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## Tuesday, November 22, 2011

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## Chair

**Mr. Dave MacKenzie**

# Standing Committee on Justice and Human Rights

**Tuesday, November 22, 2011**

● (1535)

[*English*]

**The Chair (Mr. Dave MacKenzie (Oxford, CPC)):** We'll resume the meeting.

(Clauses 105 to 107 inclusive agreed to)

(On clause 108)

**The Chair:** The NDP have a couple of motions, NDP-29 and NDP-30, if you'd like to move them.

**Mr. Jack Harris (St. John's East, NDP):** I'd like to move NDP-29.

**The Chair:** Okay.

**Mr. Jack Harris:** NDP-29 takes on the first principle, I suppose, of what the government is trying to do here, which is unnecessarily punitive and contrary to the rehabilitation of someone who has been an offender. We already know, those of us who understand the pardon system, that the purpose of a pardon is to provide an opportunity for someone to get a new start. Having committed an offence they can rehabilitate themselves, demonstrate that they are now of good character, and be able to go forward. The idea is that an individual has made a mistake, has done something wrong but wants to be able to move forward, and there having been a proper evaluation of their circumstances, it allows them to have a situation where they can say yes, I did make a mistake but I was granted a pardon.

One of the oddities of this particular approach the government is taking here is that they've replaced the word “pardon” with a brand-new notion called “record suspension”. Now I practised law for 30 years. This is a strange and odd new notion. Since 1970 one could get a pardon from the parole board. That has a meaning out there in the public and in the minds of people who want to rehabilitate themselves. People who have obtained a pardon are very proud of the fact that they have applied for a pardon. They've been subject to the scrutiny and inquiries being made by the parole board, normally an investigation done by the RCMP, that results in the grant of a pardon. It doesn't mean they never had a record, but it means that the decision has been made that it's not.... In fact, under the human rights codes of the country it's not permitted to discriminate against someone who has committed an offence for which a pardon has been granted.

Now there still is, and this is going to cause some confusion, something called a pardon. That pardon is by virtue of the royal prerogative. In other words, Her Majesty the Queen, acting by the cabinet, can issue a pardon to someone by virtue of the royal prerogative. This has always been the case going back to the kings and queens of England. That's left in the legislation somehow or other to distinguish it as a result of this legislation from a pardon obtained by another legal process.

The other legal process is the one we have now. It assists the individual with a criminal record in moving forward in his or her rehabilitation and enhances the safety of communities by motivating the individual to remain crime free and to maintain good conduct. You know, it doesn't erase the conviction. The conviction can be used for the purposes that we would want it to be used for. It doesn't cancel legal obligations under the Criminal Code to register, for example, if someone has a firearms prohibition, or some sort of driving prohibition, or there are still exceptions with respect to the flagging of someone's name in the CPIC database. If there's a sexual offence, it doesn't remove any other legal obligation. Also the name, date of birth, and last known address of the person who has received a pardon or a discharge may be disclosed to a police force if a fingerprint identifying that person is found at the scene of a crime.

It doesn't remove the record entirely, but what it does is give that person a sense that they have been granted a pardon that allows them to assist in their rehabilitation.

We've heard a lot of information about this. This amendment is particularly devoted to the notion of changing “pardon” to “record suspension”. Howard Sapers, the correctional investigator, said to our committee, in respect of the use of the word “pardon” versus “record suspension”, that legal language is extremely important. It has to be clear. Simpler is better. The words have deep meanings to people when they're involved with criminal justice, and “pardon” does have a particular meaning that is useful.

Professor Michael Jackson, University of British Columbia professor, an expert on criminal justice, talked about what happens in terms of the impact on changes to the pardon. He talked about the kind of people who end up seeking pardons for the kind of offence that might be committed by children or grandchildren. Someone who's convicted of a summary conviction, for example, could be a person—these are his words—who gets a little drunk on a stag night or at a university celebration, punches someone, and is convicted of common assault, or it could be a conviction for a drug offence. There's an entire raft of things that some young people may commit in the immaturity of young adulthood that they would like to have removed.

The record suspension merely sounds like—and I say this as someone who's practised criminal law in the past. To the people, in the lingo of people on the street who know about these things, record suspension almost sounds like a suspended sentence. In fact, that's the implication of all this, that it's temporary, that it's conditional, that somehow we'll put it on this list for now but it's not really meaningful.

That's incredibly important. There doesn't appear to be any real argument in favour of it. It seems to be designed to increase the intensity of punishment here without offering any redemptive value. We often talk about rehabilitation, and that's pretty important, but a pardon gives us a notion of redemption as well, that even though you have committed a crime.... If you look at the stats, 96% of people who are granted a pardon never have that pardon revoked. I have some stats here on the kinds of offences that people are convicted of that receive pardons, and the vast majority of them are in relation to matters like impaired driving—simple summary conviction matters like drinking and driving, assault, theft, and drug-related crimes.

● (1540)

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** Sorry. I was just curious if I may be on the wrong section. I thought we were dealing with the long title of the Criminal Records Act and actually replacing the word “relief” for “suspension of the records”. We're just changing the title to accurately reflect what is actually happening in the code.

Am I on the right path, Mr. Chair? I'm just curious. It appears that we're on some other clause.

**The Chair:** That's what we're on: the title.

**Mr. Brian Jean:** It doesn't say “pardon” anywhere in the change or in fact in the old or new language. It's just simply replacing the word “relief” with “suspension of the records”.

**Mr. Jack Harris:** I'd like to thank the chair for the clarification and continue with my argument.

As the member knows, the entire clause that we're dealing with here, changing the name of the Criminal Records Act to talk about suspension of records when the majority of the act talks about pardons.... The majority of the changes here, in addition to preventing people from getting pardons—changing the definition of “pardon”, dealing with the whole aspect of removing the possibility of people actually getting pardons unless Her Majesty the Queen gives a pardon by way of royal relief.... That seems to me to be a significant change.

We would like to start by taking out of the long title this whole implication that this is about suspension of records as opposed to providing relief for people who have been convicted of offences and who have subsequently rehabilitated themselves. Clearly, the intention in the long title is to talk about record suspensions for people who have rehabilitated, not pardons. That's what it's all about. That's why we have this amendment.

We want to make it clear from the outset that we're not interested in seeing the loss of this redemptive and important opportunity for young people. It's not necessarily only young people, of course, but also people who have shown by their conduct, to a demonstrable effect, that the parole board takes their application seriously and grants a pardon. This is an important aspect of a rehabilitation system in our criminal justice paradigm.

I'm not raising this as a frivolous thing at all. It is in fact extremely important that we support rehabilitation by allowing the continued consideration of pardons. This is the kind of amendment that I would hope persuasion at this committee level would actually have some effect on those opposite.

We all have children, grandchildren, brothers, sisters, brothers-in-law, and sisters-in-law who may run afoul of the law. As we noticed, a lot of these offences are impaired driving charges, or something like that. Somebody who seeks rehabilitation and seeks to restore their good name in their community and their reputation can hold their head up high and say, “Yes, I may have done something wrong, and it's clear that I did, but I have gone to the trouble, as a responsible citizen, to demonstrate my rehabilitation, to apply to the parole board, and they have recognized, after inquiries and a report and a study being done, an investigation and report by the RCMP—”

● (1545)

**The Chair:** Just to let you know, it's eleven and a half minutes.

**Mr. Jack Harris:** Thank you, Chair. I appreciate that. I don't know if that includes the erudite point of order.

**The Chair:** You'll be shut off.

**Mr. Jack Harris:** I'll be mindful of that, sir, if I could just make my point.

I think it ought to be persuasive that if the real intention, as stated on the other side, also consists of having a rehabilitative effect, then this is something that ought to be reconsidered. We'd like to start with clause 108 and have a change made.

**The Chair:** Mr. Woodworth.

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Thank you, Mr. Chair.

I want to support the point made a moment ago by Mr. Jean, that in fact if you are simply looking at this particular clause, we are replacing the word “relief” with the words “suspension of the records”. Quite frankly, that, in my view, brings greater clarity to the long title than the word “relief”, which is quite undefined.

Apart from that, I'm glad Mr. Harris had a chance to expound on the distinction between a suspension of record and a pardon, because I know there are other upcoming provisions in which this issue applies.

In that respect, I want to say that I too practised law for practically 30 years. I was about three months short of it when I got elected. I had extensive practise in criminal law, both in defence and in prosecution. I had many clients who applied for pardons, and in all of my practice, I think the issue of pardons was the one that most confused people.

After all, most people, when they hear the word “pardon” think that's a pardon for life. How many of them really understand that a pardon can be revoked? Actually, a suspension of a record is a more accurate way of describing what the practice has been under the word “pardon”. It's really a more accurate way of describing it. Indeed, people would think that when they were pardoned, that record of conviction would be wiped totally off the face of the earth. But nothing could be further from the truth. The record still remains and is subject to being reactivated and used for a variety of purposes.

I am not one of those lawyers who likes a law that is purposefully vague and misleading. I would much prefer a law that actually says what it is we're doing. In fact, even pardons really only were a suspension of record. I think it's a much more accurate phrase.

Thank you.

**The Chair:** Thank you, Mr. Woodworth.

We will now vote on NDP-29.

(Motion negatived)

● (1550)

**Ms. Françoise Boivin (Gatineau, NDP):** We almost got that one.

**The Chair:** If you will move NDP-30, Mr. Harris, I have a comment as soon as you move it.

**Mr. Jack Harris:** You give me pause.

**The Chair:** You can withdraw it if you'd like.

**Mr. Jack Harris:** No, I'll move it, Chair. I will see what you have to say.

**The Chair:** Okay. It is inadmissible. Bill C-10 amends the Criminal Record Act to substitute the term “record suspension” for the term “pardon”. This amendment proposes to replace “record suspension” with “pardon”. As *House of Commons Procedure and Practice*, second edition, states on page 766:

> An amendment to a bill that was referred to a 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 deletion of a key element is contrary to the principle of Bill C-10 and it is therefore ruled inadmissible.

We now move on to clause 108.

**Mr. Jack Harris:** It's clause 109.

**The Chair:** We haven't passed clause 108 yet.

**Mr. Jack Harris:** I see, okay.

The time allocation deals with all of clause 108, I presume.

**The Chair:** Yes, it said by clause.

**Mr. Jack Harris:** All right.

(Clause 108 agreed to)

(On clause 109)

**The Chair:** You have amendment NDP-31, Mr. Harris.

**Mr. Jack Harris:** NDP-31 is to delete lines 33 and 34 on page 62. That is the repealing of the definition of “pardon”. I would like to speak to that, and perhaps my colleague Madame Boivin would like to speak as well.

I will state briefly that despite the argument we just had, clearly what this government is seeking to do, as Mr. Woodsworth pointed out—

**Mr. Stephen Woodworth:** On a point of order, Mr. Chair, I know that my colleague and I have not been that well acquainted, but I am frequently mistaken for a great Canadian by the name of Woodsworth. That is not, however, my name. It is simply Woodworth.

**The Chair:** Thank you.

**Mr. Jack Harris:** I would have called you Wordsworth if that was the case. But thank you for the correction. I don't know if I just misspoke or actually mistook your name. I did think it was Woodworth, but I may have added an “s” at the end.

The deletion of lines 33 and 34 effectively removes the definition of “pardon” being revoked in subsection 2(1) of the existing act. If I can find my copy of the act, which I just had here a moment ago, I'll read out the definition, because I think the definition does refer to a pardon granted by the board under section 4.1 of the existing act.

Under section 4.1—and this is why the definition of “pardon” is important—the board is entitled to grant a pardon for an offence if they're satisfied that the applicant has been of good conduct and has not been convicted of another offence under an act of Parliament, and in the case of an offence referred to in paragraph 4(a), granting the pardon at that time would provide immeasurable benefit to the applicant, would sustain his or her rehabilitation in society as a law-abiding citizen, and would not bring the administration of justice into disrepute.

So it's important to recognize the role that a pardon plays and the use of the term “pardon”, if you are changing the definition and substituting for it a definition of something called a “record suspension”, which means a measure ordered by the board under section 4.1. This whole aspect of recognizing that if an offender has been of good conduct, the granting of the pardon would provide a measurable benefit to the applicant and maintain his or her rehabilitation is an important object to be achieved. Deleting the definition of “pardon” takes away that possibility for continuing and assisting and sustaining the rehabilitation of an individual as a law-abiding citizen, and that fact is particularly important.

We keep hearing from members opposite in the House about law-abiding citizens and how important law-abiding citizens are to their arguments on various matters. This is a measure aimed at assisting people to be and to continue to be law-abiding citizens. It's right here in the Criminal Records Act, and up until now, the granting of a pardon has been a mechanism that's widely accepted as a means of doing that.

I listened carefully to Mr. Woodworth's comments on what he called “confusion”. There is no confusion. Everybody understands what a pardon is, even though it may be revoked. I think people who are granted a pardon—and I haven't heard of a recent granting of a pardon—are told that the pardon can be revoked if they commit another offence under the act. As it turns out, of course, 96% of people who are granted pardons never have their pardon revoked. And why is that? Well, it's because the system is working. People who are granted pardons are almost guaranteed, with the exception of 4%, to sustain their rehabilitation as law-abiding citizens. I think that's a remarkable achievement of one aspect of our criminal law system, and I think it's something we ought not to interfere with unless there is a good reason, and I haven't heard a single one yet.

I believe my friend Madam Boivin would like to continue with respect to clause 109 of this legislation.

● (1555)

**The Chair:** We're down to about five minutes.

**Ms. Françoise Boivin:** Thank you, monsieur le président.

[*Translation*]

To continue along those lines, I think it is even clearer in the French version. The more I look at the text of Bill C-10, the more I see that there will be polishing to be done to the translation. Perhaps this type of consideration is not the aim of the committee, but if I had a recommendation to make to the government and its legal experts, it would be to clean it up a little. Subsection 109(1) of the French version reads: "*La définition de « réhabilitation », au paragraphe 2 (1) de la même loi, est abrogée*." The English version reads as follows:

[*English*]

The definition “pardon” in subsection 2(1) of the Act is repealed.

[*Translation*]

We can clearly see that the whole system was devised around the concept of rehabilitation. What strikes me in this bill—and we will have an opportunity to come back to it again in the context of other sections and I am sure my colleagues will also have things to say about it—is that we are talking amply about criminality, minimum sentences and so on, but when someone has served his or her sentence—and in many cases, the sentence will be increased once the bill has been adopted—access to the provisions under what was previously called the Criminal Records Act will be complicated.

We are talking about rehabilitation. A number of legal experts are here around this table. Many of them have practised in this field. All kinds of cases have been seen, including extreme cases where people have received pardons that they did not deserve. The statistics that Mr. Harris mentioned indicate that 96% of people who have obtained a pardon never saw this pardon revoked. That means that only 4% of them have had their pardons revoked. Sometimes we amend legislation because of small percentages, but I would like it if these small percentages didn't exist. So we need to find good solutions to ensure that these situations do not happen.

Having said that, I am not convinced that the amendments we are making to the criminal record provisions of Bill C-10 are going to help us achieve what we are trying to do, which should be our aim. We want to ensure that these people have paid their debt to society and that their subsequent reintegration into society goes well. I am not convinced that the pardon, which will not be called the suspension of the criminal record, will help them in that regard. It wasn't easy to obtain one previously. I don't know if any of you have recently helped someone eligible for a pardon. If you have, you know how long it takes. We are going to talk about how long it takes before going into the right to the suspension of the criminal record. It is not clear that this is going to have the desired effect and that it is not instead going to create hardened criminals who, normally, would have deserved a second chance at this stage. I repeat: by repealing what these provisions are based on, meaning the very definition of rehabilitation…

I just have one minute left, Mr. Jean.

● (1600)

[*English*]

**Mr. Brian Jean:** I have a point of order, Mr. Chair.

There was an NDP motion that was passed unanimously by this committee last Thursday to limit time. I believe we're at 10 minutes, or very close—

**The Chair:** We're not.

**Mr. Brian Jean:** But, Mr. Chair, I just want to—

**The Chair:** If we take out the time of your point of order, we're at less than nine minutes.

**Mr. Brian Jean:** I understand, Mr. Chair. But I know Mr. Harris has a stopwatch in front of him. We had 11 minutes of submissions by Mr. Harris in relation to a title, and I recognize now that we are going into what I would consider to be a filibuster.

I wanted to put it on the record, Mr. Chair—and I'm sorry, but it is a point of order, and we have gone over it several times. We agreed we would be lax and flexible in respect of good faith, but this has gone beyond good faith; it has gone beyond flexibility. It's a situation in which I feel that clearly there's a filibuster going on, a 10-minute filibuster per clause.

It's his right to do this, but I want to put on the record that I will have to be whipped in order to agree to adjourn this matter before midnight, at this stage, because I am not going to sit here and deal with this just on the basis of being able to extend it and then adjourn before six o'clock tonight. I am not prepared to agree to an adjournment before midnight on this basis.

**The Chair:** That's your choice. At this point, they're at eight minutes and 59 seconds. The clerk has been keeping the time.

With all due respect, the time has been taken on amendments. I don't think that's unrealistic, and—

**Mr. Brian Jean:** I understand, Mr. Chair.

**The Chair:** —as everybody agreed—

**Mr. Jack Harris:** To that point of order, Mr. Chair, we did reach a compromise agreement last week as to how we were going to proceed; we agreed to 10 minutes per clause. There are many clauses that have to do with this. We're not taking 10 minutes on very many clauses, frankly. So the fact that something is of importance enough to have me speak twice, and Madame Boivin has spoken for less than five minutes, and there may be one or two others who want to speak on the issue of pardons, because we think it's important, and you have very many clauses affected....

I think it's not really in keeping with our agreement that we should not be able to do this. This is not a filibuster; this is an attempt to put on the record the concerns that various members of our committee have about the whole change that is taking place here, which we think is important.

Why that would be a point of order and a point of breach of good faith is beyond me, frankly.

**The Chair:** Ms. Boivin, continue.

[*Translation*]

**Ms. Françoise Boivin:** Yes, exactly, especially since I was at only the third of my five minutes. So why invoke a point of order on something that had nothing to do with what I was saying?

Overall, we are against this because this is a complete shift that is distancing us from what the concept of a pardon was previously based on, which was linked to rehabilitation. We need to keep in mind that the people targeted by this have already paid their debt to society and that they have served their sentences, either in prison or elsewhere.

So that is the basis for most of the amendments we are putting forward for this part. This is why, with this amendment, we are asking that the two lines in question be removed. That's all.

● (1605)

[*English*]

**The Chair:** We have now used up 10 minutes of NDP time.

(Amendments NDP-31 and NDP-32 negatived)

**The Chair:** Shall clause 109 carry?

(Clause 109 agreed to)

(On clause 110)

**The Chair:** Ms. Borg.

[*Translation*]

**Ms. Charmaine Borg (Terrebonne—Blainville, NDP):** Thank you.

I am going to express my disagreement with this clause. I think that all the members of the party share my opinion.

I want to draw your attention to the French version of the bill, which previously spoke about rehabilitation. We are moving from rehabilitation to record suspension. I think these are really strong words. It's a significant change in language. We are seeing a shift and we are moving further away from the idea that there can be safe communities through rehabilitation and preventive measures.

So we are opposed to this clause that, once again, puts forward the idea of record suspension and imposes the related vocabulary and language, which takes us away from—

[*English*]

**The Chair:** Excuse me, Ms. Borg—

**Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC):** On a point of order, Mr. Chair, in that clause 109 has been passed, which defines a record suspension, and that clause 110 is simply seeking to include the word “record suspension” now, to refer back to that, I don't see that this can be debated, as to whether it should still be called a record suspension or not. It has now passed. This is the name of it, is it not?

[*Translation*]

**Ms. Charmaine Borg:** I understand your point. But I am explaining why we will vote against the clause. Please let me explain why I am going to vote against it. I am fully capable of expressing why our party will vote against it. We will vote against it because it includes the words "record suspension".

May I, Mr. Chair?

[*English*]

**The Chair:** Yes.

[*Translation*]

**Ms. Charmaine Borg:** Thank you.

As I was saying, the expression "record suspension" distances us from the vocabulary related to the principle of rehabilitation. It's a very significant change in language, and symbolic for the criminals who will leave prison, who will have paid their debt to society, who will have done their time and will have a record suspension. These words do not have the same meaning for someone who has perhaps spent 20 years in prison and who really wants to reintegrate into society, re-establish his or her life or start a new life, work and forget the mistake.

But the record suspension would only suspend the record, which could be re-opened at any time. I know full well it's the same thing for people who receive a pardon: they can go back at any time. It's the change in what the expression symbolizes that is important.

We also need to remember that most people do not reoffend once they are released from prison. We should let these people be pardoned for their crimes, even though the discretionary authority to truly pardon someone lies with the Crown. These are two different things. I am well aware of that. But I think we need to recognize what this new expression symbolizes, especially in French. It really moves us away from the vocabulary around the principle of rehabilitation. I don't think that this is the direction the Criminal Code and criminal justice should take.

Would my colleagues like to add anything?

[*English*]

(Clause 110 agreed to)

(On clause 111)

**The Chair:** If you would move amendment NDP-33, Mr. Harris, I have some comments.

● (1610)

**Mr. Jack Harris:** The motion is to amend clause 111 by replacing lines 28 and 29 on page 63 with the words:

> application for a pardon, to decide whether to revoke a pardon under

**The Chair:** I would suggest that Bill C-10 amends the Criminal Records Act to substitute the term "record suspension" for the term "pardon". This amendment proposes to replace "record suspension" with "pardon".

As *House of Commons Procedure and Practice,* second edition, states on page 766:

> An amendment to a bill that was referred to a 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 deletion of a key element is contrary to the principle of Bill C-10 and is therefore inadmissible. So I would rule that your amendment, motion NDP-33, is inadmissible.

**Mr. Jack Harris:** Mr. Chair, the amendment is clearly aimed at avoiding the consequence of changes that were being proposed to change "pardon" to "record suspension". We have made it very clear that we're opposed to that.

**The Chair:** I've ruled it inadmissible.

**Mr. Jack Harris:** I know you've ruled it inadmissible. But I'm speaking to clause 111 as it stands right now.

**The Chair:** Okay.

**Mr. Jack Harris:** As it stands right now, we find the use of the term "record suspension" contrary to our view of what this legislation is and what has been in effect for some 40 years and is very useful in this country. It's a shame that this opportunity for rehabilitation, and for sustaining a road to rehabilitation and sustaining a person as a law-abiding citizen, is now being eroded by this government. It's shocking that this would happen and it's shameful.

**The Chair:** Ms. Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I think it's important to put on record that young people make mistakes. This is what I find sad in all of this. I'm not talking about people who commit horrible crimes. I'm not saddened by the fact that we are making things a little more difficult for them, that we are extending the time before they have the right to this, even though I find it strange logic. We want these people to become contributing citizens to society again and want them to find jobs, but we put all possible obstacles in their way. We can't say it enough: we are talking about people who have paid their debt to society. The message we are sending them now is quite simply: so what. We aren't talking about someone who has three strikes against him, we're not talking about a notorious reoffender where a mechanism is already in place. We're making sure that this type of person isn't "pardoned". We'll have to get used to not using that expression. It's as if we are putting a big stamp on their forehead saying "Guilty for the rest of your life. Remember that it's just a suspension".

I understand what Mr. Woodworth said earlier. He said that it's almost a privilege and that it can be withdrawn, but I will repeat that 96% of them have never lost the pardon they have received. It's as if we are telling them that we will always see them as guilty individuals and that we will make sure that that image of them always exists somewhere.

It's a shift that is not surprising given the government in power, but that does not seem to make our streets and our communities safer necessarily because this hardened position will certainly have an impact on rehabilitation.

Thank you.

[*English*]

**The Chair:** Thank you.

(Clause 111 agreed to)

(On clause 112)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** I'm not going to repeat the arguments we've just made. I think they are very important and cogent arguments. I'm disappointed, obviously, that the government has refused to accept a sincere attempt to maintain what has been effective and important and I guess is underscored by this particular provision itself.

They're talking about the effects of a "record suspension", which should be the effects of a "pardon", but what is very interesting is that it says that in this case a record suspension

> (a) is evidence of the fact that
>
> (i) the Board, after making inquiries, was satisfied that the applicant was of good conduct,

—that is similar to what the rule is for a pardon at the moment—and secondly that ...the conviction in respect of which the record suspension

—or pardon, in our view—

> is ordered should no longer reflect adversely on the applicant's character;

Now, those two findings by the parole board, that the applicant is of good character and that the conviction should no longer adversely reflect on the applicant's character, make an admirable conclusion to reach. When you look at the record of the parole board in granting pardons over its recent history, I guess it reflects in part the nature of the people who apply. Those who apply for a pardon are ones who have a pretty good idea, first of all, that they don't have a second offence, and that, under investigation, they will be found to have rehabilitated themselves.

The record is quite high of people who apply actually receiving pardons; not very many people are turned down. I'm assuming that's because the people who take the trouble to apply have sufficiently rehabilitated themselves. What that tells me is that the holding out of a pardon is a very good thing, and it will be interesting to see whether or not this "record suspension" will have the same ameliorative effect.

I'm going to vote against this clause because it talks about "record suspension" instead of "pardon". But I am very encouraged by the wording that's being used here, because this is the finding that the board has made in granting pardons: it has been so meaningful to people that they apply in numbers on the order of 25,000 a year for pardons, because they think that a pardon is meaningful and is useful. In fact, some 400,000 pardons have been granted by the parole board since 1970.

(Clause 112 agreed to)

(On clause 113)

● (1615)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** Here we won't repeat the arguments, but we'll be voting against it because it changes the heading "Application for Pardon" to "Application for Record Suspension". We clearly don't support that.

(Clause 113 agreed to)

(On clause 114)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** For the same reason, it replaces the word "pardon" with "record suspension...within the meaning of the *International Transfer of Offenders Act*". This is a provision that currently allows persons who have been transferred to Canada under that act to apply for a pardon even if the offence occurred in another country. Now you can apply for a record suspension.

(Clause 114 agreed to)

(On clause 115)

**The Chair:** Mr. Harris, if you will move NDP-34, I have comments.

**Mr. Jack Harris:** I will withdraw amendment NDP-34.

● (1620)

**The Chair:** Okay. On amendment NDP-35, if you will....

**Mr. Jack Harris:** Amendment NDP-35 relates to the time limit, the time period, that applies with respect to line 15 dealing with summary conviction offences. The amendment proposes five years in the case of an offence punishable on summary conviction before someone can apply for what's now called a record suspension—

**The Chair:** Are you moving...?

**Mr. Jack Harris:** I'm moving it, that line 15, which says that (b) —

**The Chair:** So you're moving amendment NDP-35?

**Mr. Jack Harris:** It's amendment NDP-35, which replaces line 15 on page 65 with the following: "three years, in the case of an offence —"

**The Chair:** I have a ruling for you, sir.

Bill C-10 amends the Criminal Records Act to extend the ineligibility period for applications for a record suspension. This amendment proposes to leave the ineligibility period at three years.

As *House of Commons Procedure and Practice*, second edition, states on page 766:

> An amendment to a bill that was referred to a 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 deletion of a key element is contrary to the principle of Bill C-10 and therefore is inadmissible.

**Mr. Jack Harris:** We're not deleting it. We're changing it from five years to three years. Is it the understanding that even changing it from five years to three years is not permitted?

**The Chair:** Yes, it is currently at three, but the bill will change it to five years.

**Mr. Jack Harris:** Yes. It's already three years, so because we're changing it to what it is already, that's considered out of order...?

**The Chair:** The bill moves it to five years and you're trying to keep it at the current level.

**Mr. Jack Harris:** Yes, at the current one. The response, then, is to speak and vote against it, I take it.

**The Chair:** Well, no, it's out of order.

**Mr. Jack Harris:** No, to speak and vote against the change to five years, right? You don't have to—

**Mr. Brian Jean:** If you vote for it, you—

**Mr. Jack Harris:** Yes, I guess we could vote for every section of the legislation and then we would go home. But that's not what we're here for. That's not our job.

**The Chair:** On amendment NDP-36?

**Mr. Jack Harris:** Well, I suppose we may as well move all the motions, if that's possible, and we'll see whether—

**The Chair:** Just amendment NDP-36, if you will move it—

**Mr. Jack Harris:** Amendment NDP-36 deletes lines 19 to 28. Lines 19 to 28 deal with persons who are considered ineligible for pardon. That's the three strikes and you're out provision, which we're seeking to remove.

**The Chair:** Bill C-10 amends the Criminal Records Act to make certain offences ineligible for record suspension. This amendment proposes to delete this concept.

As *House of Commons Procedure and Practice*, second edition, states on page 766:

> An amendment to a bill that was referred to a 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 deletion of a key element is contrary to the principle of Bill C-10 and is therefore inadmissible.

That takes us to amendment NDP-37.

**Mr. Jack Harris:** We would move an amendment to clause 115 by replacing line 38 with the following: "coercion in relation to the victim".

**The Chair:** I have no ruling.

**Mr. Jack Harris:** We're in order?

**The Chair:** I don't know whether you're in order, but we have no ruling against it.

**Voices:** Oh, oh!

**Mr. Jack Harris:** You had no ruling prepared.

Let's see. There are two other amendments to clause 115. Since we've committed ourselves to—

**The Chair:** Let me tell you that the Liberal amendment L-31 is between your two.

**Mr. Jack Harris:** Okay. It is necessary that they be in that order, is it?

**The Chair:** Yes.

**Mr. Jack Harris:** Let me speak then to the clause in general and why we made the amendments, which have been found to be, by your ruling, sir, not in order.

The change for a summary conviction period prior to being able to apply for what was a pardon—in three years for a summary conviction offence—we feel was perfectly adequate.

Again, going back to the statistics and the record, when you look at the number of people who have actually had their suspensions revoked, it appears that the three-year time limit was working well and the system itself was working well. The reality is that if people aren't entitled to apply for three years, given the amount of time that it takes typically, particularly recently, to get an application approved—it's in the order of 18 months—I think it's already de facto very close to the five-year period that's being proposed.

We are opposed to that. We are opposed to the three strikes and you're out in terms of being eligible for a pardon. Either you meet the test that the board is required to do to determine whether an applicant is of good conduct—I mean now of good conduct. It doesn't mean of good conduct when they committed the offences. Clearly, the offences indicate bad conduct. But to be able to establish to the board, after it makes inquiries to satisfy itself, that an applicant is of good conduct and that the conviction for which they applied should no longer reflect adversely on the applicant's character, surely that's a sufficient enough test.

If they couldn't establish those provisions, if they couldn't establish those conditions, they wouldn't get a pardon in the first place. But if they can establish those provisions, if they can satisfy those conditions, if they can satisfy the parole board that they are of good conduct, and the board is satisfied that the conviction should no longer affect adversely on the applicant's character, then why would you deny them a pardon? Why would you deny them the advantage of the record suspension, as you're now calling it?

It's unduly harsh. It's unduly punitive. I can understand the concerns that one might address if we're talking about persons of trust, etc. But the existing provisions of the law already take those things into account. If someone is seeking to carry out a community situation with young people, for example, the fact of a pardon wouldn't stop you from being on a registry. It wouldn't stop your name from showing up on CPIC. None of those things that we associate with the public safety aspects of our criminal law, with respect to a conviction, get suspended when a pardon takes place. The provision for that is already accounted for.

So there's no valid reason, in our view, to avoid the notion that persons who meet that test should be ineligible to apply. We think the increase to 10 years in the case of an indictable offence, or an offence punished by indictment, is all right. We've agreed with that in the past, but to go to five years for summary conviction offences is unnecessary and we disagree with that.

(Amendment negatived)

● (1625)

**The Chair:** Mr. Dion, do you want to move Liberal-31?

**Hon. Stéphane Dion (Saint-Laurent—Cartierville, Lib.):** Yes. Thank you very much, Mr. Chairman.

I would have been very sorry to not have input to this committee. I have an opportunity before me. Mr. Cotler will come back.

[*Translation*]

The amendment reads as follows: "That Bill C-10, in Clause 115, be amended by deleting lines 4 to 6 on page 66." These lines read as follows: "4(5) The Governor in Council may, by order, amend Schedule 1 by adding or deleting a reference to an offence."

We propose that the current situation remain, meaning that Parliament make this kind of decision and not the Governor in Council. This is the recommendation of the Canadian Bar Association.

● (1630)

[*English*]

The Canadian Bar Association is concerned and is recommending that, and if I may, I will just read the rationale for this amendment:

> ...clause 115, section 4(5) which permits the Governor in Council, rather than Parliament, to determine further offences for which pardons may not be granted. ...decisions regarding which offences may not receive pardons from criminal convictions should only be made after open debate in Parliament. Decisions regarding which offences are eligible for pardon is fundamental to the criminal law, and should only be decided by Parliament.

It makes so much sense that I expect everybody will vote for it—if I understand well the dynamic of this committee.

**The Chair:** I would say well put, sir.

Having heard the interventions on Liberal–31, those in favour?

(Amendment negatived)

**Hon. Stéphane Dion:** I tried.

**The Chair:** NDP–38 is identical, so....

**Ms. Françoise Boivin:** Can we try it again?

**Mr. Jack Harris:** Can we try again? Seeback was thinking about it. Maybe we have another opportunity to persuade.... It might be successful.

(Clause 115 agreed to)

(On clause 116)

**The Chair:** If you'll move NDP–39, Mr. Harris, I have a comment for you.

**Mr. Jack Harris:** Oh, oh, I've got a feeling coming on here.

It's moved that Bill C–10, in clause 116, be amended by replacing lines 15 to 17 on page 66 with the following:

> 4.1(1) The Board may grant a pardon for an offence if the Board is satisfied that

**The Chair:** Mr. Harris, for the same reasons that NDP–30 and 33 were ruled out of order, in the opinion of the chair, the deletion of a key element is contrary to the principle of Bill C–10 and is therefore inadmissible.

**Ms. Françoise Boivin:** We didn't use the word “pardon”.

[*Translation*]

It's because it doesn't say that in the French text.

[*English*]

**Mr. Jack Harris:** Yes, that's correct. Only in the English text.

**The Chair:** Sure.

**Mr. Jack Harris:** Are we talking now about clause 116 then?

**The Chair:** Yes, clause 116.

**Mr. Jack Harris:** I'm not going to belabour the point we've made. The reason for the amendment is clear; we do wish to retain the notion of a pardon. It will be available, and we note again that the provisions here make it clear that, with respect to certain offences, after the applicable period in proposed section 4.1, a person who

> has been of good conduct and has not been convicted of an offence under an Act of Parliament; and

—in the case of certain offences—

> ordering the record suspension at that time would provide a measurable benefit to the applicant, would sustain his or her rehabilitation...as a law-abiding citizen and would not bring the administration of justice into disrepute.

These again are laudable goals, but if they are met, we believe a person should be granted a pardon.

**The Chair:** Shall clause 116 carry?

(Clause 116 agreed to)

**The Chair:** We counted you just once. Did you vote twice?

**Mr. Jack Harris:** I made a mistake, Mr. Chair. I wonder if you could acknowledge that it's possible for members of Parliament to make mistakes. I ask that my vote be recorded as being opposed to that particular....

**An hon. member:** Opposed is not a right.

**Mr. Jack Harris:** I was so taken aback by my stopwatch here, showing that I only spoke for one minute and fourteen seconds on that particular clause. I just note for the record, Mr. Jean, that—

**Mr. Brian Jean:** You should be able to change your vote as well.

**Mr. Jack Harris:** You want me to change my vote to...?

**The Chair:** The clause did carry.

Clause 118.

**Mr. Jack Harris:** Mr. Chair....

**The Chair:** We're now dealing with clause 117. I'm sorry.

All of us can make mistakes.

**Mr. Jack Harris:** All of us can. I've never claimed to be perfect, Madam Chair—Mr. Chair.

● (1635)

**The Chair:** Madam Chair?

**Mr. Jack Harris:** Madam Chair? I was looking past you.

**Ms. Kerry-Lynne D. Findlay:** David, you need a haircut.

**The Chair:** We've been here too long—but you're not my type.

**Ms. Kerry-Lynne D. Findlay:** For the record.

**The Chair:** For the record.

**Mr. Jack Harris:** We again see the words “record suspension” appearing several times in clause 117 and will therefore be opposing that particular section.

(Clause 117 agreed to)

(On clause 118)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** Once again, Chair, it gives the executive committee power to adopt rules with respect to record suspension, so we'll be voting against it.

(Clause 118 agreed to)

(On clause 119)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** This removes the provision of referring to pardons in the heading, so we vote against this as well.

(Clause 119 agreed to)

(On clause 120)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** Once again, we'd say the same thing, in approximately four seconds.

**The Chair:** Thank you.

(Clause 120 agreed to)

(On clause 121)

**The Chair:** If you'll move NDP-40, Mr. Harris, I have another ruling for you. It's an awful lot like the other three.

**Mr. Jack Harris:** I'd be very happy to move NDP-40—

**Ms. Françoise Boivin:** Speak slowly.

**Mr. Jack Harris:** —because I hope the wisdom of our position may yet meet with some support.

We're moving to amend clause 121 by replacing line 33 with the following:

> who has received a pardon under section 4.1 or

That's our amendment.

**The Chair:** Well, for the same reasons as for NDP-30, NDP-33, and NDP-39, in the opinion of the chair the deletion of a key element is contrary to the principle of Bill C-10 and is therefore inadmissible, sir.

So we can debate clause 121.

**Mr. Jack Harris:** Yes. Well, I'm not going to engage in significant debate on 121. We are opposed to this amendment. We are opposed to all of the amendments that change “pardon” to “record suspension”. We think it's important that we keep that.

(Clause 121 agreed to)

(On clause 122)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** For the same reason, we oppose.

(Clause 122 agreed to)

(On clause 123)

**The Chair:** Shall clause 123 carry?

**Mr. Jack Harris:** Are you allowing me to speak to it or did you take the vote?

You're moving very fast here.

**The Chair:** I took the vote on one side and I was waiting.

**Mr. Jack Harris:** Oh, you're waiting for the vote on this side.

**The Chair:** Well, I waited before I called the vote, but....

**Mr. Jack Harris:** You're too fast for me, Chair.

**The Chair:** I'm rarely accused of that, sir.

**Mr. Jack Harris:** No, again, we are objecting to the use of the term "record suspension".

**The Chair:** So you're opposed to clause 123?

**Mr. Jack Harris:** Right.

(On clause 124)

[*Translation*]

**Ms. Françoise Boivin:** We are talking about record suspension. It's the same thing.

[*English*]

**Mr. Jack Harris:** For the same reason, Chair, we oppose clause 124. It deals with the whole notion of record suspension.

**The Chair:** Okay. I've made another error, and I need to go back to clause 123.

(Clauses 123 and 124 agreed to)

(On clause 125)

**The Chair:** Mr. Harris.

● (1640)

**Mr. Jack Harris:** Chair, we agree with the proposal to allow a person the entitlement to make a representation, if the board is considering revoking an order that had been granted for a record suspension. But, again, we're opposing the use of the term "record suspension", so we don't support the amendment. We support the principle of ensuring that an individual has a right to make representations at a hearing, but we don't support the amendment.

**The Chair:** Thank you.

(Clause 125 agreed to)

(On clause 126)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** We oppose this on both grounds, that again it disentitles certain people to the record suspension. We believe that the earlier provisions that indicate what needs to be established before someone is entitled to a pardon, or a record suspension in this case, are sufficient to allow the board to make its ruling, and they're given the discretion to do so.

We think that this is adequate, and there shouldn't be a list of offences that the board takes into consideration, whether someone meets the test or not. If they do, fine; if they don't, then that's fine as well. So we oppose it, and we also oppose the use of the term "record suspension".

**The Chair:** Shall clause 126 carry? Those in favour?

**Ms. Charmaine Borg:** Oh, sorry....

You're playing tricks with us.

**Some hon. members:** Oh, oh!

**Mr. Jack Harris:** You're very insistent. The first time it didn't work.

**The Chair:** I don't know if we ever accused the NDP of voting twice in the past.

(Clause 126 agreed to)

(On clause 127)

**The Chair:** Clause 127.

**Mr. Jack Harris:** Clause 127, again, uses the words "record suspension". I don't think we're opposed to the principle contained there, but we're opposed to the change.

(Clause 127 agreed to)

(On clause 128)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** Again, we have to say we support the principle of the board disclosing decisions but not identifying individuals unless there's an authorization. Again, though, we have a problem, obviously, with the use of the words "record suspension", so we can't support the provision, although we support the principle.

**The Chair:** Thank you.

(Clause 128 agreed to)

**The Chair:** Mr. Harris, would you help Ms. Borg?

**Ms. Françoise Boivin:** That's all right. It's done.

**Mr. Kyle Seeback (Brampton West, CPC):** We're winning them over slowly but surely.

**Some hon. members:** Oh, oh!

**The Chair:** It has been a long day.

(On clause 129)

**Mr. Jack Harris:** We're making significant progress, though, Mr. Chair, as you may have noticed.

**The Chair:** We're doing very well, and I thank you for it.

We're at clause 129.

**Mr. Jack Harris:** On clause 129, again, Chair, we see that this particular provision doesn't refer to the issue of record suspensions, and the principle is something we support, so we're prepared to support clause 129.

● (1645)

**The Chair:** Ms. Borg, have you got that one?

(Clause 129 agreed to)

**Ms. Françoise Boivin:** She convinced us.

(On clause 130)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** On clause 130, we are in support of the board reporting to Parliament at the end of the year on its activities, but of course we would rather that these were called "pardons" as opposed to "record suspensions", so we are unable, at this clause-by-clause, to support this particular clause.

**The Chair:** Thank you.

(Clause 130 agreed to)

(On clause 131)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** I'll just indicate that we'll be opposing this. It's consequential to other amendments that we voted against.

**The Chair:** Okay.

(Clause 131 agreed to)

(On clause 132)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** We support that.

(Clause 132 agreed to)

(On clause 133)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** Before we vote on that, I wonder if someone could explain why item 3 of schedule 1 is repealed.

**The Chair:** Mr. Churney.

**Mr. Daryl Churney (Director, Corrections Policy, Department of Public Safety and Emergency Preparedness):** The straightforward answer would be that when Bill C-10 comes into effect, persons convicted of sexual offences against minors would become ineligible for a record suspension, completely, so there would be no need to have this small subsection of historical offences still referenced in the schedule.

It will become moot at that point once the bill comes into effect, simply because if you're not eligible to obtain a pardon for a child sex offence, there is no need for a further reference in the schedule to those historical offences that are still on the record.

**Mr. Jack Harris:** Thank you.

**The Chair:** Thank you.

(Clauses 133 and 134 agreed to)

(On clause 135)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** We're entering into a new act here now, the International Transfer of Offenders Act, and I wonder if we could have a five-minute break, Mr. Chairman, before we start this new act.

**The Chair:** Sure. We will suspend until five minutes to five.

● (1645)

(Pause)

● (1710)

**The Chair:** We're set to resume.

Mr. Harris, I would see the clock as 5 o'clock.

**Mr. Jack Harris:** Thank you, Chair. You're very wise; we're only five minutes beyond our proposed time.

**The Chair:** We're still at clause 135.

**Mr. Jack Harris:** We're not going to offer any comments on clause 135. We don't agree that it actually enhances public safety, but we're not going to make any comment on that.

(Clause 135 agreed to on division)

(On clause 136)

● (1715)

**The Chair:** Now we're at clause 136—

**Mr. Jack Harris:** I have some NDP amendments—

**The Chair:** —and, Mr. Cotler, you have Liberal amendment 32.

**Hon. Irwin Cotler (Mount Royal, Lib.):** Yes, Mr. Chairman.

I move that clause 136 be amended by deleting line 28 on page 73 to line 45 on page 74.

**The Chair:** Thank you, sir.

**Hon. Irwin Cotler:** Let me just explain that, Mr. Chairman.

**The Chair:** But I have a ruling on the motion. Let me give you the ruling.

**Hon. Irwin Cotler:** Oh, okay. Sorry. I didn't know there was a ruling.

**The Chair:** Bill C-10 amends the International Transfer of Offenders Act to provide for the Minister of Public Safety and Emergency Preparedness to modify the list of factors to consider in deciding whether to consent to the transfer of a Canadian offender. This amendment proposes to delete the list of factors.

*House of Commons Procedure and Practice*, second edition, states on page 766:

> An amendment to a bill that was referred to a 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 deletion of a key element is contrary to the principle of Bill C-10 and is therefore inadmissible.

So your motion is inadmissible, sir.

**Hon. Irwin Cotler:** Mr. Chairman, I just want to make a comment on it, if I may.

**The Chair:** You can challenge the chair, sir, but....

**Hon. Irwin Cotler:** No, I don't want to challenge. I want to say something for the record on this point, if I may.

**Some hon. members:** No.

**The Chair:** Sorry.

**Hon. Irwin Cotler:** All right.

**The Chair:** You can debate the clause afterwards.

**Hon. Irwin Cotler:** Sure. Okay.

**The Chair:** Now we'll turn to amendment NDP-41.

**Mr. Jack Harris:** We have a number of amendments here.

**The Chair:** You have seven amendments. The rules, which you set, are ten minutes per clause.

**Mr. Jack Harris:** Ah!

**The Chair:** You set the rules, sir.

**Mr. Jack Harris:** I thought it was ten minutes per amendment.

**Some hon. members:** Oh, oh!

**Ms. Françoise Boivin:** Good one, Jack. Oh my God.

**Mr. Jack Harris:** I will say, however—that's a joke, obviously—there's a principle, the same principle that's behind all of these amendments to clause 136, so I can debate them in my comments at once. I will do it first of all by taking the first amendment, NDP-41, and say that the current clause 136 says:

> In determining whether to consent to the transfer of a Canadian offender, the Minister may consider the following factors:

—and then there's the list of them:

> (a) whether, in the Minister's opinion, the offender's return to Canada will constitute a threat to the security of Canada;

What we're suggesting is a change to those lines on page 73, so the bill would then read:

> In determining whether to consent to the transfer of a Canadian offender, the Minister must consider the following factors:

The change to "whether the" would now read,

> (a) whether the offender's return to Canada will constitute a threat to the security of Canada;

Similarly, the other amendments, NDP-42 through 48, are all to the same effect, deleting certain lines and making changes that essentially avoid the ministerial discretion that's offered, the reason being—and this is where it's important—is that the whole purpose of the International Transfer of Offenders Act is to permit offenders who've been charged and convicted in another country, as much as possible, to be able to serve their sentences in Canada if certain factors are taken into account. Obviously public safety is an important matter: a threat to the security of Canada; the safety of people within Canada; whether they've abandoned Canada as their permanent residence. Obviously these are factors.

We're not going to have somebody back who really has no connection with the country and happens to have Canadian citizenship. But if someone is going to come back to Canada at some point after their sentence, then obviously it's in Canada's best interest to ensure this person is, as far as possible, rehabilitated. This is the key to proper operation of clause 136 of the bill.

We have a big problem with ministerial discretion that is "in the opinion of the Minister". Again, the reason for that is it's a choice of words, and it's a choice of words that's very important. Lawyers will know that if you use the words "in the opinion of the Minister", it's very difficult for there to be an objective review of such a decision. We've seen that in many court cases that have gone to the Federal Court. The intention of the existing act, insofar as is possible, is to allow people to serve their sentence in Canada and be eligible for supervision, for parole, for the kind of rehabilitation matters we talked about earlier under the corrections act.

This is not about being nice to offenders, although maybe in some cases, if someone is in a prison in a foreign land where they're subject to inhumane conditions and because of our international human rights standards we would be appalled that any Canadian citizen would suffer from prison conditions, we may want to recognize that Canada's international human rights standards are higher. If you're a prisoner you're entitled to certain basic standards, and we would prefer that they have those standards. We would exercise the powers under this act to ensure someone wasn't languishing in a jail where they weren't getting proper food and would be able to serve their sentence in Canada and be subject to proper human rights conditions.

● (1720)

So it is about humanitarian considerations, but it's also about someone who, if they are going to return to Canada after they serve their sentence...let's ensure they're able to get the benefit of Canadians' rehabilitative efforts, the supervision of a parole, and the easing back or reintegration into society, so that they would be less of a threat to Canadian society then they might otherwise be if they came back after serving a long sentence under the conditions of another country's law. That's what the purpose of it is here.

It's feared by us that the use of the term "in the Minister's opinion" would give other factors. It's also added in here, "any other factor" that the minister believes to be relevant. As the Canadian bar has suggested, "With such open-ended discretion, these critical decisions would be determined according to the opinion of the Minister in each case."

Now, they're suggesting there that there may be a constitutional issue and a constitutional challenge. They say, "It remains to be seen whether Canada's courts will interpret this broad discretion as a 'reasonable limit' demonstrably justified under section 1 of the Charter". So the red flag has been waved by the Canadian Bar Association, and they're not just doing this because they want to do that. They're doing it because, in their considered opinion as lawyers who are concerned about these issues, they want to raise this flag and object to the arbitrariness of the ministerial discretion here.

Discretion is not to be exercised willy-nilly. When a minister has discretion to make a determination, it's not based on the minister's personal opinion; it's the discretion that's exercised as an officer of the crown. It has to be quasi-judicial, if I may use that term, and it has to be exercised in good faith, and it has to be exercised in a particular manner.

To use the term “in the Minister's opinion” is to remove it one step from judicial review, a step that we don't think it's appropriate to take. This is not a reflection on any particular minister; it's one that applies to any minister of the crown. It's not that we're suggesting that this minister would operate in a certain way. We're suggesting that it's inappropriate for any minister to have that type of apparently personal discretion, because it's open to putting something beyond the reach of the courts and beyond the reach of an adjudication separate from what is in fact said to be “in the Minister's opinion”.

This is why this is being opposed. This is why this scheme that's set out here we feel is wrong. We have opposed this in the past when this suggestion has come forward and we oppose it now.

**Ms. Françoise Boivin:** Two minutes, Mr. Chair?

● (1725)

**The Chair:** Two minutes, Ms. Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I'll be brief, Mr. Chair. Actually, this part of Bill C-10 is much too discretionary and too vague. It uses the expression “may take into account”. It will be extremely difficult in cases of disputes that will be made based on that. A lot of people here will remember the Khadr case, and many other cases where Canada made specific decisions.

We hope to amend a provision that sets out that the minister may take into account factors that are mentioned, or any other factor that the minister deems relevant. The minister will be able to judge the relevance of those factors, which are relevant and which are not. It's the type of provision that leads to all kinds of disputes.

Since this is a bill that is supposed to be tough on crime, I would have thought that the minister would have to take into account all these criteria that may seem entirely reasonable. If it says “may take into account”, that means that we do not know if he will apply it in the same way for everyone. These provisions are not really clear.

So we object based on these considerations. Obviously, we always want to protect the public, but we want to do it in a way that is based on criteria that are known to everyone, and we want justice be applied in the same way to everybody.

[*English*]

**The Chair:** Thank you, Madam Boivin.

Mr. Harris, you're moving.... Oh, I'm sorry.

**Mr. Jack Harris:** No, we moved these amendments. I moved one, but we're speaking to them all, using our 10 minutes for the entire clause. When I spoke, I spoke to the amendments, so we may have to deal with them. You can deal with them as a group, if you wish.

**The Chair:** We can, but you're moving amendments NDP-41—

**Mr. Jack Harris:** I'm moving amendment NDP-41.

**The Chair:** —through NDP-48.

**Mr. Jack Harris:** Yes.

**The Chair:** Okay. Thank you. That was just to clarify it.

Mr. Cotler.

**Hon. Irwin Cotler:** Mr. Chairman, I have just a brief comment. I understood the ruling before, that the nature of my amendments are beyond the scope that could be addressed here. My whole point—and it's related to what Mr. Harris has said here—is that I thought subsection 10(1) of clause 136 should really remain as it is. That's why I felt that all the things in the bill that seek to amend it confer what I would call an unduly broad discretion. It's been mentioned they make it constitutionally suspect, and we don't need a constitutional challenge. I speak in particular to the last phrase, which is

> any other factor that the Minister considers relevant.

I say this, Mr. Chairman, because I've been dealing with the Minister of Public Security, under the existing legislation, on transfer of offenders. We've had a very good exchange on these matters. Under the present, existing legislation, it has worked well without constitutional challenge, and we've achieved the objectives with respect to rehabilitation of the offender, the protection of the victim, community anchoring, and the like.

I'm just worried that this type of legislation.... Again, I don't question the good faith involved in the proposal of this whole set of criteria. But all the criteria, taken as a whole, particularly the last criterion, are going to invite a constitutional challenge. All I'm saying is that in the interest of the legislation, in the interest of a process that is at times a very difficult and delicate one, but one that has worked well up until now, Mr. Chairman.... I've worked with the Minister of Public Security, and I've had, as I said, the kind of relationship and application of the law that has, for me, validated the existing legislation. That's why I don't see the basis for the amendment.

● (1730)

**The Chair:** Thank you, Mr. Cotler.

We need to vote on each one of the amendments. We need to vote them up or down.

(Amendments NDP-41 through NDP-48 inclusive negatived)

**The Chair:** Shall clause 136 carry?

**Mr. Jack Harris:** On division.

**The Chair:** On division, Mr. Goguen?

**Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC):** Yes.

(Clause 136 agreed to on division)

**Mr. Brian Jean:** I have a point of order. I just wondered if Mr. Harris would consider grouping some of the rest, the balance, clauses 137 to 166. We have made considerable progress in relation to them. I see that there are absolutely no amendments by the NDP or the Liberals. Whether they would both consent to move those as one and deal with them.... Obviously, if they had issues with them, they would have proposed amendments.

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** Yes, I....

**The Chair:** Do you want to suspend and look at it?

**Mr. Jack Harris:** Suspend and look at it...there may be one or two that we wish to speak.... Most of them are consequential to other amendments. There are a couple that we would like to highlight, and I could identify which ones.

I think we're proposing to have a break.

But I don't want anyone to assume, because we didn't propose amendments, that we're in favour of these particular ones. As you've seen, many amendments that we have proposed have turned out to be out of order, and some we were choosing to speak against and vote against.

If we were to have a break right now, when we come back I could identify those ones we wish to speak to, and we could perhaps group some of the others.

**Mr. Brian Jean:** Would it be possible to look at the balance of them as well, Mr. Harris, just because there are some with amendments that are more contentious, obviously, but there are others, up to clause 205 I think, that could probably be dealt with?

**Mr. Jack Harris:** The section you were referring to is under the International Transfer of Offenders Act, and then there are some consequential amendments that are beyond that having to do with the Human Rights Act and other matters, so I was thinking of clauses 137 to 165 in the context of what we would discuss when we came back.

What follows, then, is the Youth Criminal Justice Act, and clearly we have some amendments there and some important discussions to take place.

**The Chair:** Okay. We'll suspend.

The clerk has brought in hot food, so we'll return at 6:15.

**Mr. Brian Jean:** Just as a matter of course, Mr. Chair—

**The Chair:** I can take less of a break. There was a request for 45 minutes.

**Mr. Jack Harris:** We're not going anywhere, so....

**The Chair:** Half an hour?

**Mr. Jack Harris:** That's fine.

**The Chair:** Okay.

We'll return at six o'clock.

● (1735)

(Pause)

● (1805)

**The Chair:** We'll call the meeting back to order.

I think, Mr. Harris, we're right about 30 minutes from when we broke, and I think you indicated you may have a comment or two here?

**Mr. Jack Harris:** Yes. Thank you, Chair.

As I indicated earlier, I was going to look at the group of clauses between 137 and 166, for which there are no amendments, and all of which we are voting against. I won't refer to them all. These are what are known as consequential amendments that begin in clauses 137, 138, and 139, and refer to amendments related to the pardon issue and the imposition of record suspension into the Canadian Human Rights Act.

The effect of this is that the discriminatory practices, what they call the prohibitive grounds for discrimination, will continue to include pardon. However, as a result of the changes in this act, pardon does not have the same meaning. The only kind of pardon that the Canadian Human Rights Act now talks about is a pardon by royal pardon, or royal prerogative, which is essentially the Governor in Council—in other words, the state, not the Parole Board of Canada.

What's been added is “or in respect of which a record suspension has been ordered.” So the same protections for non-discrimination will be included in the Canadian Human Rights Act, but the word “pardon” is included with an entirely different meaning. I just wanted to point that out as a problem.

There's a whole series of other pieces of legislation that are referred to—the Contraventions Act. There's a whole series of matters in relation to the Criminal Code where this is mentioned. There's clause 141, for example, which changes the definition of pardon. This is the one I just referred to. The definition of pardon is changed to “a conditional pardon granted under Her Majesty's royal prerogative of mercy”. That's in the Criminal Code of Canada.

So what we're talking about here is that pardon remains in some sections, but it refers to a particular type of pardon granted by the royal prerogative, which I'm not aware, frankly, of any case in which it has been used in modern history. Somebody else might be able to enlighten me on that, but it's certainly not something that I'm familiar with the use of in Canada, so leaving it there is, in my view, just a bit misleading because of course pardons are not available as they were.

There's a whole series of other pieces of legislation that refer to pardons, which are also amended. There's an amendment to the National Defence Act, for example, in clause 152; there's a consequential amendment in that. This goes on to all of the Criminal Code matters, the DNA Identification Act in clause 148, the Immigration and Refugee Protection Act, the National Defence Act —as I pointed out before but also in clauses 152, 153, 154, and 155 —and the Youth Criminal Justice Act is also amended. The name of the parole board is changed in one of these sections, but mostly we're dealing with transitional provisions related to record suspensions. And this goes on to clause 166, which is the coming into force.

We're opposed to all of these because they are the ones that set out the consequences of the changes from “pardon”, as it currently exists under the Criminal Records Act, to “record suspension”—a very regretful move being made by this government, and one that I think members opposite will also learn to regret when they see the consequences of it.

● (1810)

I frankly think there are an awful lot of people in this country who are going to be displeased with the fact that the notion of a pardon is missing from our criminal law, as is the sense of hope, I suppose, and encouragement that it gives to people to amend their conduct to become good citizens and to be treated in a way that says it's no longer in the interest of society to have that record hanging over their heads. It gives them an opportunity to reform their lives and to move on after paying their debt to society, as we pointed out.

I may be speaking for more than 10 minutes, but we're dealing with probably 40 clauses there, or maybe a little fewer than that. My stopwatch has run out of battery. It's only a 10-hour battery, and we've been here for more than 10 hours so far. I'll have to rely on the stopwatch the chair has. I'll take your advice into consideration when my time is running low, given the fact that we've also agreed to operate under good faith during these proceedings.

Having said that, Mr. Chair—and I don't think any of my colleagues have any comments—I would suggest we vote on clauses 137 to 166 as a block, if my colleagues opposite have no objection to that.

**Ms. Kerry-Lynne D. Findlay:** We agree, reluctantly.

**The Chair:** We're dealing with clauses 137 through 166 in a group right now.

(Clauses 137 to 166 inclusive agreed to)

(On clause 167)

**The Chair:** Now we're at clause 167. I believe the NDP have an amendment. Is it amendment NDP-49?

**Mr. Jack Harris:** We are moving into the Youth Criminal Justice Act, Chair.

The first amendment we have is to clause 167, found on page 86 of the bill. That's a provision we're proposing to amend, if I can just find that page quickly.

**Ms. Françoise Boivin:** It's on page 86.

**Mr. Jack Harris:** Our amendment is to replace line 6 on page 87 with the following words:

> (a) an offence committed intentionally or recklessly by a young person

That has to do with the definition of "violent offence". Again, we had a significant expert opinion on that from Professor Nick Bala, for one, and from the Canadian Bar Association. They supported the notion of defining "violent offence" but said it should not include cases of endangerment without the element of intention or recklessness, as Professor Bala said:

> to take account of the limited foresight of youth; the words "young person knows or ought to know would endanger the life or safety etc..." should be added.

So he proposed a different type of amendment, but what we are proposing here is the use of the words, "an offence committed intentionally or recklessly by a young person".

The emphasis here was that there needs to be a recognition for violent offences, but the whole concept of the Youth Criminal Justice Act is to recognize that people who are subject to the act under the age of 18 have a limited or diminished foresight because of their youth. This has been demonstrated many times. The effect of this particular definition and the consequences, of course, are that more young people will be treated in a different way, by pretrial detention and other matters, by the use of "violent offences".

Some of the commentary that was made has to do with the number of young people who Canada does incarcerate—as suggested by Professor Bala in his brief and his comments to the committee. We had a situation in Canada where, under the Young Offenders Act, we had one of the highest rates of custody for adolescents in the world. Even with the decline since the Youth Criminal Justice Act, the rates of youth custody in Canada remain much higher than some western European countries, as well as New Zealand. He presented some charts to show Canada's situation in that regard.

We don't have any more violent a society in Canada to justify that, and I think one of the big concerns here is that if there's an incidental endangerment that's not intentional, not caused by recklessness, that it should not be included in that particular offence.

We have two separate...we're on the same clause. On page 87 there's another, NDP-50, which is also an amendment to clause 167, line 12, which is of the same effect. I'll take advantage of the fact that I'm talking on this clause to deal with that as well, making a change by replacing line 12, as well as line 6, to include that element of intention or recklessness into the offence.

Having said that, Chair, unless my colleagues have something in addition to add, I'll leave it at that.

● (1815)

**The Chair:** Mr. Woodworth.

**Mr. Stephen Woodworth:** Thank you, Mr. Chair.

In response to my colleague's submissions regarding these amendments, I want to point out that, first of all, putting aside the question of whether or not a young person ought to go to jail, period—and I put that aside, because the sentencing provisions of the Youth Criminal Justice Act will still require that a youth justice court not impose a custodial sentence unless all other alternatives to custody have been considered—no one is going to go to jail unless all other alternatives have been considered.

The issue these amendments raise is whether or not this might be appropriate for a young person who has either caused bodily harm or has created a substantial likelihood of causing bodily harm and has done so negligently, maybe even persistently negligently or repeatedly negligently. Recklessness and intention, of course, are higher standards of culpability than negligence.

In my view, it is appropriate to allow a judge the discretion to consider a custodial sentence for negligent conduct when other alternatives have been considered and have been deemed by that judge to be inadequate. I know how much my colleagues opposite want to increase the discretion available to judges, so I would simply implore them to give the judge that discretion.

The reason I'm talking about sentencing is that it's really the main impact of this change. Violent offences are among those for which a judge is allowed to consider a custodial sentence.

Thank you.

**The Chair:** Thank you.

Mr. Harris.

● (1820)

**Mr. Jack Harris:** Based on the new rebuttal...I hear what the member is saying. There is, as he knows, an offence of criminal negligence causing bodily harm, which is a separate offence. This is a different matter. As suggested by the legal experts, the *mens rea* involved in either intentionally or recklessly causing bodily harm ought to be a proper inclusion in the category of violent offences. But I hear what the member says. We obviously disagree on this.

**The Chair:** Okay.

We're dealing with amendments NDP-49 and NDP-50.

**Mr. Jack Harris:** I guess we can deal with them together if we're ready to pass them together.

**The Chair:** Do you want to deal with that?

**Mr. Jack Harris:** They're both the same. They're both to the same effect. They are just for different parts of the same clause.

**The Chair:** For clarification for the record, we're dealing with NDP-49 and NDP-50.

(Amendments negatived)

(Clause 167 agreed to on division)

(On clause 168)

**The Chair:** Clause 168 has a number of amendments from all three parties. I'm thinking that we should deal with them separately. The clerk tells me that they all deal with the same lines. They are somewhat different. So if one passes, it blocks the other two or three behind it, whatever the case may be.

**Mr. Jack Harris:** May I suggest, Chair, that we deal with them together in terms of debate and then vote on them separately?

**The Chair:** Yes, we can do that, I think.

**Mr. Jack Harris:** It would just be for reasons of efficiency.

**The Chair:** Sure. Oh, efficiency we like.

We'll have Mr. Casey on Liberal amendment 33 and Liberal amendment 34.

**Mr. Sean Casey (Charlottetown, Lib.):** LIB-33, you have before you. Essentially, this is directed at the fact that this bill raises the idea of protection to the public to a level of principle and relegates rehabilitation and social reintegration to the background, and our fundamental belief is that this is not the right way to go with respect to the youth criminal justice system.

The second issue we have is the neglect to incorporate the lasting protection of the public. Our feeling is that if you want to provide lasting protection to the public, you need to favour rehabilitation and social reintegration, as opposed to the focus of the bill.

The amendment that you have there, as you can see, sets forth principles that favour rehabilitation and social reintegration, as opposed to, if you will, protection of the public. That's the first one.

The second one, I would say, is a light version. It's less intrusive to the legislation that you've put forward, but it's put forward with the same directive in mind.

Thank you.

**The Chair:** Thank you.

Do you want to debate now, as opposed to—

**Mr. Stephen Woodworth:** Oh, I'm sorry, I do want to debate, but I can wait if you wish.

**The Chair:** You have an amendment also?

**Mr. Stephen Woodworth:** No.

**Some hon. members:** Yes, we do.

**Mr. Stephen Woodworth:** I'm sorry, I do.

**The Chair:** Yes, government—

**Mr. Stephen Woodworth:** I don't, but I—

**The Chair:** Madam Boivin

[*Translation*]

**Ms. Françoise Boivin:** Thank you.

[*English*]

**The Chair:** This is NDP-50.1?

**Ms. Françoise Boivin:** That's it, 50.1.

[*Translation*]

This amendment relates to what we've heard a lot of talk about in recent weeks. It also relates to what the Quebec Minister of Justice said to the committee when he presented three amendments on behalf of the Province of Quebec that fit very well within Bill C-10.

In his letter of November 15 that was addressed to you, Mr. Chair of the committee, the minister said the following on page 1:

> Bill C-10 has reworked the declaration of principle of the Youth Criminal Justice Act (YCJA) to remove the notion of "long-term protection". My first request for amendment concerns subparagraph 3(1)(*a*) of the YCJA, so as to clarify the notion of "protection" in the statute by preserving the notion of "long-term protection of the public".

This is what you will find in our amendment 50.1. It's this idea of long-term protection of the public that very nicely connects the way justice works and the Youth Criminal Justice Act. It's a system that has been working very well in Quebec for decades.

The minister also recommended two other amendments. One was to replace the verb "*encourager*" with "*favoriser*". I understand the various statements made by the Minister of Justice, who feels that it is this amendment that we will finally manage to pass. I would like to say on record that of the three amendments put forward by Quebec, and that we are also putting forward, it is probably the least contentious, and that it would be almost indecent to refuse it.

The third amendment recommends adding a paragraph to section 75 of the YCJA, under which a province's Lieutenant-Governor in Council could, by order, exempt the province from its application, or even set an age older than 14 years to allow its application. We'll come back to this. My colleagues will come back to it later, especially when it comes to clause 185, or something like that.

All that to say, with respect to the idea of long-term protection of the public, I cannot believe that any intelligent person, and everyone around this table is an intelligent person, would not want to include the word "long-term" next to the words "protection of the public". If we don't want it to be long term, I don't know what kind of protection we want. We shouldn't be afraid because it comes from Quebec. We shouldn't automatically say that, if it comes from Quebec, it's not good.

● (1825)

[*English*]

But when we talk about “long-term protection of the public”, that shouldn't be worrisome for the people before us.

[*Translation*]

I encourage people to adopt at least amendment NDP-50.1 concerning the Youth Criminal Justice Act. I'll allow my colleagues to intervene in the time remaining.

[*English*]

**The Chair:** Mr. Jacob.

[*Translation*]

**Mr. Pierre Jacob (Brome—Missisquoi, NDP):** Thank you very much, Mr. Chair.

I agree with Ms. Françoise Boivin. The minister came to Ottawa the first time on November 1, and he came back today, November 22. He wanted to stress the importance of the three amendments he proposed in his November 15 letter.

First, let's talk about the long-term protection of the public. It is vitally important to use that wording in section 3(1)(*a*) of the Youth Criminal Justice Act because it will make all the difference. We need to encourage young people to rehabilitate themselves, be it in the short, medium or long term. Not only will the young person be detained in a rehabilitation centre, but they will also be rehabilitated and reintegrated into society, sooner or later, in order to become a productive member of society.

That is working in Quebec because our crime rate has dropped. Young people who go through the justice system rebel at first, but slowly, they adjust and take part in the rehabilitation process. Ultimately, they leave these centres, and some even come back to talk about their positive experiences with other youth.

Now let's talk about the amendment dealing with the change in terminology that has been accepted. To some extent, changing the French wording from "*encourager*" to "*favoriser*" is a simple enough amendment. It would be accepted, if I am not mistaken, for the sake of consistency with other documents on crime. So it would strengthen the idea of rehabilitation.

The last amendment I want to address is the one that deals with the rule lifting the ban on publication of information that would identify a young person. That amendment is all-important because identifying a young person who has committed a crime will stigmatize them systemically, making it hard for them to reintegrate into society, regardless of their crime. Identifying the young person is detrimental to their rehabilitation. It is also detrimental to the victim because if the young person is not able to reintegrate into society, they will re-offend, resulting in other victims and so forth.

For all these reasons, I support the amendments put forward by Minister Jean-Marc Fournier. It is unfortunate not to see any kind of cooperation or consultation happening. Twice, the minister travelled from Quebec City to Ottawa. We hear all this talk of open federalism. The Prime Minister promises a cooperative style of open federalism, even boasts about it, but he blew it this time, because Quebec's justice minister left empty-handed and dissatisfied. And I can certainly see why.

I will now hand the floor over to my colleague, Ms. Charmaine Borg.

● (1830)

**Ms. Charmaine Borg:** Thank you. I have just two minutes, so I will keep it brief.

These amendments are critical, and I am asking the government to consider and support them. In Quebec, our system works, it produces good results. I don't understand why the province is being asked to fix something that isn't broken. It would be like turning back the clock 10, 20, 30 years. It makes absolutely no sense. These amendments will save Quebec and allow the province to maintain its course. Naturally, there will still be considerable costs attached, and Quebec will refuse to pay them—that is for sure. However, the amendments will, at least, make the bill not quite as bad for them.

I am asking you, begging you even, to support these amendments, especially the one that says "*favorisant la réadaptation et la réinsertion sociale des adolescents ayant commis des infractions*". I feel compelled to stress the importance of the wording "*favorisant la réadaptation*". The merits of that concept have been proven by numerous experts, something the minister—who came not once, but twice—mentioned repeatedly. That is how we will make our streets and communities safe. I am well aware that you may not vote in favour of these amendments, and that makes me wonder whether you truly want to make our streets safe. We have a system in Quebec that works, that does what it should, and you are telling us to turn back the clock by 20 or 30 years if you vote against these amendments.

Once again, I am asking you to stand behind long-term protection. "Long-term protection" is a two-word concept that will help make our streets and communities safe. We are looking down the road. These young people who are coming out probably had difficult childhoods—no doubt, they had problems. We need to take that into account. We need to help them, and putting them in jail is not the right solution. At the very least, it should not be the first solution. There should be other solutions that are conducive to protecting society in the long term, in other words, rehabilitation and reintegration.

I think my time is up. I thank you and I ask that you support these amendments.

● (1835)

[*English*]

**The Chair:** Thank you, Madam Borg.

Now, we have government amendment G-4, if you'd like to move it.

**Mr. Robert Goguen:** This motion seeks to replace the verb "*encourager*", in French, with the verb "*favoriser*" in the French version of proposed subparagraph 3(1)(a)(ii) of the act.

[*Translation*]

This is one of the amendments Minister Fournier wanted to see, so we have kept it. Section 3(1)(*a*) of the Youth Criminal Justice Act talks about protecting the public. Subparagraph 3(1)(*a*)(ii) reads "*encourager la réadaptation et la réinsertion sociale des adolescents ayant commis des infractions*". The amendment would replace the word "*encourager*" with the word "*favoriser*", as requested by Minister Fournier.

We are well aware that Minister Fournier was not very happy with his visit. So it is, of course, on his word, on the basis of his recommendations, that we kept this amendment. We are very happy to cooperate and work with Minister Fournier, now and in the future, as we have done with the other attorneys general and ministers. For that matter, Mr. Chair, I would say that, even before this bill was revamped, the provincial authorities gave us their recommendations, which we took into account when making the changes that were asked for. We made changes that Quebec had asked for, with respect to pre-trial detention, adult sentencing, and custody and supervision orders, among others. We are certainly not oblivious to the wishes of Quebec or Minister Fournier. We are moving one of the three proposed amendments, and we look forward to continuing to work with the minister.

Mr. Chair, I would conclude by saying that nothing in Bill C-10 prevents Quebec in any way from pursuing rehabilitation when the judicial system deems it appropriate.

[*English*]

**The Chair:** Okay. Having heard all of the interventions, we need to vote on these amendments one by one.

**Mr. Stephen Woodworth:** Mr. Chair, I was waiting until all of the motions were moved to make my intervention. I understood that was your direction earlier.

I want to point out, at least in this venue, that some of the comments by my colleagues opposite to the effect that protection of the public is now going to be paramount would be dispelled if they were to read the act as amended. They would see that the protection of the public is referred to only in proposed paragraph 3(1)(a), which has an equality with paragraphs 3(1)(b), 3(1)(c), 3(1)(d), and the principles contained therein. Neither 3(1)(a) nor 3(1)(b) nor 3(1)(c) nor 3(1)(d) is paramount over any of the others, nor is protection of the public.

I would also ask them to consider that the removal of the modifier "long-term" from the existing act simply allows the phrase "protection of the public" to apply to both short-term and long-term considerations. It does not delete the notion of long-term considerations; it simply widens the definition to include both.

Apart from that, Mr. Chair, I support the government amendment to replace "*encourager*" with "*favoriser*", but only because I believe that it will still be equivalent to the English "promoting", which I would paraphrase as fostering or encouraging, and which will be nothing more or less than that.

Thank you very much.

**The Chair:** Thank you.

Have I cut anybody else off?

We're voting on amendment LIB-33.

(Amendment LIB-33 negatived)

(Amendment LIB-44 negatived)

(Amendment NDP-50.1 negatived)

(Amendment G-4 agreed to)

**The Chair:** Shall clause 168 as amended carry?

● (1840)

**Mr. Jack Harris:** Debate.

**Some hon. members:** Oh, oh!

**The Chair:** We all make mistakes, Mr. Harris.

**Mr. Jack Harris:** I'm a reasonable guy!

**The Chair:** It carries.

(Clause 168 as amended agreed to)

(Clauses 169 to 171 agreed to on division)

(On clause 172)

**The Chair:** If you will move it, Mr. Harris, I have a comment.

**Mr. Jack Harris:** I will move it and you will rule it out of order.

**The Chair:** I probably will.

**Mr. Jack Harris:** I think we're getting the message on deleting clauses being proposed in their entirety, so I think it's probably preferable to withdraw the amendment and debate the clause itself, because the argument is the same.

Our amendment was to delete that clause in its entirety, and the reason is because it changes the objectives of sentencing to denunciation and individual deterrence as principles of sentencing for youth crimes.

We did have expert evidence on this. We heard Professor Bala's comments as an expert on this matter, and we also heard excerpts from the Nunn commission, talking about the issue of how you deal with young people and youth courts.

In this act, even with some of the provisions that are a part of the act itself and the new amendments, for example, in clause 168, "the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability"—and then it talks about what it emphasizes—it's clear that we do have a different set of rules for young people. Denunciation is a feature of sentencing that is reserved for adults at this point in time, and to include that as a principle of sentencing for young people we feel is inappropriate and contrary to the understanding of what the youth criminal justice system is about.

As I say, some of the proposals will only lead to potentially longer periods of incarceration, less emphasis on rehabilitation, and less ability for young people to be rehabilitated. This is one of the reasons we are opposed to the overly punitive nature of aspects of this legislation in its entirety and the reason we oppose this particular section.

There may be others who have some comments on our side, but I'm not certain of that.

**The Chair:** Mr. Woodworth.

**Mr. Stephen Woodworth:** I have a brief point, Mr. Chair, just to illuminate that this amendment simply gives discretion to a judge where a judge concludes that a specific young person might be deterred...to allow the judge to take that into account in sentencing. It is permissive to a judge. It's not mandatory or required. Therefore, I would hope my friends across the way would be willing to give the judges a little more discretion.

● (1845)

**The Chair:** Thank you, Mr. Woodworth.

(Clauses 172 and 173 agreed to on division)

**Mr. Brian Jean:** Mr. Chair, on a point of order, I'm wondering if Mr. Harris would consider the opportunity we have to group the clauses together.

**Mr. Jack Harris:** The next amendment we have is on clause 185, but there may be one on clause 183—we have a Liberal amendment—so I don't have a problem with clauses 173 to 182 being dealt with as a group.

**Ms. Kerry-Lynne D. Findlay:** We've dealt with clause 173, so it would be clauses 174 to 182.

**Mr. Jack Harris:** Okay. We just did that on division. It would be clauses 174 to 182. I stand corrected. Thank you.

**The Chair:** It's agreed that we will deal with clauses 174 through 182.

(Clauses 174 to 182 agreed to on division)

(On clause 183)

**The Chair:** Now, Mr. Casey, you have an amendment on clause 183.

**Mr. Sean Casey:** Yes, it's Liberal amendment 35. In the short time that I've replaced Mr. Cotler, I've heard my colleague Mr. Woodworth a couple of times deliver very convincing pleas for more judicial discretion, and that's exactly what this is directed at.

The bill as presented ties the hands of the judge with respect to the imposition of an adult sentence, and we are asking for permissive language to allow a judge to have that discretion.

**The Chair:** Do you want to deal with all of them?

**Mr. Jack Harris:** Our amendment is identical. If one fails, the other fails.

We have a second amendment as well to the same clause, replacing lines 2 and 3 on page 93 with the following:

> that an adult sentence be imposed if, having considered the seriousness and circumstances of the offence, the personal circumstances of the young person—including their age, maturity, character, background, and previous record—and other relevant factors, it is satisfied that

That would be in there and be ahead of the provisions about the presumption of moral blameworthiness or culpability being rebutted, and the sentence being imposed according to the purpose and principles of the act.

It's to the same effect.... We think the requirement of adult sentences is an affront, as Mr. Casey indicated, to the court having discretion. Again, telling judges what to do in so many circumstances, as we're seeing in this government's approach to both the youth justice system and the adult system, is contrary to our justice system, which, frankly, has a large number of judges across this country who are highly trained, highly experienced, and whose judgment we pay handsomely for, and who we rely on to deliver justice in individual cases and to take into consideration relevant factors, and have that system operate with the level of discretion that's appropriate. We think it is appropriate to continue to expect judges to be able to make proper determinations based on, as we say here, the individual circumstances that should be taken into account.

We're talking here about the seriousness of the offence, the personal circumstances of the young person—their maturity, character, background, and previous record—and any other relevant factors. I think that's the key here, that it does permit relevant factors to be taken into account. Judges have long experience and there's a tremendous amount of precedent available to guide the court in terms of how they work and what precedents.... If they deviate from those precedents and are out of line, other courts and courts of appeal can establish the guidelines that are necessary to give a proper set of determinations for our courts on an ongoing basis.

We are satisfied that the existing provisions of the law are adequate. In order to continue with that tradition, we think our amendments—along with the amendment, LIB-35, that was proposed by Mr. Cotler, through Mr. Casey just now, which, in this case, is identical to NDP-52. Our amendment, NDP-53, provides a guideline around which the decision of a sentencing judge or a determining judge would be made.

● (1850)

**The Chair:** Thank you.

Mr. Casey, you have LIB-36. Just so it's clear, if the NDP-53 amendment is adopted, we can't adopt LIB-36.

**Mr. Sean Casey:** May I speak to LIB-36, Mr. Chair?

**The Chair:** Yes.

**Mr. Sean Casey:** Thank you.

I'm now in the uncomfortable situation of speaking out of both sides of my mouth.

If it is the will of the majority of this committee to limit the discretion of judges, then it's our position that if you're going to give them direction then you'd better make it damn clear.

What LIB-36 does is it says to judges that if you're going to set about imposing an adult sentence, the standard to be applied is the criminal standard of “beyond a reasonable doubt” and no other standard, which makes it consistent with our Constitution, and makes it crystal clear that if you're going down that road they're entitled to the criminal burden of proof.

So while we would urge upon you that the judges should be given discretion, as I indicated in my earlier remarks, if you disagree with that and you're going to tie their hands, make sure you make it real clear and make sure that young people are entitled to the benefit of the doubt before they're handed an adult sentence.

That's the purpose of that amendment.

Thank you.

**The Chair:** Thank you, Mr. Casey.

Now the NDP have amendment 54.

**Mr. Jack Harris:** Yes. I'll just speak briefly to that, Mr. Chairman.

We think that all the provisions of section 3 and section 38 should be considered, not just subparagraph 3(1)(b)(ii), to give proper consideration for the factors of sentencing.

**The Chair:** Thank you.

Mr. Jacob, do you wish to say something?

[*Translation*]

**Mr. Pierre Jacob:** Amendment NDP-53 confirms what Quebec's youth centres have told us. The only approach that works, that works wonderfully in Quebec even, is differential intervention. It targets the use of the right measure at the right time, and the basic premise is this: the person is an individual who is still developing and who has not fully matured, and as such, that individual has different needs. Therefore, the individual or unique characteristics of each young person have to be taken into account.

It is, of course, necessary to take a rigorous approach to this type of intervention, so as to reinforce the notion of time. Parental involvement is also crucial, as are the victim and the impact. And that is why age, maturity, character, background and previous record are extremely important factors that need to be taken into account by the judge. The recourse available to judges must not be overly restrictive, because they will not be able to use differential intervention and neither will rehabilitation centres.

Thank you, Mr. Chair.

[*English*]

**The Chair:** Thank you, sir.

Having heard the discussion, we must vote on the Liberal–35 amendment.

(Amendment negatived)

**The Chair:** NDP–53.

● (1855)

**Mr. Jack Harris:** NDP–52 falls?

**The Chair:** It fell because it was identical to the first one.

**Mr. Jack Harris:** Okay.

**The Chair:** I'll call the vote on NDP–53.

(Amendment negatived)

**The Chair:** We're on Liberal amendment 36.

(Amendment negatived)

**The Chair:** All those in favour of NDP–54?

(Amendment negatived)

(Clauses 183 and 184 agreed to on division)

(On clause 185)

**The Chair:** Mr. Casey, Liberal–37.

**Mr. Sean Casey:** Clause 185 is the publication ban.

Our concern with this is that it's a break from what's been the Canadian approach since 1908, in relation to the protection of confidentiality and identification of young people. It's a serious break from how we've traditionally treated youths involved in our justice system. Absolutely, positively, it heightens the risk of stigmatization and has serious implications for rehabilitation and reintegration, which we believe should be the paramount considerations in the youth criminal justice system. So that's the reason for the amendment, the reason for our concerns with respect to publication bans.

Thank you.

**The Chair:** Thank you, sir.

If Liberal–37 carries, we can't address NDP–55, but go ahead.

**Mr. Jack Harris:** Since we've agreed to a 10-minute discussion per clause, I'd prefer to talk about more than one of these together, sir.

I agree with what my colleague, Mr. Casey, has proposed as LIB-37, and we also have amendment NDP-55.

We also have NDP-55.1, which is an amendment to clause 185, which I will read with your concurrence, to add the following as an additional section after line 22 on page 94, as subsection (5):

> (5) The Lieutenant Governor in Council of a province may, by order, exempt the province from the application of this section or fix an age greater than 14 years for the purpose of its application.

In dealing with the whole question of publication, we agree with Mr. Casey, and we agree that lifting the ban of publication is an extremely negative proposition. I would encourage members to consider the letter the Quebec Justice Minister, Jean-Marc Fournier, sent to this committee on November 15 that says, and I'm reading the English translation of the letter:

> Bill C-10 substantially amends the rule lifting the ban on publication of information that would identify a young person.
>
> Currently, publication is limited to specific cases, for example young person liable to an adult sentence or young person having committed a presumptive offence and the Attorney general had given notice to seek adult sentence. By henceforward targeting all violent crimes, the amendments proposed by Bill C-10 could cause the identity of too many young persons to be disclosed.

"The publication ban", as he points out, and we agree totally, "is intended to promote the reintegration of young persons at the end of the rehabilitative process. Lifting this ban would adversely affect their rehabilitation and undermine their potential for reintegration into society." I think this is also consistent with what we've heard from other experts, criminologists, people such as Professor Bala, and others who have underscored the importance of treating young offenders in a different category.

Justice Minister Fournier goes on to say that there's a difficult situation for public prosecutors, being in an awkward situation where they have "the burden of proving the relevance of the measure in which they did not see the benefit for society". In other words, they're required to prove why they didn't seek such a publication exposure in a particular circumstance, even though—particularly as the public prosecutors themselves would believe and that would be particularly true in Quebec, I'm assuming—this was a bad thing.

Also, the justice minister points out that the “publication of a young person's identity results in stigmatization and, as pointed out by the Supreme Court of Canada, disrupts the abilities of the family and others to provide support” that a young person would need in terms of his or her rehabilitation.

I think these are very important considerations, and we have a rational proposal from the Quebec government as to how to do that. My colleagues, Madame Boivin and Monsieur Jacob, have talked about it earlier in their interventions on an earlier provision. But this is the section where we are proposing to actually insert the Quebec suggestion into this law as an add-on to clause 185, allowing the Lieutenant Governor in Council of a particular province to make an order exempting that province from the application of the section or to fix an age greater than 14 years for the purpose of its application.

We think this is a reasonable proposal and we would ask that it be adopted.

● (1900)

**The Chair:** I've let you go through that, but I must tell you that amendment NDP 55.1 attempts to introduce an exemption by permitting a Lieutenant Governor in Council of a province to be exempted from the application of this section.

As *House of Commons Procedure and Practice*, second 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 an exemption is a new concept that is beyond the scope of Bill C-10; therefore, the amendment is inadmissible.

The other NDP amendment, 55, is okay; it's 55.1.

**Mr. Jack Harris:** We'll ask the government to adopt this amendment as part of the proper bill before we're finished, whether it's today or in third reading, report stage, or at some other stage of the bill. We would ask the government to adopt this as a reasonable proposition.

**The Chair:** Go ahead.

**Mr. Stephen Woodworth:** On these motions, generally, I wish to briefly point out that the government bill in no case requires a judge to lift a publication ban. It requires only that a judge think about it. That doesn't seem too heinous to me.

**The Chair:** We've heard all the discussion on the amendments. On LIB-37, all in favour?

(Amendment negatived)

**The Chair:** We'll go to NDP-55.

(Amendment negatived)

(Clause 185 agreed to on division)

**Mr. Robert Goguen:** Does Mr. Harris want to consider grouping some others?

**Mr. Jack Harris:** Yes. Perhaps we could just call clause 186 first, and then look at some of the rest of them.

(On clause 186)

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** I singled that one out for comment. We do support that, and I am prepared to talk about all the rest of them as one group. I would just mention in passing some of the provisions.

I would like to acknowledge and recognize that while we oppose many of the provisions that are being put forth here, we are not opposed to everything in the government's bill. In fact, some of the provisions, such as clause 186, recognize and underscore the fact that young people must be treated differently and separated from adults in our penitentiary system.

I will read clause 186 for the record, which says:

> Subsection 76(2) of the Act is replaced by the following:
>
> (2) No young person who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility for adults or a penitentiary.

I think that is an important principle. It's important to have it in the legislation. It's important to underscore that there is a different system of justice for young people and for adults, and we really do care about trying to ensure that while young persons are still of that age, under 18, we don't see them put in a population with adults who may be.... The term “hardened criminals” comes to mind. It would expose young people to certain individuals and circumstances that would be totally inappropriate for recognizing the situation that they find themselves in, still with the hope that the major principle of dealing with young persons, particularly those who are kept in custody, is to be treated and held separately from adults.

We want to recognize that this is contained in here and indicate our support for it, and indicate our support and interest in recognizing that not everything in this legislation is negative, that there are some positive aspects of it. We're happy to acknowledge that, while we are doing our job to vigorously object to the provisions that we have been objecting to.

● (1905)

**The Chair:** Thank you.

Mr. Jean.

**Mr. Brian Jean:** Mr. Chair, very briefly, I would agree with Mr. Harris. I have had the opportunity in Alberta to go to a youth assessment centre, as well as a federal penitentiary and provincial penitentiaries.

I can assure those people who are listening today that there's a significant difference between a youth centre and one for adults. I think this clause goes to that very thing, and I congratulate the government for moving this clause.

(Clause 186 agreed to)

**Mr. Jack Harris:** If I may speak to the remainder of the provisions, with the permission of the chair and the consent of the committee, the provisions between 187 and 204 are provisions that we are not opposed to, and we're satisfied to have them voted on as a group.

Some of these are simply consequential on a certain other provision, providing notice, in some cases a French language change —which is important—or the requirement that police keep a record of any extra judicial measures that are to take place if a young person is not brought before the court. So we see that these amendments are, in general, consequential and are related amendments to things that have already been passed. We don't see any reason to debate these particular sections individually.

**The Chair:** Are we talking about clauses 187 to 204 inclusive?

**Mr. Jack Harris:** Agreed.

**The Chair:** Mr. Jacob.

[*Translation*]

**Mr. Pierre Jacob:** Before we wrap things up, I want to say that I agree with the youth centres association, which appeared on October 25. Pierre Hamel, Director of Legal Affairs, was their spokesperson.

I agree that we need to maintain a balance between protecting the public and rehabilitating young people. We believe in investing in social services, particularly when it comes to tangible measures to reduce poverty, and the creation of programs to help youth enter the job market and to improve access to housing. All such measures will do more for society's youth in the long term than any hard-on-crime approach that seeks to toughen up the laws.

That was just a general comment I wanted to make about the Youth Criminal Justice Act.

Thank you, Mr. Chair.

● (1910)

[*English*]

**The Chair:** Mr. Harris.

**Mr. Jack Harris:** My colleague has just pointed out that some of these amendments are consequential on issues that we disagreed with. So for the sake of consistency, we would prefer to see them passed on division, but we're prepared to deal with them as one vote.

**The Chair:** Do you have any comments, Mr. Casey?

**Mr. Sean Casey:** Agreed.

**The Chair:** Having heard the recommendation, shall clauses 187 through 204 inclusive carry?

(Clauses 187 to 204 inclusive agreed to on division)

**Mr. Jack Harris:** Mr. Chair, I think we've made substantial progress today, having disposed of quite a few clauses, from 10 to 205, with the exception of half a dozen clauses in between. I would propose that we not see.... We could see the clock at 11:59, perhaps, and would not have to endure the time between now and then for continued debate, and resume our meeting tomorrow at 3:30 as planned.

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** Just as a matter of clarity, so we know what we're faced with tomorrow, would the clerk be able to give us which clauses have not been dealt with, so that all members know for tomorrow? I think there might be a revised agenda.

**The Chair:** It's clauses 39 to 43 and clauses 205 to 208. They're on the latest version of the agenda, I think, Brian.

Just for clarification for the chair, do we agree to see the clock as 11:59?

**Mr. Robert Goguen:** We agree.

**The Chair:** How late are we going tomorrow night?

**Mr. Robert Goguen:** No later than 11:59, as per your motion—the witching hour.

**The Chair:** I was thinking that somebody was going to see us as an earlier day tomorrow. The officials have been making plans to be here every night, it seems, but with good luck we've been seeing them go home.

**Mr. Jack Harris:** Well, I think we've been operating on a principle of good faith, and I think we'll continue to do so.

**The Chair:** Fine. I appreciate that.

I would like to thank the interpreters, the officials, and the folks at the table. It's been another long day.

Thank you very much for your attendance.

The meeting is adjourned.

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