't know how we, as a committee and as parliamentarians, wouldn't want to recommend the inclusion of such people, rather than restricting them because so few people will be caught by this.

I'm mindful of the presumption, but this isn't a matter of presumption. We in Parliament should be speaking and saying that those who are at a heightened risk or who are even at risk to offend against children will not be presumptive; they will be included on the registry.

The Chair: Thank you.

Shall CPC-5 carry?

An hon. member: I'd like a recorded division.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

The Chair: I'm going ahead here too fast, but we are continuing, folks, just so you know.

Now we have CPC-6.

Mr. Larry Brock: Madam Chair, could I get clarification? Are we continuing beyond 5:30 p.m.?

The Chair: Yes.

I'm going to continue now with CPC-6.

Mr. Larry Brock: I can speak on it.

CPC-6 is largely CPC-5 language. The rationale behind it from both my interventions and Mr. Caputo's interventions still applies. The difference between CPC-6 and CPC-5 is that it doesn't have the addition of an offence involving a person with a disability.

The Chair: I will now ask if CPC-6 carries.

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

The Chair: Thank you.

Now we have CPC-7.

[*Translation*]

Mr. Rhéal Éloi Fortin: I don't have that amendment, Madam Chair. I imagine it's part of the amendments.

Could the clerk tell me where to find it?

The Clerk: It's like the other amendment earlier, Mr. Fortin: it was sent at the beginning of the meeting. It's a single amendment.

Mr. Rhéal Éloi Fortin: I just found it. I'm sorry, you're right.

Thank you.

[*English*]

The Chair: Mr. Van Popta, do you move this?

Mr. Tako Van Popta: I move CPC-7.

• (1730)

The Chair: Thank you very much.

Mr. Tako Van Popta: I'll speak to it. It will just take me a minute.

I was inspired to put forward this amendment by the testimony we heard from Dr. Roebuck, federal ombudsman for victims of crime, and Professor Benedet, who said that the bill would be improved drastically in that in addition to the factors that a judge should consider, there should also be a list of the factors that a judge should not consider.

We were referred to a paper written by Professor Benedet on exactly that topic. I read the paper. She studied 155 cases in which a judge gave an exemption from an order. She analyzed them and

found that there was, in her opinion, flawed reasoning. I'm just going to read one section:

Taken as a whole, these decisions provide some interesting insight into how judges understand the seriousness of various kinds of sexual assaults and the purpose of the registry. More specifically, they show the way in which rape myths can creep back into judicial decision-making even after conviction and sentencing.

She concluded with:

...Parliament could respond by setting out a list of irrelevant factors akin to those found in the Criminal Code provisions on the production of third party records in sexual offence prosecutions.

Dr. Roebuck and Professor Benedet both spoke to that at Tuesday's meeting, and CPC-7 captures that.

Thank you.

The Chair: I have Mr. Maloney.

Mr. James Maloney: I remember the evidence because I think I was the one who actually asked the question, but in my experience, the more you include, the more you exclude, because crafty lawyers like those on the other side of the table will see a list and then argue that it's exhaustive. We've all encountered that many times, and it's a pitfall I don't think we necessarily want to fall into here.

The Chair: Shall CPC-7 carry?

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

(Clause 7 agreed to)

The Chair: Please listen carefully. There are no amendments submitted to clauses 8 to 48. Do we have unanimous consent to group them for the vote?

Some hon. members: No.

The Chair: Do you consent to grouping clauses 8 to 32?

Some hon. members: Agreed.

(Clauses 8 to 32 inclusive agreed to)

(Clause 32.1 negatived)

The Chair: Clauses 33 to 48 have no amendments. Can I ask to group them together?

Some hon. members: Agreed.

(Clauses 33 to 48 inclusive agreed to)

The Chair: There's a new clause 48.1 in G-8, moved by Mr. Maloney. Shall G-8 carry?

(Amendment agreed to)

(Clause 49 agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: On division.

The Chair: Shall the chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: The chair will report the bill as amended to the House.

That concludes the clause-by-clause consideration.

Thank you, everyone. Have a wonderful evening. I appreciate the wonderful way we did the clause-by-clause study. Thank you so much.

The meeting is adjourned.

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