

Private Members' Business

I think that is key, because there will always be a lingering doubt because of past experience, that somewhere there is a copy in some computer bank that will remain forever and ever. The person should be present when the record is destroyed so that that person is satisfied that he or she no longer has a record.

Madam Speaker, that is all I have to say. I give concurrence that this bill should go to committee and be studied further. I hope the government will see fit to pass this into law.

Mr. Tom Wappel (Scarborough West): Madam Speaker, I had not intended to speak on this bill but I was in the House and listened very carefully to the proposer of this bill and also to my colleague from the NDP.

I want to make a few comments and perhaps play the devil's advocate. May I say that I have no problem with the bill proceeding to committee for further discussion. In playing the devil's advocate, I would like to ask a question and examine the situation.

In Canadian criminal law, only three things can happen. Either a person is acquitted, in which case it is found that the person did not commit the crime, or the person is found guilty of the crime but is given a conditional or absolute discharge. Third, a person is found guilty and convicted.

What sort of criteria do judges use when they start the determination after a finding of guilt whether or not to register a conviction or give an absolute or conditional discharge. Of course, that is what happens.

The first thing the trier of fact has to decide is, is there guilt. Once the judge decides yes, there is guilt then the next question becomes: Should we give an absolute or conditional discharge or should we register a conviction?

Let us not forget that there is a finding of guilt. We are not talking about an innocent person. We are talking about someone who has been found guilty of committing the Criminal Code offence for which they have been charged.

Having said that, what sort of considerations are taken into account? Among them is the severity of the offence and whether or not that person has been in trouble with the law before. That is a very important consideration.

We have all heard the old adage: you are entitled to one mistake. You can learn from your mistakes. Why

destroy a person's life with one mistake. I agree with that. It makes eminent sense to me, and that is one of the things that the judge will look at.

If it is two joints of marijuana and the person is 19 years old, is that the kind of offence we want to have a conviction registered for so that that person stands convicted? Of course not. In that circumstance, we give an absolute or conditional discharge. That makes sense. It is fair and it is humane.

Now we come to: What do we do with that information? We have this bill and the bill provides in the explanatory notes that the purpose of this act is to provide that where a person is discharged under the Criminal Code in respect of an offence, all records relating to that offence must be destroyed.

What comes to my mind is the following. One of the criteria that is used by a judge in determining whether an absolute or conditional discharge should be granted is whether there have been previous brushes with the law, previous findings of guilt. While that person might very well be given an absolute discharge the first time he is caught with two joints of marijuana, that same judge might decide to give a conditional discharge if it is the second time he has been found guilty of possession of two joints of marijuana.

Suppose he is arrested and found guilty a third time of possession of four joints of marijuana or half a kilo of marijuana. Maybe it will be a conditional discharge, but just perhaps it might be a conviction. What is my point?

My point is and I ask the question—there might be an answer, and I hope there is and I certainly hope that the committee considers it—if all the records are destroyed, how does anyone know who is considering whether to give an absolute or conditional discharge whether that particular person, having been found guilty of that offence, has been found guilty of a previous offence, perhaps a similar offence, which may be relevant in the judge deciding whether or not to grant an absolute or conditional charge, or indeed, register a conviction? If all record of that conditional discharge has been destroyed, I presume there is no way the judge could ever know that this offence occurred or how many times before a conditional or absolute discharge has been given for similar offences. This, from a devil's advocate point of view, troubles me.