



## MINUTES OF PROCEEDINGS

OTTAWA, Monday, June 19, 2023

(66)

[English]

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 6:05 p.m., in room B30, Senate of Canada Building, the chair, the Honourable Brent Cotter, presiding.

*Members of the committee present:* The Honourable Senators Batters, Boisvenu, Busson, Clement, Cotter, Dalphond, Dupuis, Pate, Patterson (*Nunavut*) and Simons (10).

*Participating in the meeting:* Aoife Mc Donald, Administrative Assistant, Committees Directorate; Julian Walker and Michaela Keenan-Pelletier, analysts, Library of Parliament.

Pursuant to the order of reference adopted by the Senate on Tuesday, May 30, 2023, the committee continued its consideration of Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act.

### WITNESSES:

#### *Department of Justice Canada:*

Matthew Taylor, General Counsel and Director, Criminal Law Policy Section;

Joanna Wells, Acting Senior Counsel, Criminal Law Policy Section;

Isabelle Desharnais, Counsel, Criminal Law Policy Section (*by videoconference*).

It was agreed that the committee proceed to clause-by-clause consideration of Bill S-12.

It was agreed that the title stand postponed.

It was agreed that clause 1 carry.

The chair asked whether clause 2 shall carry.

The Honourable Senator Simons moved that Bill S-12 be amended, in clause 2,

(a) on page 1,

(i) by replacing lines 8 to 17 with the following:

**“2 (1) Subparagraph 486.4(1)(a)(i) of the Act is re-”,**

(ii) by deleting lines 23 and 24;

(b) on page 2, by deleting lines 1 to 7.

After debate, the question being put on the motion in amendment, it was adopted.

The Honourable Senator Busson moved that Bill S-12 be amended, in clause 2, on page 1, by adding the following after line 22:

**“(2.1) Paragraph 486.4(2)(a) of the Act is replaced by the following:**

**(a)** as soon as feasible, inform any witness under the age of 18 years and the victim of the right to make an application for the order;

**(2.2) Subsection 486.4(2) of the Act is amended by adding “and” at the end of paragraph (b) and by adding the following after that paragraph:**

**(c)** if an order is made, as soon as feasible, inform the witnesses and the victim who are the subject of that order of its existence and of their right to apply to revoke or vary it.”.

Matthew Taylor and Joanna Wells answered questions from time to time.

After debate, the question being put on the motion in amendment, it was adopted.

The Honourable Senator Busson moved that Bill S-12 be amended, in clause 2, on page 2, by adding the following after line 7:

**“(3.1) Subsection 486.4(2.2) of the Act is amended by striking out “and” at the end of paragraph (a), by adding “and” at the end of paragraph (b) and by adding the following after paragraph (b):**

**(c)** if an order is made, as soon as feasible, inform the victim of the existence of the order and of their right to apply to revoke or vary it.”.

After debate, the question being put on the motion in amendment, it was adopted.

The Honourable Senator Pate moved that Bill S-12 be amended in clause 2, on page 2,

(a) by replacing lines 8 and 9 with the following:

**“(4) Subsection 486.4(4) of the Act is replaced by the following:”;**

(b) by adding the following after line 14:

“(4) An order made under this section does not apply in either of the following circumstances:

(a) the disclosure of information is made in the course of the administration of justice when the purpose of the disclosure is not one of making the information known in the community; or

(b) the disclosure of information is made by a person who is subject to the order and is about that person and their particulars, in any forum and for any purpose, and they did not intentionally or recklessly reveal the identity of or reveal particulars likely to identify any other person whose identity is protected by that order.”.

After debate, the question being put on the motion in amendment, it was adopted on the following vote:

YEAS

The Honourable Senators

Batters, Boisvenu, Busson, Clement, Cotter, Pate, Patterson (*Nunavut*), Simons – 8

NAYS

The Honourable Senator

Dalphond – 1

ABSTENTIONS

The Honourable Senator

Dupuis – 1

The Honourable Senator Busson moved that Bill S-12 be amended, in clause 2, on page 2, by replacing lines 12 to 14 with the following:

“justice shall

(a) if the victim or witness is present, inquire of the victim or witness if they wish to be the subject of the order;

(b) if the victim or witness is not present, inquire of the prosecutor if, before the application was made, they determined if the victim or witness wishes to be the subject of the order; and

(c) in any event, advise the prosecutor of their duty under subsection (3.2).

**Duty to inform**

**(3.2)** If the prosecutor makes the application, they shall, as soon as feasible after the presiding judge or justice makes the order, inform the judge or justice that they have

**(a)** informed the victim and any witness who are the subject of the order of its existence;

**(b)** determined whether they wish to be the subject of the order; and

**(c)** informed them of their right to apply to revoke or vary the order.”.

The Honourable Senator Pate moved that the motion in amendment be amended by adding the following after the word “existence” in proposed paragraph (3.2)(a):

“, its effects and the circumstances in which they may disclose information that is subject to the order without failing to comply with the order”.

After debate, the question being put on the subamendment, it was adopted, on division.

Resuming debate on the motion in amendment to clause 2 of the Honourable Senator Busson, as amended.

It was agreed that the motion in amendment, as amended, be adopted, on division.

The Honourable Senator Busson moved that Bill S-12 be amended in clause 2, on page 2, by adding the following after line 14:

**“(5) Section 486.4 of the Act is amended by adding the following after subsection (4):**

**Limitation — victim or witness**

**(5)** An order made under this section does not apply in respect of the disclosure of information by the victim or witness when it is not the purpose of the disclosure to make the information known to the public.”.

After debate, the question being put on the motion in amendment, it was adopted.

It was agreed that clause 2, as amended, carry.

The chair asked whether clause 3 shall carry.

The Honourable Senator Pate moved that Bill S-12 be amended, in clause 3, on page 2,

(a) by replacing line 15 with the following:

**“3 (1) Subsections 486.5(1) to (3) of the Act are”;**

(b) by adding the following after line 35:

**“(3)** An order made under this section does not apply in either of the following circumstances:

(a) the disclosure of information is made in the course of the administration of justice when the purpose of the disclosure is not one of making the information known in the community; or

(b) the disclosure of information is made by a person who is subject to the order and is about that person and their particulars, in any forum and for any purpose, and they did not intentionally or recklessly reveal the identity of or reveal particulars likely to identify any other person whose identity is protected by that order.”.

After debate and with leave, the amendment was withdrawn.

The Honourable Senator Busson moved that Bill S-12 be amended in clause 3,

(a) on page 2, by replacing lines 15 to 38 with the following:

**“3 (1) Section 486.5 of the Act is amended by adding the following after subsection (3):**

**Limitation — victim, etc.**

**(3.1)** An order made under this section does not apply in respect of the disclosure of information by the victim, witness or justice system participant when it is not the purpose of the disclosure to make the information known to the public.

**(2) Section 486.5 of the Act is amended by adding the following after subsection (5):**

**Duties — judge or justice**

**(5.1)** If the prosecutor makes an application for an order under subsection (1) or (2), the judge or justice shall

(a) if the victim, witness or justice system participant is present, inquire of them if they wish to be the subject of the order;

(b) if the victim, witness or justice system participant is not present, inquire of the prosecutor if, before the application was made, they determined whether the victim, witness or justice system wishes to be the subject of the order; and

(c) in any event, advise the prosecutor of their duty under subsection (8.2).

**(3) Section 486.5 of the Act is amended by adding the following after subsection (8):**

**Supplementary duty — judge or justice**

**(8.1)** If an order is made, the judge or justice shall, as soon as feasible, inform the victims, witnesses and justice system participants who are the subject of that order of its existence and of their right to apply to revoke or vary it.

**Duty to inform**

**(8.2)** If the prosecutor makes the application, they shall, as soon as feasible after the judge or justice makes the order, inform the judge or justice that they have

**(a)** informed the victims, witnesses and justice system participants who are the subject of the order of its existence;

**(b)** determined whether they wish to be the subject of the order; and

**(c)** informed them of their right to apply to revoke or vary the order.”;

(b) on page 3, by deleting lines 1 to 4.

The Honourable Senator Pate moved that the motion in amendment be amended by adding the following after the word “existence” in proposed paragraph (8.2)(a):

“, its effects and the circumstances in which they may disclose information that is subject to the order without failing to comply with the order”.

After debate, the question being put on the subamendment, it was adopted, on division.

The Honourable Senator Pate moved that the motion in amendment be amended by replacing “**3 (1) Section 486.5 of the Act is amended by adding the following after subsection (3):**” with

**“3 (1) Subsection 486.5(3) is replaced with the following:**

**(3)** An order made under this section does not apply in either of the following circumstances:

**(a)** the disclosure of information is made in the course of the administration of justice when the purpose of the disclosure is not one of making the information known in the community; or

**(b)** the disclosure of information is made by a person who is subject to the order and is about that person and their particulars, in any forum and for any purpose, and they did not intentionally or recklessly reveal the identity of or reveal particulars likely to identify any other person whose identity is protected by that order.”.

After debate, the question being put on the subamendment, it was adopted, on division.

Resuming debate on the motion in amendment to clause 3 of the Honourable Senator Busson, as amended.

It was agreed that the motion in amendment, as amended, be adopted.

It was agreed that clause 3, as amended, carry.

The chair asked whether clause 4 shall carry.

The Honourable Senator Busson moved that Bill S-12 be amended in clause 4, on page 3, by replacing lines 7 to 17 with the following:

**“Application — vary or revoke**

**486.51 (1)** If a person who is the subject of an order made under section 486.4 or 486.5 requests that the prosecutor have it varied or revoked, the prosecutor shall, as soon as feasible, make an application to vary or revoke the order on their behalf.

**Order — vary or revoke**

**(2)** If an application to vary or revoke an order made under section 486.4 or 486.5 is made by the person who is the subject of the order or by any other person, including a prosecutor, who is acting on their behalf, the court that made the order or, if that court is for any reason unable to act, another court of equivalent jurisdiction in the same province shall, without holding a hearing, vary or revoke the order, unless the court is of the opinion that to do so may affect the privacy interests of any other person who is the subject of any order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that person.

**Hearing**

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

**Factor**

**(4)** In order to determine whether the order should be varied, the court shall take into account whether it is possible to do so in a manner that protects the privacy interests of any other person who is the subject of any order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that person.

**Notice**

**(5)** The applicant is not required to provide notice of the application to vary or revoke the order to the accused.

**Submissions**

**(6)** The accused shall not be permitted to make submissions in relation to the application.

**Notice of change**

**(7)** If the order is varied or revoked, the prosecutor shall notify the accused.”.

The Honourable Senator Simons moved that the motion in amendment be amended in proposed subsections 486.51(2) and (3) by replacing “the privacy interests of any other person” with “the privacy interests of any person other than the accused”.

After debate, the question being put on the subamendment, it was adopted on the following vote:

YEAS

The Honourable Senators

Batters, Boisvenu, Clement, Cotter, Pate, Simons – 6

NAYS

The Honourable Senators

Busson, Dalphond, Dupuis, Patterson (*Nunavut*) – 4

ABSTENTIONS

NIL

Resuming debate on the motion in amendment to clause 4 of the Honourable Senator Busson, as amended.

It was agreed that the motion in amendment, as amended, be adopted.

It was agreed that clause 4, as amended, carry.

The chair asked whether clause 5 shall carry.

The Honourable Senator Busson moved that Bill S-12 be amended in clause 5, on page 3, by replacing lines 18 to 26 with the following:

**“5 Section 486.6 of the Act is amended by adding the following after subsection (1):**

**Prosecution — limitation**

**(1.1)** A prosecutor shall not commence or continue a prosecution against a person who is the subject of the order unless, in the opinion of the prosecutor,

**(a)** the person knowingly failed to comply with the order;

**(b)** the privacy interests of another person who is the subject of any order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that person have been compromised; and

**(c)** a warning to the individual is not appropriate.”.

After debate, the question being put on the motion in amendment, it was adopted.



It was agreed that clause 5, as amended, carry.

It was agreed that clause 6 carry.

The chair asked whether clause 7 shall carry.

The Honourable Senator Boisvenu moved that Bill S-12 be amended in clause 7, on page 8, by replacing line 13 with the following:

“age of 18 years or is a woman.”.

After debate, the question being put on the motion in amendment, it was negatived on the following vote:

YEAS

The Honourable Senators

Batters, Boisvenu – 2

NAYS

The Honourable Senators

Busson, Clement, Cotter, Dalphond, Simons – 5

ABSTENTIONS

The Honourable Senators

Dupuis, Pate, Patterson (*Nunavut*) – 3

It was agreed that clause 7 carry, on division.

The chair asked whether clause 8 shall carry.

The Honourable Senator Busson moved that Bill S-12 be amended in clause 8, on page 10, by replacing line 33 with the following:

“plies for life if the person

**(a)** was previously convicted of, or previously received a verdict of not criminally responsible on account of mental disorder for, a primary offence or an offence under section 130 of the *National Defence Act* in respect of a primary offence; or

**(b)** is, or was at any time, the sub-”.

After debate, the question being put on the motion in amendment, it was adopted.

It was agreed that clause 8, as amended, carry.

It was agreed that clause 9 carry.

It was agreed that clause 10 carry.

It was agreed that clause 11 carry.

It was agreed that clause 12 carry.

It was agreed that clause 13 carry.

It was agreed that clause 14 carry.

It was agreed that clause 15 carry.

It was agreed that clause 16 carry.

It was agreed that clause 17 carry.

It was agreed that clause 18 carry.

It was agreed that clause 19 carry.

It was agreed that clause 20 carry.

It was agreed that clause 21 carry.

It was agreed that clause 22 carry.

It was agreed that clause 23 carry.

It was agreed that clause 24 carry.

It was agreed that clause 25 carry.

It was agreed that clause 26 carry.

It was agreed that clause 27 carry.

It was agreed that clause 28 carry.

It was agreed that clause 29 carry.

It was agreed that clause 30 carry.

It was agreed that clause 31 carry.

The chair asked whether clause 32 shall carry.

The Honourable Senator Busson moved that Bill S-12 be amended in clause 32, on page 25, by replacing line 25 with the following:

“(1)(b) if, on or after the day on which this subsection comes into force, they have made an application for an exemption”.

The question being put on the motion in amendment, it was adopted.

It was agreed that clause 32, as amended, carry.

The Honourable Senator Pate moved that Bill S-12 be amended on page 30 by adding the following after line 5:

**“32.1 (1) Subsection 672.501(4) of the Act is replaced by the following:**

**(3.1)** If a Review Board makes an order under any of subsections (1) to (3), it must promptly inform the person whose identity is protected by the order of its existence, its requirements and the consequences of failing to comply.

**(4)** An order made under any of subsections (1) to (3) does not apply in any the following circumstances:

**(a)** the disclosure of information is made in the course of the administration of justice when the purpose of the disclosure is not one of making the information known in the community; or

**(b)** the disclosure of information is made by a person who is subject to the order and is about that person and their particulars, in any forum and for any purpose, and they did not intentionally or recklessly reveal the identity of or reveal particulars likely to identify any other person whose identity is protected by that order; or

**(c)** the disclosure of information is made by the victim or witness when the purpose of the disclosure is not one of making the information known to the public.”.

After debate, the question being put on the motion in amendment that new clause 32.1 carry, it was adopted on the following vote:

YEAS

The Honourable Senators

Batters, Boisvenu, Clement, Cotter, Pate, Patterson (*Nunavut*) – 6

NAYS

The Honourable Senators

Busson, Dalphond – 2

## ABSTENTIONS

The Honourable Senators

Dupuis, Simons – 2

It was agreed that clause 33 carry.

It was agreed that clause 34 carry.

It was agreed that clause 35 carry.

It was agreed that clause 36 carry.

It was agreed that clause 37 carry.

It was agreed that clause 38 carry.

It was agreed that clause 39 carry.

It was agreed that clause 40 carry.

It was agreed that clause 41 carry.

It was agreed that clause 42 carry.

It was agreed that clause 43 carry.

It was agreed that clause 44 carry.

It was agreed that clause 45 carry.

It was agreed that clause 46 carry.

It was agreed that clause 47 carry.

It was agreed that clause 48 carry.

It was agreed that clause 49 carry.

It was agreed that the title carry.

It was agreed that the bill carry, as amended, on division.

It was agreed that the Law Clerk and Parliamentary Counsel be authorized to make necessary technical, grammatical, or other required non-substantive changes as a result of the amendments adopted by the committee, including updating cross-references and renumbering of provisions.

The committee discussed observations.

After debate, it was agreed that the observations prepared by the Honourable Senator Pate be appended to the report.

It was agreed that the chair report Bill S-12, with amendments and with observations to the Senate.

At 9:35 p.m., the committee adjourned to the call of the chair.

*ATTEST:*

Mark Palmer

*Clerk of the Committee*