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# **Standing Committee on Public Safety and National Security**

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**EVIDENCE**

**Wednesday, May 1, 2019**

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**Chair**

**The Honourable John McKay**



## Standing Committee on Public Safety and National Security

Wednesday, May 1, 2019

• (1530)

[English]

**The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)):** Ladies and gentlemen, it's 3:30, we have quorum, and I want to respect witnesses' and members' time, so we are now in session. This is the 159th meeting. My goodness, this is a hard-working committee if I've ever seen one.

We have two witnesses for the first hour, the first from the Canadian Police Association, and the second from Campaign for Cannabis Amnesty.

At the end of the first hour, I'm going to ask someone to move acceptance of the subcommittee report. I'm going to ask Mr. Eglinski to be ready, since he's been so friendly.

With that, we'll simply ask the witnesses to speak in the order in which they're listed.

From the Canadian Police Association, we have Mr. Stamatakis.

**Mr. Tom Stamatakis (President, Canadian Police Association):** Good afternoon, Mr. Chair and members of the committee. Thank you for inviting me to appear before you this afternoon as part of your committee's ongoing study of Bill C-93.

I'm appearing this afternoon on behalf of the Canadian Police Association, which, as many of you know, is the largest policing advocacy organization in the country, representing over 60,000 front-line civilian and sworn law enforcement professionals from coast to coast to coast. Our members are the proverbial "boots on the ground" when it comes to issues of public safety and are the first to feel the effects of decisions made by elected officials at all levels of government.

As is my usual habit, I want to keep my opening remarks relatively brief to allow for as much time as possible for your questions and comments, particularly given that the subject matter in Bill C-93 is relatively straightforward.

At the outset, let me say that the Canadian Police Association is generally supportive of the goal of Bill C-93. While obviously we have seen a significant change in the legal status of cannabis within the last year, there is no doubt that social attitudes towards marijuana have been changing for quite some time. We certainly see it with the policing level and with the general public as well. While we often hear the popular term "war on drugs" with respect to policing attitudes around these substances, which aren't just limited to cannabis, most police services in Canada, in my experience, if not

all, have long since de-emphasized enforcement for simple possession.

Now that the legal framework has caught up to the social attitudes, there isn't any good reason, in my opinion, to deny people who have otherwise been law-abiding members of society being given a clean record and a chance to fully participate in areas that might otherwise have been denied to them on the basis of a past mistake. On that basis alone, our association is generally supportive of this legislation.

That said, we would like to take this opportunity to express some concern about the automatic nature of record suspensions being proposed by this bill. There's absolutely no doubt that the overwhelming majority of applications that will be made under these amendments will be from individuals who pose no ongoing risk to public safety, and they should certainly be dealt with as expeditiously as possible.

However, I would note that there will also be some applications made by offenders where simple possession may have been a charge that was arrived at based on a plea agreement with the Crown and down from a more serious charge. In those circumstances, it is possible that both the Crown and the court may have accepted the plea agreement based on the assumption that the conviction would be a permanent record of the offence and would not have accepted the lesser charge if they knew this would be cleared without any possibility of review at a future date.

While I understand that it would be both impossible and entirely unfair to hold unproven charges against someone, even in the case of a plea bargain, I do believe that this legislation could be quite easily amended to ensure that the proposed changes to the Criminal Records Act—specifically, the addition to section 4.1, which bars the Parole Board from conducting any evaluation of the applicant's history—don't allow habitual offenders to slip through the cracks.

An amendment that would allow the Parole Board to retain at least a slight amount of discretion to consider an applicant's conduct since conviction, or certainly any subsequent convictions, would alleviate any concerns police might have about ensuring community safety isn't compromised by the small number of repeat offenders who might take advantage of this legislation, and it will maintain the reputable administration of justice.

As I mentioned, I do want to keep these opening remarks brief. The legalization of cannabis has certainly been a significant change for front-line law enforcement, and I should note that it is a testament to the professionalism of our members that the transition to this new regime has been remarkably seamless over the eight months since the changes were enacted.

This legislation on the whole seems like a common-sense approach toward ensuring that criminal records reflect the new consensus around cannabis in Canada. We appreciate that the government has been very forthright in consulting with law enforcement experts as they've proceeded with this policy change, and we look forward to continuing that consultation.

We believe that Bill C-93, with a few small amendments to ensure that the Parole Board retains some amount of discretion to ensure long-term and habitual offenders are held accountable, will allow people to avoid the stigma of a criminal conviction and give those who deserve it a much-deserved second chance.

Thank you very much for inviting me appear before you today.

• (1535)

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

For Campaign for Cannabis Amnesty, we have Annamaria Enenajor. You have 10 minutes.

**Ms. Annamaria Enenajor (Founder and Director, Campaign for Cannabis Amnesty):** Thank you.

Good evening, Mr. Chair, and members. My name is Annamaria Enenajor. I am a criminal defence lawyer and the founder and campaign director for the Campaign for Cannabis Amnesty.

The Campaign for Cannabis Amnesty is a not-for-profit advocacy group focused on righting the historical wrongs caused by decades of cannabis prohibition. It was founded in April 2018, not too long ago, in response to the absence of federal legislation addressing the stigma of previous convictions for offences that would not longer be illegal under the Cannabis Act. Since then, the campaign has been calling on the government to enact legislation to delete criminal records relating to the simple possession of cannabis. We believe that no Canadian should be burdened with a criminal record for minor, non-violent acts that are no longer a crime.

It is an honour to appear before you today, and I offer you some observations and modest recommendations with respect to Bill C-93. The campaign supports the implementation of measures to remove the stigma of past cannabis convictions that disproportionately impact marginalized Canadians. As it is currently drafted, however, Bill C-93 does not go far enough.

The story of enforcement of cannabis possession offences in Canada is one of historical injustice and inequality. Canadians of different backgrounds consume and possess cannabis at comparable rates. In fact, Canada has one of the highest rates of cannabis consumption in the world. In 2017, 46.6% of Canadians—almost half of Canadians—admitted to using cannabis at some point in their lives.

Despite this widespread consumption, a growing body of social science evidence has shown that not all Canadians face the same

consequences for these actions. Racial profiling and suspicion of specific groups on the basis of stereotypes means that some Canadians are more likely to be closely scrutinized by law enforcement than others. Black Canadians, indigenous people of Canada and low-income Canadians are more likely to be stopped, searched, arrested, prosecuted and incarcerated for cannabis possession offences than white Canadians. This is not a tragic and accidental phenomenon. This is a historical injustice and a systemic charter violation that cries out for redress.

The equality provision of the charter was intended to ensure a measure of substantive, and not merely formal, equality. The Supreme Court of Canada has consistently held, beginning with the case of *Eldridge*, 1997, that a discriminatory purpose or intention is not a necessary condition to finding a violation of the equality provision of the charter. It is sufficient if the effect of the legislation, while neutral on its face, is to deny someone equal protection and benefit of the law. To the extent that the government seeks to draw distinction between laws that are discriminatory on their face and laws that are discriminatory in their effects, a distinction is illegitimate for the purpose of our constitutional protections.

While historical cannabis protection laws were not discriminatory on their face, they most certainly produced discriminatory effects in their enforcement. They perpetuated disadvantage on the basis of race, ethnic origin and colour, all of which are prohibited grounds under the charter.

The unequal and disproportionate enforcement of cannabis-related offences on this scale and of this magnitude encourages distrust and resentment of law enforcement, cynicism towards the administration of justice and an understandable sentiment that the promise of substantive equality under the charter is a myth for many Canadians. An appropriately powerful response to this shameful history is therefore also necessary to maintain the integrity of our justice system.

While the campaign applauds the government's willingness to recognize the disproportionate stigma and burden that results from the retention of conviction records for historical simple cannabis possession, we believe the bill does not go far enough.

Given the serious consequences of a cannabis possession conviction on the lives of Canadians and the legacy of inequality through disproportionate and discriminatory enforcement, the federal government must respond to this historical injustice with a measure sufficiently powerful to denounce a shameful history. People with simple cannabis possession records should be put in the same position as those millions of Canadians who did and who continue to do the exact same thing.

•(1540)

While it was criminal, they did not face any consequences because of factors that have no bearing on their moral culpability or criminality—factors such as their race, income, family connections and their neighbourhood of residence. As a result of that, they were never arrested and never convicted and were able to proceed through their lives with opportunities that were not available to other Canadians. As a result, Bill C-93 should be amended to provide for free, automatic, simple and permanent records deletions for simple cannabis possession offences.

If the government is not willing to go that far, then we suggest that there are other aspects of that kind of regime that the government could tap into that would still be satisfactory. For example, the government could incorporate aspects of an expungement scheme that could improve the bill's utility and allow for the implementation in a way that would benefit as many people as possible.

For example, on Monday when this committee met last, we heard that because of our decentralized and often archaic record-keeping practices, attempting to find and then destroy all relevant records would simply be too arduous. Just because we can't do this for all records doesn't mean we can't do it for some, and in fact, for the most important. As the honourable Ralph Goodale mentioned on Monday, while records relating to criminal offences do not exist in a single national database, records for convictions that have the greatest impact on jobs, volunteering and travel, in fact do.

The Canadian Police Information Centre, CPIC, is a national database maintained by the RCMP. If someone is arrested, charged and convicted of a crime, this record exists in the CPIC database. When an employer asks for a background check, for example, and requests it from the RCMP, the RCMP doesn't dispatch agents to rummage through courthouses to get all these disparate court records and information about an individual. They scan CPIC. When Canada discloses conviction information about its citizens to the United States, it also doesn't send photocopies of papers in boxes that are all across the country in disparate jurisdictions. It shares one database: CPIC.

Whereas we can't delete all records, what we can do is target one extraordinarily important database. Automatically removing all simple cannabis possession offences from CPIC would go a long way to alleviate the impact of a conviction from the lives of Canadians, even though this would not constitute a full expungement.

The automatic deletion of CPIC entries in relation to simple cannabis offences is also a cost-effective way to provide immediate relief to Canadians. An application process involving the collection of records from provincial, territorial and local police databases involves delays and hidden costs. Even if Bill C-93 eliminates the \$631 application fee ordinarily required for record suspension applications, applicants may still need to pay for fingerprinting, court information and local police record checks, which can add up to hundreds of dollars.

There has been some discussion in this committee about whether record suspensions assist Canadians when crossing the border to the United States. I'd like to speak very briefly about that, and I could be

asked more questions about that later. Record suspensions do not assist Canadians seeking to cross the border to the United States. The United States does not recognize any foreign pardon, irrespective of the effect of conviction. In fact, neither foreign pardons nor foreign expungement are effective in preventing inadmissibility to the United States. They are essentially equally useless.

I have provided to this committee fulsome submissions in writing that outline further recommendations, points and observations about this law. However, I wish to conclude with our primary recommendation, which is this: Bill C-93 should provide for the permanent and automatic deletion of all conviction entries for cannabis simple possession in the CPIC database.

Our subsidiary recommendations are outlined in our written briefs.

•(1545)

We hope that the recommendations that we proposed would increase the bill's utility, assist in achieving its stated goals and allow for implementation that would benefit as many people as possible.

Thank you for your time.

**The Chair:** Thank you very much.

With that, we turn to Ms. Sahota. Seven minutes, please.

**Ms. Ruby Sahota (Brampton North, Lib.):** Thank you, Mr. Chair.

First, I'd like to find out a little bit more about cannabis amnesty. I guess I didn't get a chance to really do my homework.

You are the founder of that organization. When was it created and what was its purpose at the time?

**Ms. Annamaria Enejor:** It was created around April 2018.

I am a criminal defence lawyer. A lot of my clients face criminal charges with respect to cannabis. One thing that you can tell is that I'm a relatively recently called lawyer. I haven't been practising for very long, but one thing that quite surprised me is that often when it comes to offences, people are less afraid of the actual sentence and more afraid of what it will do for them for the rest of their lives. That stunned me. I thought that you do your crime, you do your time and you move on. I found it particularly disheartening that people who were trying to get their lives back on track were essentially being sabotaged by a system of information disclosure that prevented them from getting jobs, getting volunteer placements or travelling, for example, because of the stigma attached to having previously committed a criminal offence.

**Ms. Ruby Sahota:** Where is this organization based?

**Ms. Annamaria Enejor:** It's based out of my office in Toronto.

**Ms. Ruby Sahota:** I found it interesting. We were exploring on Monday that.... You've obviously been through the costs of fingerprints and court records and police record checks. I was wondering if either of you could give us some insight as to how much a police record check and obtaining court documents would cost in the regions where you practise.

**Mr. Tom Stamatakis:** I couldn't give you a specific answer. It varies from jurisdiction to jurisdiction.

**Ms. Ruby Sahota:** The jurisdiction that you are working from....

**Mr. Tom Stamatakis:** My home service is in Vancouver, and to be very blunt about it, I haven't dealt with a record check or any fingerprinting for some time in that jurisdiction. I don't know what the cost is at the moment.

**Ms. Annamaria Enejajor:** I don't have the answer for that, but I know where I can get it. I've been speaking to a group of young entrepreneurs who work out of the Ryerson legal innovation centre in Toronto, who have designed an app that tries to help people streamline and manage better the costs of doing a pardon application. It's called ParDONE.

Through my association with them, they've done a lot of the research about the disparity across the board in the application for pardons.

• (1550)

**Mr. Tom Stamatakis:** I will get you a few examples from a few jurisdictions. I don't know if you want me to send them on to the committee.

**Ms. Ruby Sahota:** Yes, that would be useful. Thank you.

**Ms. Annamaria Enejajor:** I could reach out to them as well because I know they've created a database for the cause. It varies. I know in my jurisdiction it's around \$50 for a local police check. I can't remember whether it's Regina or Winnipeg, but I think it may be Winnipeg where it can be up to \$125.

**Ms. Ruby Sahota:** Does ParDONE represent people in filling out their pardon paperwork? Do they have a cost associated with that?

**Ms. Annamaria Enejajor:** Yes, they do.

**Ms. Ruby Sahota:** Do you know what their cost is?

**Ms. Annamaria Enejajor:** I'm not sure. I haven't really talked to them about the cost model because our discussions were focused on providing it pro bono because we are not-for-profit. They did mention that even with attempting to reduce the costs as much as possible because of the ancillary costs of fingerprinting.... Even if you get rid of the \$631, there's fingerprinting, a local police check and a background check.

**Ms. Ruby Sahota:** Would your organization be able to provide services as pro bono work in helping people go through the process?

**Ms. Annamaria Enejajor:** That's certainly one thing we're contemplating, once the government has passed legislation on pardons. We would be very much interested in assisting people as much as possible. However, until we see the model the government is implementing for the purpose of pardons, it will be difficult for us to know whether we are capable of doing that.

**Ms. Ruby Sahota:** You talked about automatic deletion. We were informed on Monday that automatic deletion would be very difficult to do. Because of the way the charge is listed in CPIC, prior to 1996,

it would be a narcotics possession charge or conviction, and post 1996, it would be seen as a possession of a substance in schedule II.

**Ms. Annamaria Enejajor:** Yes.

**Ms. Ruby Sahota:** How would they be able to pick out...They would basically have to pick out all of those charges which could be for various different narcotics or different substances in schedule II and then go through all the court documents and police records. It would be quite extensive.

**Ms. Annamaria Enejajor:** Yes, that's correct. It would be very difficult for those prior to the Controlled Drugs and Substances Act, but schedule II of the Controlled Drugs and Substances Act is only cannabis.

**Ms. Ruby Sahota:** Is it only cannabis?

**Ms. Annamaria Enejajor:** It's cannabis, cannabinoid, cannabis derivatives, cannabidiol. It's the schedule of cannabis derivatives. There is a list of around 10, 11 or 12, and of those there may be only one that is presently not legal.

**Ms. Ruby Sahota:** So, that's what you meant by saying some people can still be helped. You're saying those that are coming after that change in the law are they the ones that we can automatically delete?

**Ms. Annamaria Enejajor:** Yes.

**The Chair:** Thank you.

Mr. Motz, you have seven minutes.

**Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC):** Thank you very much, Mr. Chair, and thank you to both witnesses for being here today. I want to ask you both the same question.

Were either one of your organizations consulted in the drafting of this bill? I know your answer to my second question, were your objectives met in this bill? Obviously, they weren't. From the Police Association, you answered both. Were either of your groups consulted before the drafting of this bill?

**Mr. Tom Stamatakis:** Were we directly consulted? Not in an extensive way. We had some exchanges, but we didn't have a specific consultation with respect to this bill.

**Ms. Annamaria Enejajor:** I would say the same thing. We had an open line of communication with Mr. Goodale's office to the extent that we would send him information and ideas. His office would acknowledge the receipt, but we weren't consulted about the actual substance of the bill. The first time we saw it was when it was released to the public.

**Mr. Glen Motz:** Officials briefed us when they were here on Monday. There are about 250,000 individuals, according to the records that they relied upon, who might be eligible for this process. Do those figures align with what you have heard or believe to be a true and accurate number of Canadians who have a minor possession of marijuana as a criminal record?

• (1555)

**Ms. Annamaria Enenajor:** My understanding is that it is half that number that reflects people who have a previous cannabis conviction record or a previous criminal record for simple cannabis possession. You said something that might be the reason for that. You said there are about 250,000 people who would be eligible. The number of people who are eligible for pardons, under this piece of legislation, is different from the number of people who have previous cannabis conviction records.

The eligibility pares down the number of people and it may be reasonable to suspect that one of the requirements for eligibility is that individuals have to have only simple cannabis possession records. You can imagine that a vast number of people who have simple cannabis possession also have another offence on their record, be it an administrative offence, a fine or another drug-related offence. That would automatically disqualify them. I can see that the number of people who might be able to benefit from this would be substantially less than the number of people who actually have simple cannabis possession on their records.

**Mr. Glen Motz:** Any comments from the Canadian Police Association, sir?

**Mr. Tom Stamatakis:** I couldn't comment specifically on the number, but that doesn't surprise me that the number would be relatively low. As I said in my remarks, in my experience police organizations have de-prioritized targeting people for simple possession, particularly cannabis, for quite some time.

**Mr. Glen Motz:** One of the other things the officials told us on Monday was that based on the 250,000, they anticipate there will be potentially up to only 10,000 individuals who would take advantage of this record suspension opportunity.

Are you hearing anything different on either part? Is that something you can speak to?

**Mr. Tom Stamatakis:** Anecdotally, it's not unusual in my experience that people don't pursue getting a pardon or having a record expunged. It's a step that people have to take, so it's not uncommon for me to come across people in my work who could apply for a pardon, or an expungement of some other record, but don't for whatever reason.

**Ms. Annamaria Enenajor:** I think that's correct.

It doesn't surprise me that the number is so low. I'm surprised because I hope it would have benefited more people, which is one of the reasons we are asking for it to be automatic. If it's just the push of a button, you don't have to go through the process.

There is a difficulty in getting people to take advantage of a scheme that's developed where there's a historical documentation provision requirement. It's quite difficult to get these documents. You have to physically go to the court; they may not have them

there; they have to order them from storage and that's only one of maybe two, three, four or five documents that you have to obtain.

The process in itself could be a deterrent simply because it is too cumbersome and difficult to do. There is also the additional cost that may weed out people as well and make them think it's not worth it.

**Mr. Glen Motz:** We talked about that on Monday. There are the fingerprinting costs and the application for a record from the local police jurisdiction where that offence was committed and potentially other costs associated with that as well. It really doesn't make this a cost-neutral venture.

You mentioned, and it was talked about the last time briefly as well, the challenge of obtaining past records. We know in policing that sometimes these offences occurred in jurisdictions where the record-keeping was not as we would be accustomed to today, or in larger municipalities or organizations, and it's a problem.

Do you have solutions on how we might address that? We may not find them because they're in a box in the basement somewhere. They're not modernized or digitized, so how do we go about this?

• (1600)

**Ms. Annamaria Enenajor:** I agree it's very challenging, but that challenge can be turned on its head, I think, and that's what I was suggesting in my earlier remarks.

We don't have to focus on all the records. Why don't we focus on the ones that matter, the ones that impede people from getting jobs, volunteering or crossing the border? Nobody is going into the basement of a courthouse and using those documents to prevent someone from getting a job. The CPIC database is the impediment.

**The Chair:** Mr. Motz, I'm going to have to owe you 11 seconds for the next round.

Mr. Dubé, you have seven minutes, please.

**Mr. Matthew Dubé (Beloeil—Chambly, NDP):** Thank you very much.

First of all, I want to thank you both for being here.

I want to continue on this idea about CPIC that you mentioned in your testimony, and correct me if I'm not understanding this correctly. In other words, any time a potential landlord, employer or whoever is asking any question that requires some kind of background check, their verification would occur through CPIC, is that correct?

**Ms. Annamaria Enenajor:** That's my understanding of how it happens.

**Mr. Matthew Dubé:** Okay.

I just want to back up a little to the question about historical injustice, because this seems to have been the grounds on which the government is distinguishing between the injustices committed on the members of the LGBTQ community through Bill C-66, the individuals who would be affected by this legislation, and who have been affected by criminal records for simple possession.

The numbers you've cited in your brief, that I've cited and that many have cited about the disproportionate impact, are essentially government numbers, if I can phrase it that way. Is that correct?

**Ms. Annamaria Enejajor:** They are numbers that have been provided through either freedom of information requests and that have been processed by academics or Statistics Canada.

**Mr. Matthew Dubé:** So in other words, the government would be aware of that information when drafting this type of legislation.

**Ms. Annamaria Enejajor:** I would imagine that it wouldn't surprise them.

**Mr. Matthew Dubé:** That brings me to this. You referenced a Supreme Court case, so there really is no legal foundation for what constitutes a historical injustice. Obviously that decision you referenced goes into it, but when the minister tries to create a standard—and he was very careful in his testimony Monday to not use that phrase again, although others like Minister Blair have—there's no real precedent. There's no measuring stick as to what would reach that threshold.

**Ms. Annamaria Enejajor:** Right, yes. The case I was referring to wasn't about historical injustices. It was about equality.

**Mr. Matthew Dubé:** Right.

**Ms. Annamaria Enejajor:** The definition of equality under the charter is a definition that has been developed through case law, and it's a term of art. When you say "equality", you don't mean formal equality, you mean substantive equality, and that has a meaning. It has content.

Historical injustice is not a legal term of art. You could use it to describe anything that you deem to be a historical injustice, but I think what Minister Goodale was doing in his testimony was being very careful, because the government in essence has created it to be a term of art because of the way that it has structured Bill C-66. I think Bill C-66 was designed to address it with the term "historical injustice". There was a schedule, and on that schedule they put offences they deemed to be historical injustices. In order for them to have an argument to exclude certain offences from that schedule, they would have to define them as something other than historical injustices.

So I think it's a term of art that's artificially constructed, but you can define historical injustice in any way that you choose to.

**Mr. Matthew Dubé:** So ultimately what you're positing by using the discussion about equality is that there is clearly an inequity in how these individuals were treated and such. If you're going to use this term of art, as you say, then it could easily fall under the same sort of construct, but ultimately, it's unnecessary to go forward with expungement. If it's perceived in a particular way, if the social acceptance does exist for this activity now, which is now legal, then there's no reason why it couldn't just simply be expunged.

**Ms. Annamaria Enejajor:** Well, what I was trying to lay out had to do with the harm that was done by the historical injustices, the offences that essentially were homophobic in nature. They discriminated against individuals on the basis of sexual orientation. That is a violation of the charter, and it is false to try to draw a distinction, if you're looking at what is a violation of the charter, between laws that are discriminatory on their face and those that are discriminatory in their effect.

• (1605)

**Mr. Matthew Dubé:** Perfect.

**Ms. Annamaria Enejajor:** So it's a false distinction if your objective is to try to define things that would violate section 15 of the charter.

**Mr. Matthew Dubé:** I appreciate that. So some of the issues that people would have that would qualify for the process laid out in Bill C-93—and we've had confirmation from officials on this—would include things like those you've mentioned, some of these administrative offences, such as failure to appear in court, unpaid fines, which some would say could be fines of as low as \$50. Even then "low" is a relative term, naturally.

In your experience, would it not be the same marginalized individuals who would be targeted by those criteria that we're seeking to remediate with this legislation?

**Ms. Annamaria Enejajor:** In my experience, and I believe in the experience of many of my colleagues who defend these people on a daily basis, there's not necessarily any correlation between the number of offences on a person's rap sheet, a person's record, and the extent to which the person poses a real and true danger to society.

In fact, my clients who have the longest conviction records are the ones who have the greatest mental health challenges. They cannot understand, and for that reason they miss court dates. They are compulsive in their behaviour in terms of not showing up for court or compulsively stealing and things like that. That doesn't necessarily correlate with the people we are seeking to target as being the most dangerous and reckless people in society.

**Mr. Matthew Dubé:** And so there's a big distinction between achieving a public safety objective by not wanting to give someone a way out when there might be more serious issues and someone who might have an unpaid fine or this type of administrative offence.

**Ms. Annamaria Enejajor:** Exactly. It's not necessarily the existence of another offence on their record that speaks to the danger they pose to society, but really the nature of the offence.

**Mr. Matthew Dubé:** Ultimately we favour expungement; it seems that the government doesn't.

However, even if they were to remain with the pardon called the record suspension system, would it not be preferable for it to be automatic to avoid this application process that, despite being expedited on the federal government's side, is still costly and drawn out, given what's been raised here today and on Monday?

**Ms. Annamaria Enejajor:** Yes, absolutely.



One of my primary concerns is that this legislation, while well-meaning and much better than the status quo.... I'm not here to completely dismantle it. I think it's fantastic that the government has taken this initiative. My concern is that people will not take it up.

**Mr. Tom Stamatakis:** If it is automatic, how do you determine the nature of those additional offences to determine whether there is a public safety risk or not?

**Ms. Annamaria Enejajor:** I think if there are other offences, you wouldn't qualify for this.

**The Chair:** I have to leave it there.

This is an interesting point in the debate, so maybe Monsieur Picard can pick it up in the next seven minutes.

**Mr. Michel Picard (Montarville, Lib.):** No, I won't. I'll change the subject.

[*Translation*]

Madam, do you think consuming cannabis is a basic right?

[*English*]

**Ms. Annamaria Enejajor:** No.

[*Translation*]

**Mr. Michel Picard:** Do you think an activity that is prohibited and then becomes permissible is worthy of an administrative correction—without getting into the administrative aspect—where the correction does not necessarily relate to a basic right?

[*English*]

**Ms. Annamaria Enejajor:** No.

[*Translation*]

**Mr. Michel Picard:** On Monday, we heard from department officials, and they explained the difference between a suspension and....

[*English*]

What's "expungement" in French? I don't know.

On the difference between expungement and suspension, the pardon has a paper trail, but there's no such document to explain an expungement, so no one can arrive with a document.

Do you agree with that?

**Ms. Annamaria Enejajor:** I do not. I make reference to that in my written submission, but I can respond right now.

Essentially, what Minister Goodale was trying to say was that pardons are more beneficial for government crossings to the United States, because a successful applicant will have documented proof of a pardon while an expungement does not. This would only be the case where the government creates a regime that results in that objective.

This question was raised in this committee when the government was studying Bill C-66, which was a bill to create expungement for historically unjust sentences. When the CEO of the Parole Board, Talal Dakalbab, testified before this committee, he was asked this very same question.

Talal Dakalbab testified that those who receive an expungement pursuant to Bill C-66 could carry with them the Parole Board of Canada's expungement decision. This is a quote from that testimony:

This document shows that their offence has been expunged or that they have obtained a pardon or a record suspension. This is usually how this information can be removed from the systems of other countries.

There is a mechanism—if the government constructs the legislation in that way—to provide a document that is equally as useful in the process of an expungement but that is not in a criminal record database. With something, for example, like a birth certificate, there is meaning and weight to its significance, but it's not in a police database; it doesn't prevent you from getting a job.

Where it can be created, as Minister Goodale mentioned in the case of a suspension, it can also be created in the case of an expungement, and that was suggested by the CEO of the Parole Board when testifying about Bill C-66.

• (1610)

**Mr. Michel Picard:** What's the point of creating something new when you already have something that works and is understood by other police forces, namely U.S. customs?

**Ms. Annamaria Enejajor:** What are you suggesting?

**Mr. Michel Picard:** The pardon and the document that accompanies the pardon and everything is based on something that exists already with the exact same result, and it works. This is the language that's used daily with other police forces in other countries. Why are we recreating the wheel when we have something that is perfectly efficient and achieves the objective at stake?

**Ms. Annamaria Enejajor:** It's for the same reason that we have Bill C-93 proposed, as opposed to just the Criminal Records Act. There's a specific mischief that the government is responding to, which is a historical injustice, in my submission. The government has recognized that there's a history of disproportionate impact of cannabis convictions, of cannabis prohibition and enforcement of this law, on specific people in Canada. That's why the government is implementing, in addition to what it already has.... It's saying let's do something a little bit more. They're saying that little bit more is that they're going to remove the fee associated with it and remove the waiting period. They're not recreating the wheel, but responding to a specific mischief.

What I'm proposing is also a response to that specific mischief, but my suggestions are going a bit further. There is room to construct something where there is a unique mischief that the government is responding to, particularly when it pertains to historical injustice that will result in people losing faith and confidence in our justice system because it doesn't treat people fairly.

In terms of recreating the wheel, there are currently approximately 23 states in the United States that have either decriminalized or legalized cannabis, and of those 23, seven implemented some kind of measure for expungement or pardons or amnesty for cannabis-related offences, and of those seven, six are expungements.

In the United States, it is standard pro forma to approach things by way of expungement. The United States will understand that language better than they would understand a pardon, because it means something different in the United States. A presidential or a congressional pardon is something different from what we call a pardon.

[Translation]

**Mr. Michel Picard:** During your opening statement, you talked about focusing on the most important records.

I completely agree that someone who is looking for a job needs their pardon in order to find employment. You're saying that the government, or at least an administrative body, should do the work. How is someone in an administrative organization supposed to decide which records on the list or in the database are most important?

[English]

**Ms. Annamaria Enenajor:** I think in my description of what was important, I didn't mean important in the sense of a qualitative assessment of the content of the file or the record. What I meant by important is the location of the document that has the most impact on the person's life.

Let's say that there's an individual who had a conviction in 1983 of simple cannabis possession. The entry would be in CPIC, and that entry may also be contained in physical documents in a courthouse, in a storage facility somewhere. If we want to spend our resources to rid that person of the stigma associated with the criminal record, we should go after the digital record in CPIC rather than the paper record in the basement of a courthouse, because the digital record is the one that's most likely to have an impact on that person's ability to find employment.

Maybe I wasn't clear, and I apologize for that, but it wasn't the content of the document that's most important. It was really trying to discern which types of records we want to target for the purpose of making sure that our efforts and our resources are expended only where they will be the most effective in assisting people to get their lives back on track.

•(1615)

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

There was reference to Bill C-66 coming before this committee. I don't think it actually came before this committee. It was some other committee, but it wasn't this one, I'm pretty sure. It was probably justice.

Mr. Eglinski, you have five minutes.

**Mr. Jim Eglinski (Yellowhead, CPC):** Thank you.

I'd like to thank both witnesses for being here.

I'll start with you, ma'am.

I'm going to go back in history a little bit because I was there. I started policing in the 1960s and drugs just started to filter into Canada's community in about the mid-1960s. I was there when we started an active enforcement program, regardless of whether it was Edmonton city police or Vancouver RCMP. I watched the progression as it came up to today. I've been there and watched it.

One thing that you mentioned—and I do agree with you—is that we can not rely on anything out there for this record thing other than CPIC because CPIC didn't start when the drugs started. There are lots of records that are lost who knows where. We discussed that a little bit.

We've had discussions here by our parole people who say they have to look at it and decide whether that person should be eligible or shouldn't be eligible. They say that they're going to be able to do it quite quickly. It should be immediately, but when they sit it here they say it may take some time. To me, that's not going to be cheap and fast.

I've brought this up a number of times. I think everybody here in this room kind of knows that I think pressing a button is the way to do it for simple possession charges. It was very clear to this committee the other day that if the charge was reduced 15 or 20 years ago from something else to simple possession and that's what the Crown decided to go on and that's what the person was convicted of, then all we can rely on is that simple possession charge.

In this day and age of artificial intelligence, some of the best minds in the world here in Canada could not develop a program that would connect the CPIC program held by the RCMP with a computer going through that thing faster than we can with a group of people. You'd think a logical way of doing it would be where the computer would go and kick out the ones that should be kicked out and delete them.

I wonder what are your feelings on that.

**Ms. Annamaria Enenajor:** I think there's definitely room to develop a program like that. I think an even more complex algorithm could be developed to determine whether there are aspects of a person's record in its entirety that warrant further inspection to respond to some of the concerns of the Police Association, which may be valid with respect to.... You don't want to expunge the records or delete the records of somebody who should probably be followed, but for simple possession....

**Mr. Jim Eglinski:** Thank you for that. I think we're thinking the same way.

Could you send us a list of the six states that are doing the system because I would like to find out if any of them are doing it by computer or if they're trying to do it the manual way.

I would be very interested to know that.

•(1620)

**Ms. Annamaria Enenajor:** Yes.

**Mr. Tom Stamatakis:** I agree with what you're suggesting. The only concern I would raise is that the problem with just expunging that record—or deleting that record, to use your term—is that there are records that exist elsewhere in other databases. You need to still have some kind of an accompanying document or record that says that the CPIC entry has been deleted, so that—

**Mr. Jim Eglinski:** A properly produced program with the proper agencies working on it would be able to do that.

**Ms. Annamaria Enenajor:** There are a number of jurisdictions in the United States—they're municipalities—that are using artificial intelligence and predictive coding to identify records and eliminate them. I'm just on our web site right now because we have listed some of them there, but I can certainly provide this to the committee.

**Mr. Jim Eglinski:** Thank you.

Tom, just to let you know, it's \$25 for a check in your city and \$25 if they want to add a fingerprint check. Ottawa is \$42 for a criminal check, \$99 if you want fingerprints and \$139 if you're a company.

**Mr. Tom Stamatakis:** Thank you.

**The Chair:** You're done your five minutes.

My ever-vigilant clerk has corrected me. Bill C-66 did come before this committee. The benefit of getting old is that everything seems fresh again.

Ms. Dabrusin, you have five minutes, please.

**Ms. Julie Dabrusin (Toronto—Danforth, Lib.):** Thank you to both of you. It has been helpful to get your perspectives on things, especially in the context of what we heard on Monday as well.

Ms. Enenajor, first, you stated that this bill shows a recognition of historical injustices. If this bill passed as is, unamended, would you be happy to see it go through as a first step in righting those historical injustices?

**Ms. Annamaria Enenajor:** Absolutely.

**Ms. Julie Dabrusin:** I want to speak to you about some other points.

One of the issues that came up on Monday was really about tracking down all the records. The question seemed to be, in what was suggested to us by the officials, that if it was upon them to do all the work themselves as opposed to putting the onus on the person seeking the pardon, they would have to go and check records that might be in basements to see if it was actually simple possession of cannabis as opposed to something else.

**Ms. Annamaria Enenajor:** Yes.

**Ms. Julie Dabrusin:** However, if I understand what you've suggested today, these would all be schedule II. Would that be how it's marked in CPIC, as schedule II?

**Ms. Annamaria Enenajor:** Yes, schedule II.

**Ms. Julie Dabrusin:** At that point, all but one of those items would be in fact legal today.

**Ms. Annamaria Enenajor:** It has been a while since I've juxtaposed schedule II and the schedule of the Cannabis Act, but I do believe it's almost identical.

I know for sure that schedule II of the Controlled Drugs and Substances Act is only cannabis and cannabis-derived substances.

**Ms. Julie Dabrusin:** Then one simplified process might not get everyone, especially because laws change and schedules change over time. However, if there was a way to date it back, one way would be to actually make it somehow automatic for schedule II possession—and I'm not using the right legal terminology because I don't have the act in front of me—

**Ms. Annamaria Enenajor:** Yes.

**Ms. Julie Dabrusin:**—and then maybe have to do something else for those when you have perhaps different items and schedules and it's different legislation.

**Ms. Annamaria Enenajor:** Yes, exactly. One of the things we proposed in one of the documents we sent to the government was a multi-tiered system that responded to different kinds of offences.

For example, it makes sense if you have only one conviction for simple cannabis possession that's over 40 years old and you've never done anything since then. Who cares? Just expunge it. It's so useless to have that.

In terms of the risk of it being anything more serious than simple cannabis possessions, if they're 40 years old, why don't we just get rid of all those ones? Different tiers of types of offences can attract different responses.

• (1625)

**Ms. Julie Dabrusin:** You have outlined what that would look like. At this point, we're looking at legislation, and I guess you would agree with me that it's important that we pass this legislation quickly.

**Ms. Annamaria Enenajor:** Yes.

**Ms. Julie Dabrusin:** It would be helpful, then, if you have any suggestion as to proper wording.

**Ms. Annamaria Enenajor:** Yes.

**Ms. Julie Dabrusin:** I don't know if you've already provided that to the committee.

**Ms. Annamaria Enenajor:** I have not. I think we have a draft piece of legislation. However, I can provide that to the committee.

**Ms. Julie Dabrusin:** That would be wonderful. I'd appreciate that, if you'd be able to send in what you would propose as a draft.

The other question that has been on my mind is when we'd looked at record suspensions previously with a motion—I think it was M-161—one of the witnesses mentioned that one of the largest barriers was outstanding fines. The time didn't start clicking for a lot of people because of it.

Here, the time isn't a factor anymore under this bill, but my understanding is that you can't qualify under Bill C-93 if you still have outstanding fines. How do you feel about that piece, about the outstanding fines? Would it be helpful if people were not required to pay their outstanding fines to qualify for the pardon or record suspension?

**Ms. Annamaria Enenajor:** I actually thought there was no relationship between the presence of an outstanding fine and eligibility for Bill C-93, so I'm—

**Ms. Julie Dabrusin:** My understanding was that all penalties, any time that had to be served, if there was time that had to be served, or any outstanding fines, would have to have been completed before you would be able to qualify.

**Ms. Annamaria Enenajor:** Yes, completed. That's right.

That was a difficulty in access on this issue. Many times the people who don't pay their fines are unable to do so. These are the same people who are unable to afford pardons, ultimately. We're trying to target those people who have, as a result of their criminal convictions, become marginalized and are unable to be gainfully employed and contribute to society. Then we're doubly punishing them by preventing the only mechanism by which they can actually go out and be employed and contribute to society and gain the type of income that would allow them to pay the fine. It's a contradiction in terms to not have contemplated a way to go around that.

**Ms. Julie Dabrusin:** Thank you.

**The Chair:** Mr. Motz, you have five minutes.

**Mr. Glen Motz:** Thank you, Chair.

I'd like to continue on with the issue of fines. I think it's important to appreciate that if you have an outstanding fine, and if there's a significant timeline, it's turned into a warrant. You have a certain amount of time to pay your fine, and if you don't, it goes to warrant. The moment you start dealing with that, then, you have an outstanding warrant. Generally, if it's for minor possession, with a \$150 or \$200 fine generally, you get picked up and you're released, because really you've paid your fine. That's kind of how things generally work for minor possession.

I want to also talk about CPIC for a second. CPIC is a database that identifies to law enforcement that an individual has been dealt with with a record. I'm splitting hairs here, but CPIC doesn't actually contain the record.

**Ms. Annamaria Enejajor:** Right.

**Mr. Glen Motz:** The way the government has looked at Bill C-93 is that there's still a requirement for the department to go and verify through fingerprints and the actual record, not just CPIC. It's not as simple as hitting a button and removing it off CPIC. Now you can do that on the database that contains the actual criminal record.

But that's a different story. I want to ask you specifically about the fact that right now, the process from the department's perspective is to try to do it inexpensively from.... It's free for an applicant. It's not free for the department. They figure it will cost a couple of hundred dollars per person if their numbers are accurate in terms of the number of people who are going to be applying. I still have questions as to how well that might be done. If I'm applying for a record suspension because of a minor possession of marijuana, the onus is on me to go to "a" jurisdiction; it's not multiple but one conviction. That's all I'm allowed to deal with.

**Ms. Annamaria Enejajor:** Yes.

**Mr. Glen Motz:** I have to go back to that place of jurisdiction and I have to go and find the actual conviction from the courthouse.

**Ms. Annamaria Enejajor:** Yes.

**Mr. Glen Motz:** I have to give my fingerprints, to verify that I'm me, and confirm that I have that record. Then I submit that as part of the package that the Crown has put together for people to apply for this.

I mean, do you think that's an efficient way of doing this? Really, in terms of what we're asking, I have to apply through a process online. I have to follow a sequence where I check the boxes. The onus is on me to do those things. Then the department, the Parole

Board, has a clerical function where they might say, yes, this person's fingerprints match up through the C-216Cs or the new systems now, or, yes, this is the record, and there's nothing else that impedes this person from becoming or being.... They only have one conviction; they've qualified. To me, that seems like a really long process, potentially, and it will limit people who want to get this conviction.... I'm wondering whether this will actually benefit the people we're expecting it to benefit—those who are prohibited from getting the type of job they want because of a simple possession charge.

What are your thoughts on that?

• (1630)

**Ms. Annamaria Enejajor:** I think your instincts are correct. Even today, the largest number of applications for pardons.... The process that you describe, which is the Bill C-93 process, is better and less onerous than the process we currently have for record suspension.

**Mr. Glen Motz:** With a full pardon.

**Ms. Annamaria Enejajor:** For a full pardon.

**Mr. Glen Motz:** Okay.

**Ms. Annamaria Enejajor:** That's because it eliminates the requirement that you demonstrate good conduct and it eliminates the requirement that you have to show a measurable benefit that the pardon will give to you. They're all qualitative aspects. Often people obtain counsel to help them do that, because you're presenting a case for yourself. It's not really just running around a courthouse trying to find specific documents and putting in your fingerprints. You're making an argument for yourself. The discretionary element is no longer there in Bill C-93.

**Mr. Glen Motz:** I have just a minute or so left, and I'm curious to know something. I've asked some individuals that I know who are in business this question: Listen, as an employer, if someone applies for a position with you, and you ask them for a records check or they come in with it, now that marijuana is legalized, are you concerned that the individual has a previous conviction for simple possession of marijuana? The answer I've gotten back from them is that, no, they don't care.

**Ms. Annamaria Enejajor:** Yes.

**Mr. Glen Motz:** I think most employers don't care about whether something that's been legalized will have an impact on them. I know it impacts the individual.

I don't know if you have any thoughts on that particular issue.

**Ms. Annamaria Enejajor:** I haven't really thought about that specific issue.

The decision whether or not to hire someone on the basis of a criminal record is discretionary. My concern is about who the people are who are being most impacted as a result of the exercise of that discretion. There's always the potential for it to harm an individual and to limit them.

While a lot of employers may not ultimately care, I think we're not there yet. That may happen in a couple of years. Mr. Stamatakis mentioned that there have been sweeping cultural changes in our perception and our understanding of cannabis, and I think that's only going to continue. But until we get there we still have people who are being denied employment and volunteer opportunities.

**The Chair:** Thank you.

Our next witness is on his way from court, and the lawyers among us know exactly what that means, so I'm going to stretch this session a little bit further. Before I ask Mr. Graham for the next five minutes, I'll take a question from our analysts with respect to testimony on the schedule.

Go ahead.

**Ms. Julia Nicol (Committee Researcher):** You may not be able to answer this, but if I understand correctly, you said that in CPIC it will say this is a schedule II offence. Item 1 of that schedule, natural cannabis and derivatives, is no longer an issue, but item 2, the synthetic cannabinoid receptor agonist, remains a criminal offence. Would the item number have been listed in CPIC in every case, because if not, we have an issue with figuring it out.

• (1635)

**Ms. Annamaria Enenajor:** I don't think so. It's not that detailed.

**Ms. Julia Nicol:** That's what I thought. That's where we have a problem. You can't tell by relying just on CPIC.

**Ms. Annamaria Enenajor:** Yes.

**The Chair:** Thank you.

Mr. Graham, for five minutes, please.

**Mr. David de Burgh Graham (Laurentides—Labelle, Lib.):** That was my first question, so thank you for that.

Mr. Stamatakis, when you're looking at an electronic record, what do you know? When you pull up somebody's criminal record, what do you see?

**Mr. Tom Stamatakis:** It gives you a very brief description of the offence. There's no context or additional information.

**Mr. David de Burgh Graham:** Of all our historical criminal records in this country—I imagine there are quite a few of them—how many have been digitized? Do we have any sense of that?

**Mr. Tom Stamatakis:** No, and I would agree with my co-panellists here that record-keeping is an issue. The other issue is that while we all rely on CPIC nationally, provincially there are different databases that capture information as well. Even if you delete a record from CPIC, it doesn't mean the record is automatically going to delete from those other databases that different police agencies use in different jurisdictions.

I say this from a policing perspective.

**Mr. David de Burgh Graham:** Are police databases generally synchronized in any way? Is there some way of doing so, or is everyone their own little island?

**Mr. Tom Stamatakis:** No, they're not synchronized. Policing falls under provincial jurisdiction, and each province will make their own decisions with respect to provincial databases that might be used to capture law enforcement-generated data.

**Mr. David de Burgh Graham:** While I appreciate the sentiment, is there any way we can implement Mr. Eglinski's idea of using AI to find these data?

**Mr. Tom Stamatakis:** I think you could. I agree with the sentiment that in today's world, there should be some way of quickly managing records, at least with CPIC. If you came up with a process where there was a document that a person could be given that confirms that the record has been deleted or expunged, it would be helpful. If you focus just on CPIC, it's not going to solve the problem when it comes to simple possession.

**Mr. David de Burgh Graham:** Do all police forces feed into CPIC?

**Mr. Tom Stamatakis:** Yes, it's a national database. All police services across the country have access to CPIC.

**Mr. David de Burgh Graham:** So, as we were saying before, CPIC doesn't do the reverse. That's why there's no coordination. It's a one-way situation.

**Mr. Tom Stamatakis:** Yes.

**Mr. David de Burgh Graham:** Okay.

If someone has multiple possession charges but nothing else, would they have to apply for each one individually? What's your take on that? Or could they apply once for the 10 or 20 times they got caught?

**Mr. Tom Stamatakis:** That's a good question.

**Mr. David de Burgh Graham:** I'm not sure either. That's why I'm asking.

**Mr. Tom Stamatakis:** Yes. I think my reading of it is that it's specifically talking about simple possession. If there aren't those other circumstances, then I don't see why you couldn't apply it once. But I don't think it's clear.

**Mr. David de Burgh Graham:** Okay. But as we said earlier, if you have any other record, then it's moot anyway.

In your opening remarks, you expressed concern about people who had their plea bargains down to a simple possession, but I think the underlying hint of that was that if that was the case, they probably also had an additional criminal record, and that's why there would be a concern. If that's the case, then that criminal record would make it a moot point, would it not?

**Mr. Tom Stamatakis:** It would just be my concern that the board wouldn't have access to that information, because my experience as a police officer is that there are often those plea arrangements made for good reason. As I said in my opening remarks, those agreements are arrived at for a reason, and this changes the landscape, obviously. To be frank, if all someone has is a simple possession charge as a result of a plea agreement from 10 years ago or five years ago and there's nothing else, I have no issue with that. But our experience, from a policing perspective, is that these people often are involved in a lot of other things. I agree with you: if that's the case, then they wouldn't be eligible to apply, but it's just giving that little bit more discretion to be able to confirm that.

**Mr. David de Burgh Graham:** To do that, we'd have to have the Parole Board subjectively look at each record as it comes up, which is sort of the opposite extreme from what your colleague here is suggesting. Would that be a fair assessment?

• (1640)

**Mr. Tom Stamatakis:** I suppose what I would say is that I'm advocating for them to have the ability to do that where they believe there's a reason to do so. I'm not suggesting you create a mechanism where they have to do it in every case.

**Mr. David de Burgh Graham:** Okay. Thank you.

**The Chair:** Mr. Dubé.

**Mr. Matthew Dubé:** Thank you, Chair.

I just wanted to come back to where cannabis amnesty is at, in terms of this bill, because certainly it's better than nothing but ultimately the fact remains that the best outcome for the individuals you're seeking justice and remediation for would be expungement. Is that fair?

**Ms. Annamaria Enenajor:** Yes, that's the best outcome.

**Mr. Matthew Dubé:** Okay. And then it's a little more than the bare minimum, but another good step would be it being automatic in some way. We're getting bogged down in how that would occur, but if the government was willing to do so...?

**Ms. Annamaria Enenajor:** Yes.

**Mr. Matthew Dubé:** Even if it wasn't automatic, would a model like what was proposed in Bill C-66 be feasible? We talked about the language being used there, the historical injustice language being applied, but ultimately the Bill C-66 model could very easily have been—or still be—applied in this case, potentially, correct?

**Ms. Annamaria Enenajor:** Potentially, but Bill C-66 is actually a little bit more complex than what I'm proposing, because the offences listed in Bill C-66 were not only used to prosecute consensual homosexual activities, they were also used to prosecute non-consensual homosexual activities. So with Bill C-66, in your application, you have to either find information that would demonstrate that it was a consensual act, or swear an affidavit to that effect, so it's actually a lot more homework with Bill C-66.

Maybe there's a mirror to what the analyst was asking me before, where you're not sure what the nature of the underlying offence may be and whether it qualifies for what the objective you're trying to accomplish is. In those cases, you may actually have to go back to not just the court documents, to find those, but you may have to order the court transcript. Because oftentimes, even the court

documents won't say the nature of the substance. You have to get the evidence.

**Mr. Matthew Dubé:** I just want to go back to a question that was posed earlier about travel at the border. I think there are domestic concerns that are important enough when it comes to things like jobs and volunteering and so forth. I just want to make sure we're distinguishing something here, because there seems to be an argument that a pardon or a record suspension is better because it provides documentation.

I have two comments about that. One is there's nothing that would prevent the government from keeping a record of records that were expunged if people so requested. It seems like a bit of a contradiction, but ultimately, that would be feasible. The other piece is that in your testimony you were referring not so much as to whether it is important or not to have documentation, but to the fact that even if you have a record suspension, it is not necessarily recognized by the Americans, so there's no guarantee even there that your travel would be facilitated.

**Ms. Annamaria Enenajor:** At most, a record suspension would buttress your application for an entry waiver to the United States. You would still be required to make an application for an entry waiver if you've been denied entry. The pardon and the record suspension or an expungement would not prevent you from being deemed inadmissible.

**The Chair:** Thank you.

I would like to go back to the issue of the U.S. border officer. Your testimony was that a pardon and an expungement as far as that officer is concerned are equally useless.

**Ms. Annamaria Enenajor:** Yes.

**The Chair:** With either one, you're essentially in exactly the same position as the person who has a conviction or any outstanding charge because the question is the same.

**Ms. Annamaria Enenajor:** Yes.

**The Chair:** Whether it's a charge, a conviction, an expungement or a pardon, it's all useless as far as the U.S. border officers are concerned.

**Ms. Annamaria Enenajor:** That's correct.

**The Chair:** Thank you. That's comforting.

**Ms. Annamaria Enenajor:** Unfortunately, we can't pass laws that impact the United States.

**The Chair:** That's been one of the sales points of the bill.

**Ms. Annamaria Enenajor:** Yes.

**The Chair:** Before we suspend I'll ask Mr. Eglinski in his generous way to move that we accept the report of the subcommittee.

**Mr. Jim Eglinski:** I move that we accept the report of the subcommittee.

**The Chair:** That's excellent. I thank you for that.

**Mr. Jim Eglinski:** I'm just trying to co-operate with you and be part of the team.

**The Chair:** It's democracy in action.

Thank you very much. With that we'll suspend briefly.

• (1645) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1645)

**The Chair:** We are going to be running up against bells, colleagues. Apparently they're half-hour bells so with your indulgence, and it will have to be unanimous indulgence, and given our late start I would like to run 15 minutes into the bells and then we'll adjourn.

Thank you.

Mr. Friedman, I'll ask you to begin your testimony. If you could cut it down from 10 minutes that would be appreciated.

**Mr. Solomon Friedman (Criminal Defence Lawyer, As an Individual):** Good afternoon, Mr. Chair and committee members.

Thank you for inviting me to address you today on the subject of Bill C-93.

First, let's start with the positive. The philosophy behind this proposed legislation is sound. It is fundamentally unjust for individuals to suffer under the continued stigma of a criminal record for conduct that is no longer illegal.

As we are all well aware, a criminal record is indeed a significant barrier to success in our society. It compromises a person's ability to obtain employment, education, housing, financing, volunteer opportunities and travel. These are all roadblocks, individually and cumulatively, to a person's ability to integrate into society, contribute positively to the larger community and lead a productive, prosocial life.

The injustice of maintaining the criminal convictions for individuals previously convicted for simple possession of cannabis is further compounded when we examine the uneven and discriminatory effect of the criminalization of cannabis on already marginalized groups in Canada. In Toronto, for example, where black people make up 8% of the population, they account for 25% of all persons charged with possession of marijuana between 2003 and 2013. The same is true with respect to indigenous persons. Take Regina, Saskatchewan, where 9% of residents are indigenous but were 41% of all persons charged with cannabis possession.

Historically, these offences have disproportionately impacted the most vulnerable in our society: the poor, the marginalized, the mentally ill, the racialized and indigenous people. If the statistics aren't enough, I can tell you from the unfortunately steady stream of clients through my office that those charged with simple possession of marijuana share these traits. They generally derive from marginalized groups and, in a cruel twist of irony, these criminal convictions themselves further marginalize those same groups, perpetuating a cycle of criminalization, stigma and inequality.

Bill C-93 undoubtedly comes from a good place, and the government should be applauded for that. However, while well intentioned and a positive first step—there's always a “however”, especially when you bring in a lawyer—it remains, in my respectful view, deeply flawed. I will address each of these flaws in turn.

First, the bill requires that affected individuals apply to the Parole Board of Canada for a record suspension. This requires that a formal application be filled out and sent into the Parole Board for review. While the bill explicitly provides that no fee is payable for this particular application, unlike the ordinary record suspension fee, I suspect that for many Canadians this process will not be free.

There are numerous companies that for a significant fee will, quote, “assist” individuals in completing record suspension applications. In fact, as of today, the top ad under the Google search results for “cannabis pardon Canada” was a for-profit website offering their services for the low monthly price of \$72 and \$116 per month if expedited. To be clear, that is a monthly price on a 16-month payment plan. Who do you think this website is targeting to pay \$72 or \$116 per month on a 16-month payment plan?

We're talking about the low, low price of somewhere between \$1,152 and \$1,856, and that, of course, is irrespective of whether or not the government charges a fee for these applications. Recall that persons most likely affected by these criminal records are those already at the margins of society: people who have faced systemic barriers to success in education, employment and elsewhere. This bill, intentionally or otherwise, may serve as a barrier for people to obtain the very benefits it purports to offer.

Surely, in our age of electronic data, these records of criminal convictions for simple possession of cannabis can be proactively located by the Parole Board of Canada and identified for whatever action is ultimately legislated, be it record suspension expungement or otherwise. The burden, in my view, should be on government to rectify these records. While for those of us in this room the prospect of completing a government application may not be particularly daunting, it might be near impossible to those facing financial, educational, mental health or other challenges.

Second, Bill C-93 requires that individuals have completed their sentence prior to applying for a record suspension. Why? Why should an individual continue to be penalized, whether it is by a real jail sentence, a conditional sentence, probation conditions or otherwise, for conduct that is no longer illegal?

• (1650)

Why should an individual have to await the expiry of a lengthy term of probation for an offence that no longer exists under our law?

In my view, the injustice created by these criminal convictions should be addressed immediately, without waiting for expiration of any sentence, whether it is a prescribed period of probation, payment of a fine or some other sanction. And if you're too poor to pay your fine, well, you can never complete your sentence and you can never apply for this record suspension.

Third, I turn to the most fundamental issue of all with respect to Bill C-93: the very nature of the record suspensions mechanism. A record suspension is exactly what it sounds like. It is not a pardon; those don't exist anymore. It is not amnesty or expungement. It is a statutory process whereby the record of an offence is "suspended", that is, "kept separate and apart from other criminal records". A record suspension can be revoked. This happens automatically upon the commission of virtually all Criminal Code or controlled drugs and substances offences.

But it is broader than that. A record suspension may be revoked if the board is satisfied that the person "is no longer of good conduct". Let me give you real-life examples of individuals I have assisted who have been served with applications from the Parole Board to revoke their record suspension: people who have been the subject of numerous police checks, intelligence, or otherwise, or have received highway traffic offences such as careless driving. They were found to no longer be of good conduct. Now, I am happy to say we successfully defended those applications to revoke the record suspension.

But there you are. This will be hanging over your head for the rest of your life. Moreover the minister retains the discretion to approve the disclosure of such a record where he or she is satisfied that disclosure is "in the interests of the administration of justice or for any purpose related to the safety or security of Canada or any state allied or associated with Canada."

I can think of a state allied or associated with Canada that might be very interested in the otherwise criminal records of individuals convicted for the simple possession of cannabis.

In other words, the offence always hangs over the individual's head, record suspension notwithstanding. Most importantly, unlike expungement which requires notification to the RCMP and all other federal agencies to destroy all records to which the expungement order relates, there is no such broad requirement for a record suspension.

In review, the proposed application is itself a barrier to access, particularly for an already marginalized population. The bill requires individuals to complete their sentences before applying. In my respectful view, this is illogical, counterproductive and unnecessary. The record suspension is not a deletion of the conviction record itself; it is a suspension, a temporary suspension, one that can be revived by either administrative or statutory process.

What, then, is the alternative?

I should first note that Bill C-93 is better than nothing. But better than nothing is a mighty low bar for our Parliament. You can do better. You must do better. Instead, I would urge a scheme of expungement along the lines already provided for in the Expungement of Historically Unjust Convictions Act. The record of these convictions for the simple possession of cannabis should be expunged permanently and automatically.

In this regard, I would propose a private member's bill, Bill C-415, sponsored by Mr. Murray Rankin and introduced last October. It comes much closer to the goal of achieving true justice and relieving the disproportionate criminalization and stigmatization for those convicted of a now legal act of simple possession of cannabis.

The government has maintained in its backgrounder to this bill that expungement is only appropriate "where the criminalization of the activity in question and the law never should have existed, such as in cases where it violated the Charter."

While the first clause of that requirement is debatable when it comes to cannabis. I can tell you as a criminal defence lawyer that the criminal prohibition of cannabis has caused much more harm than good. There is no doubt that the disproportionate application of the law violates the charter guarantee of equality and runs contrary to our most fundamental constitutional values.

It is a historical wrong that ought to be redressed. Parliament can do so via the remedy of expungement. I would urge you to do exactly that.

Thank you very much for your kind attention.

•(1655)

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

We essentially have a half an hour. I'm thinking five minutes, five minutes, five minutes, five minutes, that will take us to 20 after. Then maybe we'll get in a couple more four-minute rounds, if that's all right with people.

Ms. Dabrusin, you have five minutes.

**Ms. Julie Dabrusin:** Thank you for setting out what you saw as the basis of some of your concerns about this bill.

One of my first questions—because I asked this in the last panel—is: looking at Bill C-93, would it be an improvement to this bill if we removed the requirement that a person pay any outstanding fine to qualify?

**Mr. Solomon Friedman:** Absolutely.

**Ms. Julie Dabrusin:** I believe you said this, but I just want to be really clear. Would it be an improvement if we remove the need to complete any of their outstanding probation?

**Mr. Solomon Friedman:** Absolutely.

**Ms. Julie Dabrusin:** One of the things you raised, which I raised on Monday when we had people here, was that I also did the Google search and saw the same thing. How would you recommend we inform people that this is a free process?

**Mr. Solomon Friedman:** I was speaking this morning to one of my colleagues who used to work at the Canadian Civil Liberties Association. She said they had people all the time saying they were in communication with Pardons Canada and were told to spend \$2,000. There's a serious information gap.

My best suggestion, respectfully, is to remove the application requirement. We're in a digital era, these records can be accessed. I don't know how much government databases cost and how easy they are to manage, so maybe I'm making some assumptions there, but I know that we have statistics as to how many records of conviction there are.



I say to the Parole Board of Canada, do it yourself. Maybe I'm just a practical guy. I don't see a possible benefit of having individuals apply. Vet them, if there's some question they don't meet the standards, then engage them.

● (1700)

**Ms. Julie Dabrusin:** One of the things that was raised as a concern by the department when they came on Monday was that, if they were going to dig through all the records to figure out if this was a qualifying record, people would be waiting 10 years to do this record search, as opposed to it being faster if somebody made the applications person by person.

**Mr. Solomon Friedman:** I suspect tens of thousands of people don't even know if they have a criminal conviction for the possession of cannabis, who don't understand the implications of it. Colour me extremely skeptical that the Government of Canada can't do a search through their own conviction database.

I deal with police officers every day in my professional employment; they all have access to CPIC, that is their centralized database. They put someone's name in, they get the records of conviction. Surely as it's a database, you can do the opposite, put in the records of conviction to get the names.

**Ms. Julie Dabrusin:** When I read it, Bill C-415 doesn't look as if it proposes an automatic system as well.

**Mr. Solomon Friedman:** It does not. I think that's a flaw that should be addressed, automatic and expungement.

**Ms. Julie Dabrusin:** The other thing I was wondering is it looks as if it goes to members of the Parole Board, as opposed to the administrative process of Bill C-93.

**Mr. Solomon Friedman:** Yes.

**Ms. Julie Dabrusin:** Which process do you prefer, the administrative or going to the Parole Board?

**Mr. Solomon Friedman:** I'm a little agnostic about that. If you're going to the Parole Board anyway and they have the specialty in processing pardons...but then again, I've heard about the backlog for pardons. If you're not going to do it automatically, if you have some administrative process that can short-circuit the already long waiting list for record suspensions, that's probably better.

**Ms. Julie Dabrusin:** The last witness spoke about the fact that if you were looking through CPIC, if you were going to try to do this automatic search, CPIC would pull up that it's a schedule II possession, and that schedule II was essentially all cannabis, and one item is now still illegal. Could you confirm that? Her suggestion was to just pull those out.

**Mr. Solomon Friedman:** Yes, I tend to agree with that. My frame of reference here is having seen hundreds or thousands of criminal record printouts from some of my clients. The nature of the offence is very clearly delineated. That's why I said if you can go one way, that is, put a person's name to get a list of offences, those offences are listed right there and they're listed with enough specificity in my view that you could engage the record suspension or expungement process.

**Ms. Julie Dabrusin:** All right, thanks.

**The Chair:** Welcome to the committee, Mr. Cooper, you have five minutes.

**Mr. Michael Cooper (St. Albert—Edmonton, CPC):** Thank you very much, Mr. Chair.

Thank you, Mr. Friedman.

I agree with you that Bill C-415 is not a perfect piece of legislation, but in my view, it is a far better piece of legislation than this legislation. I look forward to voting in favour of it in about 45 minutes.

**Mr. Solomon Friedman:** Good for you.

**Mr. Michael Cooper:** As you noted in your testimony, a pardon is not a deletion, but rather a suspension. Therefore, if one were asked by an employer or if they were looking for housing or looking to volunteer as a coach of their kid's soccer team or whatever it may be, if they'd been convicted of a criminal offence, they'd have to answer yes, would they not?

**Mr. Solomon Friedman:** Well, if they have received a record suspension, that removes any effects of conviction. My view would actually be that an effective conviction is having to answer yes to the fact that you've been convicted.

The vulnerable sector is different. I direct your attention to section 6.3 in the Criminal Records Act where the vulnerable persons issue is raised. There is a schedule of offences there, and that schedule of offences would not apply to a possession of cannabis charge. In my view, I don't think a record suspension would, necessarily, trigger an issue with the vulnerable sector. But of course, the trouble with the record suspension is, because the record is there, some future legislature can come and change that rule, right? Some future legislature can come and say, no, this should fall under a vulnerable sector. Or when I said that a record suspension can be revoked statutorily or administratively, I mean statutorily. If the record still exists, then a future parliament can decide, hey, all those record suspensions are right back to convictions.

That's why, in my view, an expungement is far preferable.

•(1705)

**Mr. Michael Cooper:** Right. In terms of the application process to the Parole Board, you talked about it being quite onerous. We saw, with Bill C-66, passed by the government, a process where someone could get an expungement but they would have to apply. I think approximately 9,000 or 10,000 Canadians were thought to be eligible. I think at last count it's something like seven or eight people who've bothered to apply or have been able to get through all of the paperwork. We're looking at about 250,000 people who might be eligible, and the estimate is that 10,000 might apply. Isn't even that, perhaps, a little optimistic?

**Mr. Solomon Friedman:** I think 10,000 is extremely optimistic. Remember, when it comes to this category of convictions, we're dealing with a disproportionate population in terms of marginalization. We're talking about individuals with mental health or educational deficits. I think you're going to have an even lower proportion than under the historically unjust convictions.

Maybe I'm an eternal optimist. This is an age of electronic databases. I understand there might be some people whose records might be difficult to access; maybe there was a paper database converted to an electronic one; great. We'll put asterisks next to those people and they can get letters from the Parole Board saying, "Hey, maybe you should apply and clear this up for us", but I'm certain that out of that 250,000, the vast majority can be simply rectified electronically and automatically.

**Mr. Michael Cooper:** It's been done in other jurisdictions—San Francisco. Automatic [*Inaudible—Editor*] system.

**Mr. Solomon Friedman:** San Francisco; snap of the fingers.

**Mr. Michael Cooper:** Yes.

**Mr. Solomon Friedman:** I don't know. Do they have much better computers than the Government of Canada? We're talking about the City of San Francisco there. Surely this can be done.

**Mr. Michael Cooper:** I guess what really bothers me is that we've got 33 sitting days left in this Parliament. This bill is not going to be passed. It's been a number of months since legalization came into effect. I voted against legalization, but I agree with you that it's fundamentally unjust to be burdened with a criminal record for committing an offence that is perfectly legal today and, frankly, a vast majority of Canadians have no objection to it.

Shouldn't this really have been part and parcel of the government's legalization legislation?

**Mr. Solomon Friedman:** That might be a little outside of my can. I'm a lawyer without an opinion on something. I'll say this. You're doing a lot of good work here and when it comes to the private member's bill, Bill C-415, I hope that the work and the research this committee does, if this bill doesn't pass in the present Parliament, goes on to the next parliament that can handle it and address all of these concerns with respect to the application process, expungement versus record suspension, and ensure that this is the most just version of this bill possible, whenever it gets passed.

**The Chair:** Thank you.

Mr. Dubé.

**Mr. Matthew Dubé:** Thank you, Chair.

Just for the record, and in defence of Mr. Rankin who's not here to defend his bill, I will say that our position, and his, is that it should be automatic, but there's some consternation as to whether royal recommendation is required. If there's a certain amount of cost, we'll definitely see what the rulings are in this committee when we present similar amendments to this legislation. I do want that to be clear. Certainly the expungement that's proposed in the bill is definitely a vast improvement, so we'll see, as Mr. Cooper said, how the vote goes in the next few minutes.

Mr. Friedman, thank you for being here. I appreciate it.

I did want to ask about the statistics, the 10,000 out of 250,000 and then the seven out of 9,000 or whatever it is for Bill C-66. Obviously, based on your comments, I think there might be a safe assumption—if there's such a thing to make here. I'm just wondering, do you think the 240,000 others who won't apply would likely not be applying because they fall into some category of marginalization or because of the different exemptions that exist relating to, for example, unpaid fines in the legislation?

**Mr. Solomon Friedman:** Yes, I think there are a number of factors here. First of all, it's all well and good to think that, when Parliament passes an act, it's somehow simultaneously transmitted, maybe telepathically or otherwise, to every Canadian.

There are people who have no idea what it is that you guys are up to on a whole number of fronts—

•(1710)

**The Chair:** Neither do we.

**Voices:** Oh, oh!

**Mr. Solomon Friedman:** —present company excluded, of course. That's number one.

You're going to have people who simply won't know, and you know why? When you look at what's important in their lives, they might just not care. They might have learned to live with a criminal conviction and its consequences. That's number one; you have a communications problem.

That problem is further compounded when you look at the population groups that are disproportionately affected by the criminal prohibition of cannabis, people who have educational challenges or mental health challenges who might live on the margins of society. If we can improve their lives by removing a barrier to employment, financing, travel, etc., in my respectful view, Parliament should do everything it possibly can to reach those people, because the people who will be reached and will know about it can probably hire lawyers like me.

Forget hiring your predatory pardon application people. They'll probably have counsel, and they have probably dealt with this a long time ago, and they probably got a proper record suspension by going through that process a long time ago. We want to reach the people who really need to be reached.

In my respectful view, the bill needs to be amended significantly.

**Mr. Matthew Dubé:** The officials who were here on Monday talked about non-traditional means, and it almost sounds like some kind of Twitter strategy. I'm not trying to be glib about it; it's very unclear what they're actually going to do.

From what we've been discussing and what we discussed when we did a study on record suspension as a broader issue and the reforms that are required, we talked about these sorts of bad actors trying to act in this realm.

Basically, the government would have to develop some kind of strategy to compete against these individuals, and ultimately, the amount of work that it would require could easily be the work that would be applied to finding the records, deleting them and going through expungement.

Do you think that is a fair assessment of that type of situation?

**Mr. Solomon Friedman:** I'm not an expert on government databases, but as I said, it boggles the mind that a bunch of smart people can't get together, get a software developer here or there, look at the database and just pick out these records.

As a self-employed criminal lawyer, I know I get a lot of unwanted automatic mail from various Government of Canada agencies. They find me, and they know exactly what I am up to, what taxes I've paid and when my installments are due, so the Government of Canada is really good at those automatic record-accessing databases. Surely when it comes to helping out some poor, marginalized, mentally ill people who are really in need of this assistance, for whom this could make a big difference in whether or not they reintegrate into society, I have to think—and I'm not being glib, either—that some smart people can sit down in a room and get it done.

**Mr. Matthew Dubé:** I think it's safe to say that expungement would be the best option. If that doesn't come to pass, would it still be better to have the record suspension be automatic and just remove the burden of applying?

My sense from what you've said is yes. Am I understanding you correctly?

**Mr. Solomon Friedman:** Yes, and I say that with all of the bill. It's better than nothing, but you guys can do better than nothing, for sure, and you can do better than better than nothing.

**Mr. Matthew Dubé:** Thank you.

**The Chair:** Ms. Sahota, you have five minutes, please.

**Ms. Ruby Sahota:** Thank you.

It's my understanding—and I am quite hopeful that this bill will pass, hopefully with some improvements that have been suggested by our witnesses—that the bill will pass before the House rises, unless the Conservatives don't want to see it pass. I don't know what will happen in the months to come, but the hope is that this will pass.

**Mr. Solomon Friedman:** I feel like I'm at an uncomfortable family dinner here.

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

**Ms. Ruby Sahota:** Yes, well....

**The Chair:** Let's not make this any more uncomfortable.

**Mr. Solomon Friedman:** I just had my Passover Seder last week, and I've had more than enough of that.

**Ms. Ruby Sahota:** Okay, I'm sorry about that, but I don't know—

**The Chair:** Would you go on to the question?

**Ms. Ruby Sahota:** When Mr. Cooper mentioned that, I just thought it was strange.

You have specifically stated that you see the pardon or record suspension versus expungement as a big difference.

The witness before had come and stated.... Some arguments have been made about how people are treated when crossing the border and that it would be different in the two instances. She said it makes no difference whatsoever. That was Campaign For Cannabis Amnesty: It makes absolutely no difference whatsoever.

My understanding from some of the witnesses on Monday is that, when a record has been suspended, it no longer shows up in CPIC, and a police officer doing a records check would not be able to see it. An employer would also not be able to see it once a record has been suspended.

What obstacles do you still think would stand in the path of these marginalized or vulnerable people with a record suspension versus an expungement?

**Mr. Solomon Friedman:** As I noted, the real issue to me...and I agree there is a difference of opinion when it comes to travel. That really goes to what version of the CPIC registry we have given to the U.S. Department of Homeland Security. They don't get it every day, as I understand it. They may have an outdated version.

For me the issue is that a record suspension can be revoked at any time. It can be revoked for something that reasonable people might disagree about, as to whether or not it's a good reason. As I said, a serious Highway Traffic Act offence.... Do you want somebody who otherwise wouldn't have a criminal record to have a criminal conviction hanging over their head if they get convicted of careless driving—which is a provincial offence, not a criminal offence? All of a sudden your criminal record is right back over your head.

If the records are deleted, they can't be brought back. That's the difference between expungement and a record suspension. It's in the name. It's just a suspension, it's not gone.

**Ms. Ruby Sahota:** It's my understanding from the witnesses who have come before us that they actually want that mechanism to be there in cases where there has been a mistake. This is because it is so complex to do the reverse situation, where people have to figure out whether they have a simple charge of possession or whether there were other charges involved.

The minister did also state that 95% of those records that have been suspended in the past for other situations are never revoked, so why is this such a big concern? Do you see this as something that would happen differently in this case?

**Mr. Solomon Friedman:** I'm a criminal defence lawyer. I'm concerned about the 5%. That's a serious concern.

Like I said, you have a marginalized individual who has a conviction for cannabis possession who then, let's say, is noted by... and this is a real-life example. Their car is pulled over and they're found to be in the company of individuals who have serious criminal records or they are just found to be somewhere where serious criminal activity is being committed. They're not charged, never mind convicted, or they're charged and then charges are withdrawn. That can be the basis for revoking a record suspension.

Remember, what are we talking about here? We're not talking about something that is still an offence and for which you've been pardoned because of your good behaviour now and for which you've repented. We're talking about something that is not illegal anymore. How can someone even have it hanging over their head, I would respectfully ask? It's not illegal anymore. Why do we still want it in the system? What right case could there be to restore the conviction for something that's no longer a crime? Frankly, I fail to see that.

• (1715)

**Ms. Ruby Sahota:** Thank you.

**The Chair:** The bells are ringing, but with consent I'm going to run this to 5:30. It's agreeable to all, I hope.

Mr. Motz, you have four minutes.

**Mr. Glen Motz:** Thank you.

First of all, you have some ideas in mind and some recommendations. Is it possible that you could provide this committee with a list of recommendations that—

**Mr. Solomon Friedman:** I have them right here.

**Mr. Glen Motz:** —would improve this legislation?

That would be great if you could provide this list to the committee.

**Mr. Solomon Friedman:** I'd be happy to do it.

**Mr. Glen Motz:** We confirmed yesterday with officials that individuals charged with minor possession of more than 30 grams in public before October 17, 2018, will be eligible for this expedited record suspension. However, right now, possession of more than 30 grams is still an offence.

**Mr. Solomon Friedman:** You have to ask the government that passed the Cannabis Act. There was a fight about it and I wasn't a big fan of that provision either.

**Mr. Glen Motz:** That's inconsistent. What are the consequences of that?

**Mr. Solomon Friedman:** As I said, that has to be directed to whoever drafted the legislation. I looked at that. I looked at this legislation and to me it doesn't make a whole lot of sense. To me, that's actually a fundamental flaw with the way the Cannabis Act was drafted. If we're doing better than the Cannabis Act then I think we're ahead. I find the silver lining.

**Mr. Glen Motz:** Okay.

Hopefully your recommendations have something to address that with.

I have one last question. Do you think that this record suspension process could potentially create some precedent for other charges down the road?

**Mr. Solomon Friedman:** I think that any time Parliament decriminalizes activity that was previously criminal in the code—in other words, now it's no longer criminal—people shouldn't suffer the stigma of a criminal record for having engaged in that behaviour in the past. If Parliament today says it's not illegal, I don't understand why you should suffer the effects of it.

• (1720)

**Mr. Glen Motz:** We looked at a study—I think it was M-161, which Mr. Long brought—where we talked about how there are some individuals who we all know who have conviction for other offences, like theft and whatever else.

**Mr. Solomon Friedman:** Those offences won't be suspended. The cannabis possession—

**Mr. Glen Motz:** Right, under this legislation.... What I'm referring to is, should there be some mechanism whereby we can make that easier? Do you see this process maybe impacting that conversation?

**Mr. Solomon Friedman:** Like I said, if somebody has multiple criminal convictions, this legislation is only going to suspend the possession of cannabis.

That's not insignificant, by the way. If a criminal record is disclosed to someone, where before it had theft under \$5,000 and a drug possession, now it will just have a theft under \$5,000. That changes the conversation about what kind of criminal history you have. It's not a drug conviction you have anymore; it's just a theft under \$5,000. To me, what—

**Mr. Glen Motz:** If you have both of those convictions, you don't qualify for a suspension.

**Mr. Solomon Friedman:** Yes. That's fair enough, right? I hear that. My view is that all of these should disappear. Whether you have one or five or 10 other convictions, why should you have the stigma of this conviction when it's not a crime anymore?

**Mr. Glen Motz:** Thank you.

**The Chair:** Mr. Picard, you have four minutes.

**Mr. Michel Picard:** I will pass my time to Mr. Spengemann.

**Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.):** Thank you, Mr. Chair.

Mr. Friedman, thanks very much. It's great to have you back.

I have two questions before I pass it to my colleague.

Can you zoom in a bit more on the vulnerable persons section under current current law and describe what kind of checks are being done beyond those of an average criminal record check?

Secondly, do you have any other jurisdictions in mind, other than the U.S., that have gotten this right or have taken us, in your mind, as close to the answers as we should be?

**Mr. Solomon Friedman:** If you take a look at the Criminal Records Act, there's a link to section 6.3, which defines "vulnerable person". In section 6.3, it provides that, at the request of a person who is responsible for the well-being of a vulnerable person, they can essentially disclose these records through a request process.

Then there's schedule 1. Schedule 1 sets out the kinds of offences that would still be disclosed even when you've received a record suspension. They're largely sexual offences, and that makes a good deal of sense. You're talking about somebody who is applying to work in the care of vulnerable people. Even though they may now be of good character, I certainly understand that.

There are, however—and I'm sure you have studied this—what are called non-conviction records. That is, even though you don't have a conviction, you can be barred from certain opportunities because you've been in contact with police, you have provincial offences, you're on bail conditions or a whole number of things.

This offence, however—the possession of cannabis—is not listed in schedule 1. It wouldn't fall under that disclosure mechanism for vulnerable people set out in section 6.3.

**Mr. Sven Spengemann:** Very briefly, are there other jurisdictions that we should look at that have gotten this right, beyond the U.S.?

**Mr. Solomon Friedman:** I'm not in a position to comment beyond the U.S. I'd comment specifically on San Francisco, where it was automatic. No application was done; they went through the database and just erased the records of conviction.

**Mr. Sven Spengemann:** Thanks very much.

Michel.

**Mr. Michel Picard:** Thank you, sir.

Let's say that a pardon—or whatever name we use under this bill—resulted in the fact that, since it's no longer illegal, past experience doesn't count because it's supposed to be suspended. When someone goes for a job interview and all that, since it's not illegal now, do you think that a company should look for past experience related to cannabis? For example, have they been sentenced for cannabis possession? Whereas somewhere, in fact, it's no longer illegal and they should not be concerned about that.

**Mr. Solomon Friedman:** You and I might agree they shouldn't be concerned about it, but the government is not in a position to set internal company policies. If a company has a policy that if you have a drug conviction then you're not getting hired, if they get that record, you're not getting hired.

There are also other factors at play. Some of this has to do with bonding or insurance issues. Their insurance provider might say that

they can't have somebody working on a job site if they have a conviction record. There's nothing—at least that I can see—that Parliament could do about that. The simple thing to do is to remove that record.

While we may all have a very enlightened view, saying that it was in the past and it's now legal, so come work for me—I'd probably feel that way about a prospective employee—you can't legislate that, other than removing the record of conviction.

• (1725)

**Mr. Michel Picard:** Yes, but let's say, for example, in the trucking industry, you couldn't care less whether they have been convicted or not. The concern is whether the driver is using cannabis or not. Legal or not, the industry cannot have a driver under the influence of cannabis while he or she is working and for a certain period of time there should not be any traces of it. This is, as you said, in our policy for companies.

It comes to a point where people who will obviously really need this suspension will ask, with the process we propose, to get this result, because they need a paper to prove that they don't have a criminal record. So, using a system that already exists, where you have a paper confirming that the pardon has been obtained, what is the need to go much further, based on your testimony, since the objectives have been achieved?

**Mr. Solomon Friedman:** I look at the nature of the population that's disproportionately targeted by these convictions. Those are not people who may have the sophistication or the education to know about the record suspension process or to be able to go through it without undue hardship, like engaging the services of one of these predatory companies for thousands of dollars.

If what we are trying to ensure here is justice and fairness for people who are convicted of an offence that no longer exists, then surely there is no need to have them jump through the hoops, the same hoops that we've put someone through minus the fee and approval process. We'd have to go through the hoops for people who are convicted of an offence that is still on the books.

Remember, it is not a crime anymore, so, in my view, the government should do everything it can to remove every obstacle, every burden, that's put on someone for having committed something that is no longer illegal.

**The Chair:** Before I adjourn, do you have an opinion with respect to an individual who has multiple convictions for possession over a number of years? Is that one application for all, or is it one application for each conviction?

**Mr. Solomon Friedman:** My view is these should happen automatically. If you're going to do an application process, then it should be one application for all of these. It should apply to people regardless of what other history they may have. These convictions, in my view, should simply disappear.

**The Chair:** With that, the meeting is adjourned.

Thank you.











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