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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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● (1545)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): We welcome our listening audience to meeting number 32 of the Standing Committee on Public Safety and National Security, on Bill S-2. We will proceed to clause-by-clause consideration of Bill S-2, an act to amend the Criminal Code and other acts.

We also have some senior officials here today. I would invite you at your convenience to come to the table. You are welcome to. It looks like you are all set up over there, but it's wherever you feel most comfortable, I guess.

Mr. Holland.

Mr. Mark Holland (Ajax—Pickering, Lib.): Mr. Chair, it's not that I wouldn't want to hear from the witnesses, but as we've studied this issue fairly exhaustively, perhaps we could avoid opening comments in the interests of expediency and just allow members to pose questions, should they have them, of the witnesses.

The Chair: That's fair enough.

All right. You have your bills before you. We have received a couple of amendments and we'll deal with them when we get to them.

We will proceed. We'll postpone clause 1, the short title to this bill, until the end of the bill, when we will come back and look at it.

There are no amendments until clause 5.

(Clauses 2 to 4 inclusive agreed to)

(On clause 5)

The Chair: On clause 5, we have one NDP amendment that has been brought forward. I think we have already been in some discussions with Mr. Davies on this amendment, and it has been ruled out of order.

Mr. Davies, you may speak to this.

Mr. Don Davies (Vancouver Kingsway, NDP): Mr. Chairman, while I respect that ruling, the purpose of this bill, in my understanding and after listening to all of my colleagues and the testimony, is to strengthen and enhance the effectiveness of the sex offender registry. It is my belief that my amendment does exactly that.

We heard testimony before this committee from people who use the sex registry, testimony that indicated that, at least in the opinion of some witnesses, if we register every single person convicted of an offence, we may risk clogging the registry with a number of names that are not appropriately on the sex offender registry. If that's the case, when an emergency situation arises where the police need to do a very, very fast search, such as in a case where a child goes missing, this will cause them to have to search and investigate many more people, some of whom would be a waste of time, and that will slow down the police.

Now, I recognize that not everybody may agree with that testimony, but I certainly was struck by it. So while I respect the ruling of the chair, I would respectfully challenge the ruling of the chair, at least so that I can put my amendment forward, have a discussion with my colleagues, and then have a vote on it. I would respectfully challenge the chair's ruling that my motion is out of order.

The Chair: My ruling has been that it's out of order, and of course it's not something I've just indiscriminately made a ruling on; it has come from legal services. Again, I can read you the whole ruling, but this amendment proposes to allow the court to exercise discretion and to not make that order if it is satisfied that certain conditions have been met. The amendment goes against the very principle of Bill S-2, and for that reason I've ruled it inadmissible or out of order.

Mr. Holland.

● (1550)

Mr. Mark Holland: I know there's no debate on challenges to the chair—

The Chair: That's right.

Mr. Mark Holland: —so I'm really stretching things here, but it's just to say that while I don't support the amendment, I do support Mr. Davies' right to bring it forward.

The Chair: Thank you.

All right. So unless there is other debate, it has been ruled out of order.

Mr. Don Davies: Mr. Chair, I'm challenging your decision. I'm challenging your ruling.

The Chair: All right.

There is no debate, as Mr. Holland has already suggested, on the challenge that has been brought forward—by the table, I guess, by the legal...by the clerk.

Let me just read to you what they have said, and then we will take a vote on it:

> Bill S-2 amends the Criminal Code to require that a court shall make an order in Form 52 with regard to a person sentenced to a "designated offence", or a person found not criminally responsible on account of mental disorder, requiring the person to comply with the Sex Offender Information Registration Act for an applicable period.
>
> This amendment proposes to allow the court to exercise discretion and to not make that order if it is satisfied that certain conditions have been met.
>
> As House of Commons Procedure and Practice (2nd Edition) states on page 766: "An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill."
>
> In the opinion of the Chair, the introduction of the concept of discretion is contrary to the principle of Bill S-2 and is therefore inadmissible.

So shall the chair's ruling be sustained?

(Ruling of the chair overturned)

The Chair: All right. We will then open this for debate.

Mr. Don Davies: Thank you, Mr. Chairman. I appreciate the support of my colleagues to at least put this amendment forward and have it debated, while I recognize of course that not everybody is convinced that this amendment is desirable.

I won't speak a long time on this, Mr. Chair, because we have had a lot of talk about this, but I do want to highlight a couple of the points that support this amendment. The current legislation provides a very tight and strong system for registration. Currently if a person is convicted of one of the enumerated offences then an application may be made to the court by the prosecutor. If that application is made, the current legislation requires that registration occur unless the defendant or the convicted person at that point can establish using a very high test that the impact on his or her personal situation greatly exceeds the purposes of the registration. The situation in which that would happen has been described as being very rare.

One of the main bits of mischief that this committee heard was that prosecutors either forget or omit to make that application. So my amendment clears up the mischief that we heard at this committee by making an application before the court automatic upon conviction. No longer would we face a situation in which, upon a conviction, a prosecutor would forget to make that application. It will automatically be before the court.

My amendment preserves the current test under the legislation, which still sets an extremely high burden of proof for the convicted person to meet to show why registration may not be appropriate, because there may be the rare case in which registration is not appropriate. It preserves the concept of judicial discretion.

We heard testimony that filling the registry with the names of those who do not pose a danger or risk of reoffending could harm public safety by slowing down police investigations. Having police follow up on what could turn out to be, as evidence would suggest, useless leads from the registry wastes precious time in investigations when time is of the utmost importance.

Of course my amendment would solve the main problem of prosecutors forgetting or neglecting to apply for registration, but it would still allow for the small possibility, once again with a high burden of proof, for an individual to make the case to a judge that registration was not in the public interest.

We heard testimony from the government's own justice department that the current system of judicial discretion was working well. On Tuesday, April 21, 2009, at SECU meeting number 15, Mr. Douglas Hoover, counsel for the criminal law policy section at the Department of Justice, testified thus:

> We've had a number of Court of Appeal decisions on “grossly disproportionate” to confirm that the onus has to be on the offender. He has to step up. He has to prove this to the court's satisfaction. This is a very strict test. I think the Court of Appeal in an Ontario case used the term “in the rarest of circumstances”, which is similar to the language in a Nova Scotia Court of Appeal decision on the DNA [registry].
>
> So while there were some early and I guess interesting decisions in the lower courts, we're confident that right now it is working fully as intended.

There are also questions, Mr. Chairman, as to whether fully automatic registration would be constitutional.

I will quote again from the testimony before this committee on the same day from Mr. Hoover.

> Mr. Davies referred to the Dyck case, in Ontario, where the issue was omnipresent whether a registry that was automatic was constitutional. That matter has still not been settled fully by the Supreme Court of Canada, so if we do go automatic it will be an issue.

So again we're not even sure that the legislation we're passing right now would survive a constitutional challenge.

I want to point out one last feature that everybody in this committee will remember. Before this bill was drafted and presented by the minister in the House and the Senate, our committee undertook a very lengthy study of SOIRA, the Sex Offender Information Registry Act. We heard from many witnesses, and we were just finishing off our report when the minister tabled his legislation in the House of Commons without even waiting for the benefit of our report. Our report at that time had failed to find the case for automatic registration.

● (1555)

After extensive study, it was the will of this committee that we not have fully automatic registration but that instead we recognize that there may be the exceptional case when registration is not appropriate. We've heard of situations in which a very young person may be involved. We may not be at all convinced that the person would reoffend or should be subject to what could be a very onerous registration process whereby they may be under extreme conditions for up to ten years. So preserving judicial discretion while making this an extremely tough test is important.

My final point is that we also have to bear in mind that under this legislation, as opposed to the case in Ontario, the list of offences we would be subjecting to automatic registration would be much longer. Again, I always point out that it includes sexual assault, both by indictment and by summary offence. And while every sexual assault is, of course, serious, and while we should condemn every sexual assault in the strongest terms, there may be an exceptional case when it may not be appropriate to put someone convicted of a summary conviction sexual assault into a sex offender registry, with all the attendant impact that may have.

I would urge my colleagues to support this amendment and to at least allow for the possibility that registration may not be appropriate in every single case, although it would be appropriate in the vast majority of cases.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Davies.

We'll go to Mr. Kania.

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

I'm not going to be long. What I wanted to indicate was that I supported Mr. Davies' right to have this discussion, in terms of challenging the chair, but I strongly oppose the amendment itself.

We went through this as a committee when we were studying Bill C-34, when it was introduced by the government in the House. We had hearings, and I spoke in the House of Commons about this. I spoke very strongly in terms of challenging the government to make its bill tougher.

For example, one of the loopholes it left was in requiring sex offenders to register their licence plates and details about their vehicles, which is actually now in the legislation. It's been corrected. What we've really done is try to make this into a stronger, or even broader, version of Ontario's Christopher's Law.

I think that the current legislation, as we have it before us, is good, and we need to make it as strong as possible. I do not think there should be judicial discretion for the specific examples he has noted here. We need to make this law tough to protect our citizens. So I oppose it on that basis.

● (1600)

The Chair: Thank you, Mr. Kania.

We'll go to Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

I agree with my friend, Mr. Kania. I don't have a comment so much as I have a question for Mr. Davies.

It appears to me that his amendment is attempting to replace prosecutorial discretion with judicial discretion. I'm really curious as to why he thinks that's superior. Does he not believe, or has he not considered, that some of the cases he's cited as potentially inappropriate for automatic registration might actually be better dealt with by having prosecutorial discretion?

The Chair: Thank you, Mr. Rathgeber.

You obviously wanted to respond to the question or to summarize your amendment.

Mr. Don Davies: Yes, I will respond briefly to Mr. Rathgeber's question.

There always was judicial discretion under the current legislation, and there would be judicial discretion under my amendment. Of course I believe in prosecutorial discretion as well. But according to the evidence we heard from prosecutors, and it was a concern of this committee, if you leave the discretion in the hands of prosecutors to make an application, sometimes it's not done. Sometimes it's inadvertent. Sometimes it's plea-bargained away. And I think we all agreed that we didn't want that to occur. We wanted an application to be before the court automatically upon conviction, and I'm comfortable with that.

What I do think, though, is that none of us in this room can say that every single case of a conviction for those offences, in all circumstances, always, should result properly in, and that justice will be served by, having registration occur. That's why I still think that in the rare case when the case can be made before the court.... And remember, the onus is on the convicted person to meet that burden. I know that my friend's a lawyer, and he knows what the burden of proof means. He knows what an onerous burden of proof is, and he knows what a reverse onus of proof is. With those protections, I trust the courts of this land to interpret that test, as they have.

Finally, I will point out one more time that the evidence before this committee from the Department of Justice officials was that the current system, which has judicial discretion, is working well. We did not hear any evidence of any situation when someone escaped registration who ought to have been registered. So I would urge us to make a decision based on evidence and not on speculation.

The Chair: Thank you, Mr. Davies.

Are we ready for the question?

Madam Mourani.

[*Translation*]

Mrs. Maria Mourani (Ahuntsic, BQ): Thank you, Mr. Chairman. I would like to present our perspective on it. First of all, we are not proposing any amendments. Furthermore, we agree with many, if not the vast majority, of the points that have been made today.

However, the amendment proposed by my colleague, Mr. Davies, brings an interesting dimension to this. In the amendment, which I'm reading in French and which must be the same in English, uses the expression “grossly disproportionate”.

It includes the concept of reverse onus and automatic registration. It would be up to the accused to establish that registration would have a grossly disproportionate effect. The standard of proof is extremely high.

It seems to me, therefore, that the most serious cases, as well as the vast majority of cases, would not pass the test of reversal of automatic registration.

On the other hand, this amendment does make other things possible. I'd like to give you an example to demonstrate the need to consider this possibility. Imagine a case where an 18-year-old youth expose himself to a 15- or 16-year-old-girl. It is generally acknowledged that, between 16 and 18, the age difference is minimal. However, when you are 18, you are a person of full age and are therefore subject to the Criminal Code.

Supposing these young people meet at a party and one of them exposes himself to some young girls in a very specific context. Consider this. These are our young people. It could be our daughter, our child. Would we be in favour of our child's name being listed for the rest of his life in a sex offender registry? Furthermore, it could also have been a case of mutual consent.

As we know, the current registry in the U.S. is a disaster. It contains all kinds of information, for completely minor offences.

In addition, the standard of proof is so high that the judge must be given some discretion to exercise his own judgment. After all, if you're a judge, you are capable of using your own common sense in assessing the situation. I think this is a reasonable amendment because it is neither too open-ended, nor too lax; it is still quite strict.

The requirement to show a grossly disproportionate effect sets the bar very high. This would prevent people from abusing the system, and it reflects the kind of balance we should be seeking to achieve whenever legislation is being drafted.

Furthermore, the second part of the amendment provides for a review or assessment—essentially a report that assesses the new provision. That is absolutely critical, because it is possible that, two or three years from now, the legislation will be struck down.

It is important to remember that, as well as the fact that we may realize that this provision—

● (1605)

[*English*]

Mr. Brent Rathgeber: Point of order, Mr. Chair.

The Chair: Madam Mourani, there's a point of order. Before I hear from Mr. Rathgeber, that deals with an amendment later on. I think that probably is the point of order.

[*Translation*]

Mrs. Maria Mourani: I would like to finish making my first point. I would ask my colleagues to reconsider their decision. The whole purpose of the Committee's work is to try and improve the bill. I think Mr. Davies' first amendment brings a dimension that will make it possible to set aside the vast majority of cases. Whenever the offence involved is sexual assault, sexual interference, invitation to sexual touching, sexual exploitation or incest—it's very well defined —that person's name will automatically be listed in the registry. Automatic registration is not being removed. Whenever an individual commits a sexual offence, as laid out in Bill S-2, that person's name will automatically find its way into the registry.

Having said that, the additional dimension included in this amendment is such that consideration can be given to a situation where the offence is extremely minor and of little consequence. An example might be an 18-year-old boy and a 16-year-old girl who love and enjoy each other. If the parents are not in favour of the relationship and make a complaint of sexual assault involving a 15-year-old girl and an 18-year-old male, what is going to happen? Should that young man be labelled a sexual offender for the rest of his life, even though he was actually only involved in a consensual relationship with a 15-year-old girl? I think we have to consider these issues and allow the judge to determine whether the accused has proven that the effect of registering that individual would be grossly disproportionate to the public interest in protecting society.

Mr. Chairman, I believe Mr. Davies' amendment brings a new dimension that is worth considering.

● (1610)

[*English*]

The Chair: All right. Thank you, Ms. Mourani.

I have no other speakers on the list. Are we ready for the question on Mr. Davies' amendment?

(Amendment negatived)

(Clauses 5 through 63 inclusive agreed to)

The Chair: We have been supplied with an amendment, again by Mr. Davies of the New Democratic Party. I'm going to ask Mr. Davies if he would speak to his amendment to add a new clause 63.1.

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

This amendment would simply provide that two years after this current act receives royal assent, the Standing Committee of the House of Commons on Public Safety and National Security, or such other parliamentary committee as Parliament may designate, shall review and report to Parliament on the operation of the following provisions of this act: those provisions that would amend the Criminal Code to make subject to an order for automatic inclusion in a national registry the offences the act covers, and those provisions that amend the act to include the prevention of crimes of a sexual nature.

The reason is that there are two very substantial and profound changes to this act. The first, of course, is that the committee has, in its wisdom, now passed the provision for automatic registration; and the second is that we have added prevention of crimes to the purposes of this act.

I won't belabour the first point, but I think that because we've made such a substantial change to the legislation, we should have a review two years from now in order to see how that has worked out in practice, and to hear from law enforcement officials and the justice department about how that has worked. It would give us an opportunity to have an update on constitutional challenges to that section, because there may be a difference at that time.

I would point out that the original Sex Offender Information Registration Act, which was passed by the House of Commons in a previous Parliament, did provide for a mandatory statutory review, which resulted in this committee making an extensive review of this act. I would venture to say that this committee did some excellent work in reviewing that act, and I think we found some very important amendments and we took some important steps to improve the act.

One of them, of course, is that the previous act did not include putting vehicle licence plate or registration information into the registry. So we found that sex offenders who were using vehicles, perhaps around schoolyards, were not required to register their vehicles or licence plate numbers with the registry. We found that was a significant loophole in the legislation, and through the work of this committee we identified that.

So I think it's very important that we do the same thing two years from now, particularly when we've taken the substantive move of going from a prosecutorial and judicial discretion process to one that's automatic.

The second and final point of this is that we have added prevention to the purposes. Now, we're all in favour of prevention, but we don't really know what that means in the context of this act.

When this act was drafted careful parliamentary work was done and wording was created to specify that the purpose of this act is to keep communities safer from sex offenders while also recognizing that the rehabilitation of sex offenders is an important part of that. Again, I'm not just talking about rehabilitation of sex offenders vis-à-vis helping the sex offender. In terms of community safety, the framers of the legislation recognized that we have an interest in making sure those sex offenders do have successful rehabilitation to keep us safe from a reoffence. That's why there were certain privacy protections put in for the sex offender, because interfering with their rehabilitation was considered to actually have detrimental effects on their rehabilitation, which would in turn threaten public safety. Because we've added prevention now, and we've given police the ability to access the registry—not once an act has been committed, but at any time—I think we need to review that.

My final point will be this: under the previous legislation, the police could access the registry only if they had reasonable grounds to suspect that a crime of a sexual nature had been committed. We all agreed that was too tight a test, and that police need to access the registry in far looser circumstances. One of the examples was that if a child went missing and a mother or a father phoned in but they weren't sure that the disappearance was of a sexual nature, police would be prevented from searching the registry. We all agreed that was unacceptable.

So we all agree, as committee members, to expanding access to the registry. But when we add “prevention of a crime”, we leave open the possibility that police could actually go, let's say, to an offender's place of work. They could interfere in a detrimental manner with that offender. And my prime concern is that doing so would possibly interfere with the offender's rehabilitation and thus leave us less safe.

● (1615)

For all those reasons, I would suggest that this committee put in a clause as I have proposed that would cause us to examine this legislation, particularly those two those aspects of the act, two years from now. Let's see how those things are working. We may need to fine-tune this legislation to make it even more responsive to public safety and to keep Canadians safe from sex offences, which is the goal of all of us.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Davies.

I don't have any other speakers on this. Are we ready for the question?

Madam Mourani, the addition of this would become clause 63.1, and it would be an addition immediately following clause 63, which we just passed.

Madam Mourani.

[*Translation*]

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

I would like to ask a brief question before making my comments. If I correctly understood Mr. Davies' explanation, two years from now, a report would be prepared on what is stated in paragraphs (a) and (b) with respect to the provisions of the bill that is going to be passed, and particularly automatic inclusion in the registry. Is that correct, Mr. Davies?

[*English*]

The Chair: Mr. Davies.

Mr. Don Davies: It would be automatic participation and adding prevention.

[*Translation*]

Mrs. Maria Mourani: Yes, prevention. I wanted to be sure my understanding was correct.

We will also be supporting this amendment, for the simple reason that we will be introducing a new way of doing this that is far less restrictive, but at the same time essential and important, because the previous process allowed some offenders to avoid inclusion.

In a way, we will be closing the loop. This tightly closes the loop, and since we did not pass the first amendment, which would have given judges greater discretion over the least problematic cases, it seems to me it is even more critical that there be a report.

Furthermore, taking two years to assess new legislation is a good thing. At the same time, I am concerned about how effective this registry will actually be, since everyone will be included. Will the data be accurate? Will there be enough money to manage the data base? That's fundamental.

The best example is the current no-fly list. It includes minors, and gives rise to false positives and false negatives. It includes anyone and everyone, which means that people don't have the right to fly. Let's compare that to the situation of accused persons who automatically appear in the registry, even though the judge and even the prosecutor do not want them to be included. We will end up with a very long list.

First of all, that means there will need to be money to pay for this. I hope the government won't do what it generally does, which is to pass laws without investing any money. I hope there will be money there.

I also hope there will be quality control of the registry. We wouldn't like to see people being deprived of the right to work in a daycare centre because they have a name similar to that of someone who appears on the list. I hope all of that will be considered under this legislation.

So, it is important for there to be a report setting out all of the potential shortcomings of the list, and how much it's costing, so that we know whether the government has invested the necessary funding to ensure that the list is effective and enforceable

We will also need an evaluation report setting out whether the registry is effective and has actually made it possible to prevent sexual offences. All of that is absolutely critical, because it can only help us to be better and have better legislation.

It's possible that the current legislation is flawed in terms of its enforcement. There is no way of knowing whether a law is defective or inappropriate if it's not being enforced.

That's why, two years from now, this report should be able to tell us whether the legislation is appropriate and effective and whether the funds necessary to enforce it are available. That is fundamental.

I am surprised to see that government members, as well as Liberal members, do not seem to be reacting. I am very surprised by that. I expect Liberal colleagues to support a review of the legislation two years from now, and I expect the same from the government.

You have to be sure that this is right. You should be happy that someone is proposing a review of the legislation two years from now. I don't understand why there is no reaction. I hope I am wrong, because I have serious concerns about passing legislation without wanting to know more about how it works or whether or not it is effective.

We will pass legislation, and people on the ground will not have an opportunity to tell us whether it is good or not, and we just won't pay any more attention to it. It makes no sense.

● (1620)

We have to do what is necessary; we have to ensure that this legislation operates effectively on the ground. We also have to ensure that it is enforced; we're not just passing legislation for the sake of it. The best example would be the law we passed in 1995 on human trafficking. Fifteen years later, we have nothing. As I recall, there have been three, four, five or possibly six convictions for trafficking in Canada. Laws that we pass have to be effective, because otherwise, there is no point; we are wasting our time and taxpayers' money.

The best way to assess the effectiveness of a law is to test it. So, we are going to test it. However, if we test it and we have no report subsequently, we are not doing anything. We will simply be producing another law without knowing whether or not it works.

That is fundamental, Mr. Chairman. We should at least consider this amendment and reflect on the fact, as a group working together, that we need to take the time, two years from now, to assess the relevance of that legislation. I therefore invite all my colleagues, in good faith, to support this amendment, which I know is both worthwhile and important.

Thank you, Mr. Chairman.

[*English*]

The Chair: Thank you, Madam Mourani.

Let me also add that committees are able to take up studies and look at effectiveness of bills at any time. Even if this amendment doesn't pass, the option is there for a committee to pick it up.

Mr. Holland.

● (1625)

Mr. Mark Holland: Thanks, Mr. Chair.

I have two points to make. My first point is the one that the chair just made: the committee always has the opportunity to review an issue if it doesn't feel it's working. So I don't think there's a need to support this motion, and there certainly isn't a need for the kind of urgency I'm hearing.

The second point, and it's just as important, is the fact that this is modelled after Christopher's Law in Ontario. This is something that is in place, working, and seen to be highly effective. This committee has just taken a lengthy period of time to review that law, and we have seen it to be effective.

So I don't understand or see the need for it, and on that basis won't be supporting it.

The Chair: Thank you, Mr. Holland.

Ms. Mourani.

[*Translation*]

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

I understand my colleague's position based on the Ontario example. However, don't forget that Ontario is a province. It passed a bill and now has a registry which operates based on its own criteria and parameters. That does not necessarily mean that when it's in place across Canada, and therefore affecting a larger proportion of the population, the effect or scope will be the same.

We're talking about one population and comparing it to a larger one. Will the registry have the same effects? Will it include the same number of offenders? Who will it operate? We're not sure.

If the Ontario model is working, that's great. Surely they have to review it there as well, to make adjustments. However, we cannot make comparisons saying that if it worked in Ontario, it has to work in Canada. We can make that assumption. We can assume that this model will work as well in Canada, but there is no guarantee. We have to review it in order to be sure. It's quite true that the Committee can look at this at any time and that it can review any matter it decides to. However, this amendment would require it to carry out such a review, so that it would no longer be based on whether the Committee felt it was necessary or not.

Mr. Chairman, members of Parliament come and go. Governments also come and go. Now, the situation around this table is what it is. It may be different two years from now. We don't know. Today we may all be very interested in reviewing the national sex offender registry, but two years from now, the people sitting at this table—may not be us—may not be interested in looking at whether this legislation is effective.

However, if it is an obligation under the act, they will be required to do so. They will have to look at this. Do you understand the difference, Mr. Chairman? It's a significant one. It may seem to be a minor distinction, but it is actually a very important one.

That's why I invite my colleagues to reconsider their position. We are all human, we are all entitled to make mistakes; that's what makes us human. So, we cannot say that we are 100% certain that all the laws we pass are perfect, because we are basing ourselves on an example either in Ontario or elsewhere in the world.

Let's look at the American example. It doesn't work. There is the infamous problem of false positives and the fact that people are included whose names should never have been there. The best example I can give you is the 18-year-old boy and the 16-year-old girl who are in love. That's really the typical example.

What are we seeking as a society? Do we want our young people to end up in a sex offender registry because they had sex with a 14-year-old girl? I don't understand. Do we want to make a judge powerless and force him to say to an 18-year-old boy that he is sorry, because if he had anything to do with it, he would not have included him in the registry? Unfortunately, because there is no loophole there, and even though he knows that the young man's name should not be in the registry, and even though the young man himself and his lawyer could demonstrate that his name should not be included, it's too bad, but the legislation forces a judge to include him in the registry.

Mr. Chairman, I have learned one important thing over my years in Parliament. When you include someone's name in a registry, it's extremely difficult to remove it afterwards. The best example of that are the people who are on a no-fly list. They have to fight and go to extreme lengths to have their name taken off the list because they are no longer allowed to fly. They are prohibited from flying. Why? Because their name resembles that of another supposed terrorist.

● (1630)

Again, we're dealing with assumptions. You may say that in the case of a sex offender registry… the person is charged and convicted of a crime, and so on. I understand all of that. However, in the exercise we are engaged in today, I think it's a shame we will be giving no opportunity to a judge to decide whether the person appearing before him could or should not be included in the national sex offender registry because, for example, the individual in question, who is an 18-year-old boy, had a relationship with a 16-year-old girl—he loves her, but the parents do not approve. I can imagine that happening. There are all kinds of scenarios that come to mind.

There is another more ridiculous scenario I could point to: one involving a man who is bathing naked—you obviously have to be naked when you bathe—in his bathroom, with the window open, and someone sees him. He is accused of being an exhibitionist. The lady across the street has a fit, exclaiming: “Good heavens, what is this? He is walking around naked! That's not right! I'm calling the police. He is an exhibitionist, officer.” Then the man is told that he was seen, not only by the lady on the first floor, but also by a little 2-year-old girl, etc. And this fellow ends up in court. You're an exhibitionist, are you? So what are we going to do? Put his name in the sex offender registry, without giving him any opportunity to prove that including him in the registry is not really useful? That is the substantive question we should be asking.

And there is another question, which concerns me greatly: will this registry be effective? Witnesses who came before the Committee told us that there are too many names in the registry—like the U.S. example—and that it's not effective. We need an effective registry which clearly identifies sex offenders. We need to put money into it, and we need to be able to assess it. It's true that the registry is already in place, but because of this new way of managing it, we have to know whether it's working or not. And that requires an evaluation—not a “possible” or “probable” evaluation, “if the Committee feels like it”. There has to be a statutory requirement with respect to the registry.

In closing, I'd just like to say that it is critical that this bill be evaluated, but not based on the whims of certain members of the Standing Committee on Safety and National Security who may be sitting at this table two years from now; it has to be prescribed by law. It doesn't commit you to anything. In fact, when you are sure of yourself, and when you know you have a good law, you shouldn't be afraid to have it reviewed subsequently. Why this fear? I can understand as regards the first amendment, which gives the judge that option, and there is reverse onus on the part of the client. It may be ideological, and depending on the period, we may be a little further to the right or to the left. However, when it comes to a report, how can we not agree?

The only thing I can see is that people are clearly not interested in being told two years from now that this registry may not be that effective. I would just like to say one thing, Mr. Chairman.

● (1635)

If, two years from now, I am still alive and am sitting in front of you or in front of your chair—because you may not be there at that point—I will request such a report. That is something I can say; in fact, it's already in writing.

Thank you, Mr. Chairman.

[*English*]

The Chair: Thank you, Ms. Mourani.

Seeing no other debate—and Ms. Mourani having no other examples of the registry—are we ready for...?

Go ahead, Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet (Montcalm, BQ): I would like to continue along the same lines as what Ms. Mourani has just said. A thought came to me: if it's a majority government and it doesn't want to do this, what happens then?

Earlier, Mr. Chairman, you said that the Committee can meet at any time to review the effectiveness of the legislation. However, what happens if the Committee cannot do that?

I intend to be polite with you. In my opinion, the Liberals expect to return to office one day. They don't want to hurt anyone because, at some point, they will be sitting on the other side. I can't stand that kind of thing, to be perfectly frank. When I hear the Liberals and Conservatives talking about a coalition… There is already such a coalition in terms of every bills that's considered, because they are certain to regain power one day. The Bloc will never form a government, I can assure you of that. As for the NDP, I hope they can, but I'm not at all certain it will happen.

Ms. Maria Mourani: We don't want your power. Ah, ah!

Mr. Roger Gaudet: You know what I'm driving at. You'll note that for every single bill, there's a coalition between the two.

I'll give you another example: a 17-year-old boy and a 17½-year-old girl who sleep together. When the girl turns 18, and the boy is only 17½, if the girl's mother doesn't want her daughter to go out with the boy anymore [*Editor: Inaudible*]. Be very careful, because the way it is currently drafted, it's a very bad bill. It's a purely ideological bill; nothing more.

Thank you very much.

[*English*]

The Chair: Thank you, Mr. Gaudet.

Seeing no other debate on this, are we ready for the question on the amendment?

(Amendment negatived)

(Clauses 64 and 65 agreed to)

The Chair: Back to the beginning, shall the schedule of the bill carry?

Some hon. members: Agreed.

The Chair: Shall the short title of this bill, clause 1, carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill to the House?

Some hon. members: Agreed.

The Chair: Folks, I think that—

Ms. Alexandra Mendes: Mr. Chair, don't we have to go back and do clause 1?

The Chair: We did.

Ms. Alexandra Mendes: We did? Oh, gee, that was quick. Sorry.

The Chair: Yes, it doesn't take long around here. If you take more than six seconds for a coffee break, you could miss the passing of a bill.

Thank you very much. This will be reported back to the House.

I would remind you again to submit your witness lists for the different studies that are coming up. I have also been told that the second version of the mental health report will be circulated by our clerk tomorrow morning, so you will get that. If you have a chance, take a look at it. We look forward to finishing off that report as soon as possible.

Madam Mourani.

● (1640)

[*Translation*]

Mrs. Maria Mourani: Mr. Chairman, am I to understand from your comments that we will not be starting our work on the report dealing with the Correctional Service and mental health?

[*English*]

The Chair: No, we are; it's on the 18th.

[*Translation*]

Mrs. Maria Mourani: Because all the parties had agreed that, if we finished Bill S-2 today, we would immediately tackle the report on the Correctional Service. It is now 4:30 p.m. and we have an hour left.

[*English*]

The Chair: I'm told that we don't have the latest copy of the report here.

The other point is that Mr. Davies made a suggestion.... But the point is that the report isn't available.

[*Translation*]

Mrs. Maria Mourani: Mr. Chairman, if you look at the schedule we passed a little earlier, you will see that today's meeting is not shown. That was the agreement, needless to say. I'm sure Mr. MacKenzie will support what I just said. We agreed that we would immediately tackle our work on the report. We still have 45 minutes left and it would be a shame to waste that time because we can at least get started on it now.

That is what all of us had agreed to do. The schedule that was sent out also reflected that. I would like to hear from Mr. MacKenzie on this.

[*English*]

The Chair: The government and all opposition parties were very much prepared to begin that report, but the report is still in electronic form and it has not been printed. It's not a problem with anyone backing out; it's a problem of not having the report in paper form. That is why my question earlier in regard to.... Was it October 18 that we were going to go late?

A voice: Yes, sir.

The Chair: The intention is that when we begin on the Monday that we're back we will just continue, bring in the dinner for the evening, and we will finish it.

Part of the reason is because it wasn't printed. You're very correct that it was the agreement that if we had extra time today we'd begin to work on it, but for some reason it wasn't able to be printed.

[*Translation*]

Mrs. Maria Mourani: Mr. Chairman, I can't say that I forgive you, because you are not the guilty party, but I am a little disappointed that Mr. Préfontaine did not arrange for this to happen.

In my opinion, we have already done some very good work on the report. Furthermore, when all party representatives got together for a meeting yesterday, we agreed to move forward. I was expecting to see a draft. That being said, we will be here on the 18th, possibly until 2:00 a.m.

[*English*]

The Chair: I want to assure everyone that the reason we did this wasn't that we may finish it early on the 18th and then not have dinner; we are going to have dinner, regardless, on the 18th. So we will try to finish that.

I apologize on behalf of the table for not having that ready.

If there's no other business, then, we will adjourn.

Thank you to all.

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