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Chair

The Honourable Paul DeVillers

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

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● (0910)

[*English*]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): I'd like to call this meeting to order. It is the meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. We're continuing the study of Bill C-2, an Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act.

We have three groups of witnesses, although I see the first group has not arrived yet, the Canadian Artists' Representation, but no doubt it will be along.

But we have, from the International Centre to Combat Exploitation of Children, Cherry Kingsley, the executive director.

[*Translation*]

From the Barreau du Québec, we have Nicole Dufour, a lawyer with the Research and Legislation Service, and Lori-Renée Weitzman, a lawyer and member of the Committee on Criminal Law.

[*English*]

And from the Canadian Broadcasting Corporation we have Edith Cody-Rice, senior legal counsel, privacy coordinator.

Welcome to all of our witnesses. We start the process with approximately a 10-minute opening statement from each group, and then we go to questions from the members.

Since the Canadian Artists' Representation are not here yet, we'll start with Ms. Kingsley from the International Centre to Combat Exploitation of Children, for approximately 10 minutes, please.

Ms. Cherry Kingsley (Executive Director, International Centre to Combat Exploitation of Children): Good morning, members.

First of all, I'd like to say hello again. I think I've been here three times now, so I'm hoping the third time is the charm, because I see this as a really important piece of legislation, and it's important that we pass it sooner rather than later.

I represent the International Centre to Combat Exploitation of Children and am myself a survivor of commercial sexual exploitation, having grown up in the sex trade here in Canada from the age of 14 until I was 22.

The work I do with both the centre and out in the community is with young people who are survivors of different aspects of sexual exploitation. That includes various aspects of prostitution, pornography, and those young people involved in what is basically called survival sex, young people who are basically negotiating things like food, housing, drugs, and alcohol—negotiating their survival—in exchange for sex.

Because we know that young people are so vulnerable—because of poverty, because of homelessness, because of their age, because of lack of information, because of not knowing their rights—the law always has to try to protect young people and put the responsibility on those who know better, who would be the adults.

I think this is important legislation because, first of all, it defines exploitation in a different way. It recognizes it as a form of terrible abuse against children. It puts the onus on the adults, and it removes the dialogue of consent—and that's really important, because I don't think it's the responsibility of children in our community to protect themselves from adults who may want to exploit their poverty or any kind of vulnerability or addiction or hunger or anything like that. So I think it's important to always remove the notion of a dialogue or the appearance of consent. Otherwise, the young people are trying to defend themselves in courts. As well, you've put in other provisions that are important to protect victims when they want to give testimony.

I think the law is important because it puts a system in place that protects children in the community, in law, and in the courts. As well, I think it makes a public statement, and it really forces communities and community members to make that attitudinal shift about where the responsibility is. For too long, in our country and around the world, we've criminalized young people for their own exploitation and their own poverty.

The International Centre feels that both the removal of consent issues and support for child witnesses, along with clear definitions of the various aspects of exploitation, make for an approach to addressing exploitation that is truly based on the rights of children.

Obviously child pornography is a huge issue globally. We know there's been a real lack of clarity within the community and within courts around illustrations and stories and other things like that, but we think the distinction in those stories, those illustrations—those acts of art, as some people would call it—is whether or not hate crimes are being perpetrated. And hate crimes to us mean targeting a group of people for various aspects of abuse where you try to incite it or where you try to promote it, and we consider child pornography an act of hate against children, because people are obviously promoting abuse and exploitation towards a very targeted segment of the population.

We like it that you've held strong in trying to define that and in trying to create tools with which courts can measure acts of imagination. And we like that it's illegal to own, distribute, or produce any form of child pornography. It reminds us that each image is a real child as well, so we thank the committee for continuing to be strong.

I know you have taken some criticism from the artistic community, but we like what you've done and thank you for continuing to try to protect children from those who incite, through their art, a form of abuse against children.

We also hope that the strengthening of the protections of children in law against all forms of exploitation will serve as encouragement to other departments in government and to the community to create real services and supports for children. If some of the things that make children vulnerable to exploitation are homelessness, poverty, and addiction, then we hope other departments in government will certainly step up and try to fill that void, because we can't continue to criminalize young people as a form of protection. So we're glad this law makes a real shift.

The role of government is always to create leadership, regardless of the debate that happens in the public or media or community. There are some things that government just has to step in and say aren't okay.

We're hoping you guys will be able to get through the debate quickly and pass this into law, so that it will start to have a real impact in the community. That's important, because I've been debating and presenting this for a number of years, I think about five years. So we're hoping this will pass, regardless of people's criticism, so that the balance will be in the favour of young people. I know some people see this as a form of censorship or as limiting creative imagination and stuff like that, but I think that any imagination or creative work that incites is out of balance anyway, right?

The final thing I wanted to compliment this committee for was its rights-based approach. I was reading in the preamble of the legislation how you continue to cite the United Nations Convention on the Rights of the Child. I know you guys have had a lot of criticism. I've been through this journey with you guys a bit. I was at the first World Congress Against the Commercial Sexual Exploitation of Children, and I was a keynote speaker at the second world congress in 2001, and I am myself a survivor. I've worked with thousands of children across Canada. In some ways, I feel like I've really made this journey with you.

I'm so glad that regardless of the criticism you might be receiving from some of the artistic community, and regardless of the criticism around the age of consent, you guys have held firm on a real rights-based approach and are not willing to minimize or chip away or erode the rights of children. You're willing to create a law that protects them and puts a responsibility on adults, and you're not willing to hold children legally accountable for their own exploitation and abuse, and you're not willing to permit the dialogue of the appearance of consent. So I thank you guys, and I hope this time you'll be able to push it through.

Thank you.

● (0915)

The Chair: Thank you, Ms. Kingsley.

I see that we have the Canadian Artists' Representation here, Ms. Audrey Churgin, the national director, and John Greyson, an artist member.

Perhaps you would like to make your opening presentation of approximately 10 minutes, and then we'll go to questions after that.

Ms. Audrey Churgin (National Director, Canadian Artists' Representation): CARFAC is an organization with approximately 4,000 artist members across the country, as well as some institutional and associate members. We represent 15,000 Canadian artists across the country. We're certified by the Status of the Artist Act to speak on behalf of all Canadian artists; we are the only voice recognized by the Status of the Artist Act.

We spoke to this issue in the last round. This time we've asked John Greyson, an artist from Toronto, to speak on our behalf from another perspective. So I'll turn it over to John.

Mr. John Greyson (Artist Member, Canadian Artists' Representation): Thank you.

I speak to you today as a member of Canadian Artists' Representation, le front des artistes canadiens, or CARFAC, which represents 15,000 professional artists across Canada. With equal force I speak to you as an artist and a filmmaker who fears he must turn himself in if Bill C-2 is enacted.

In 1996 I made a film called *Lilies*, adapted from the play *Les Feluettes* by Montreal playwright Michel Marc Bouchard. A fanciful account of how homophobia destroys the lives of three Lac Saint-Jean teens, this film has won a bunch of Genies and best film awards at international festivals. Stylized and romantic, it's about as racy as an episode of *Kids of Degrassi Street*. Yet, according to Bill C-2, it's kiddie-porn.

How is this possible? First, the script stresses that the three are schoolboys by wilfully staging several scenes in their school; the lead actors, all 20-something, sinisterly insist on playing their adolescent characters as adolescents; then the costume and makeup departments perversely made these characters appear to be 17, as scripted; and the funders, Alliance Atlantis and Telefilm Canada, incited us to make a poster featuring the guys in an embrace, all of which are clearly illegal under 1993's Bill C-128, Canada's neanderthal kiddie porn law, which seeks to criminalize any and all depictions of under-18 sex.

You'll argue that under Bill C-128 I would have had recourse to an artistic defence, to which I respond that artistic defence is a monstrous and untenable “guilty until I'm proven innocent” position that, through stigmatization, forever tars me in the public eye with the brush of kiddie porn. There's perhaps no accusation more career destroying in this culture than the slur of pedophile—well, al Qaeda terrorist is right up there.

Ask visual artist Eli Langer what it's like to have the courts finally recognize his artistic merit after accusing him of being a child pornographer. Guess which description the average Canadian remembers?

But now in the wake of the Robin Sharpe case, Bill C-2 seeks to abolish the artistic defence and replace it with one called legitimate purpose, which in our eyes is even worse. I'm still guilty until proven innocent. The cops and courts are still placed in the position of assessing the legitimacy of *Lilies*, while I'm forced to bear the costs to my wallet, reputation, and dignity. Most important, CARFAC believes the right to creative expression is one all citizens share, not a privilege or a “legitimate purpose” that can be bestowed or withdrawn by the courts.

Why did I make *Lilies*, then, if it was so patently illegal? The answer goes back to my lonely adolescence in London, Ontario, where I searched desperately for any representation whatsoever of queer life and came up pretty empty. There was an earnest CBC drama about an alcoholic, self-hating, gay clown in 1973. Then there was a Pierre Burton interview with a man hidden behind a potted plant in 1974. That's not much to go on.

I made *Lilies* so gay teens today could see some validating picture of themselves, a picture that corresponds to their actual much improved reality in Canada today: a consistent age of consent of 14; a culture that prohibits discrimination and promotes diversity; a country that claims to protect their rights as citizens to both creative and sexual self-expression.

But if Bill C-2 passes, I've decided I'm going to save everyone a lot of trouble and turn myself in. Given the sweeping scope of the bill, the one thing I fear is that the lineup at the cop shop will be long. What if I'm stuck behind Atom Egoyan, who portrayed a stripper pretending to be a schoolgirl in his award-winning film *Exotica*? Or worse, Alice Munro, whose coming of age stories that violate this law are too numerous to count? Or retired prima ballerina Evelyn Hart, who for 30 years danced teen roles with such memorable sensuality? Or the actress Sarah Polley, who played in sexually active adult roles on screen before she was 18? Or the entire productions of *Miss Saigon* and *La Bohème*, both concerning, after all, teen prostitution?

In fact, I don't really believe the cops will use Bill C-2 to target Atom, Alice, Evelyn, or me. However, if Bill C-2 passes, we in the arts community know we must brace ourselves for the next inevitable Eli Langer case, or, equally importantly and more likely, the next Robin Sharpe case. When opportunism, some ambitious cop, meets opportunity, some artist or citizen judged sufficiently marginal or dispensable or unpopular, Bill C-2 will enable the next headline-grabbing arrest, the next wave of costly organizing, and, most costly, the next wave of self-censorship on the part of vulnerable and nervous artists across the country.

● (0920)

On this day when Parliament is on the verge of extending the right to register china patterns to our lesbian and gay citizens, it's worth noting just how far we've come as a country in terms of adopting modern and rational approaches to sex, its expression, and its representation. Why, for a minute, should we as artists, as citizens, tolerate a law, Bill C-128, or its draconian extension, Bill C-2, which are so clearly throwbacks to another era, a time of censorious repression and vote-getting moral panics?

As it stands, Bill C-128 is a bad law that treats us all like children. We urge you to reject Bill C-2 and reaffirm the rights of all Canadians, not just artists, to speech and creativity.

Thank you.

The Chair: Thank you, Mr. Greyson.

[*Translation*]

Ms. Dufour, from the Barreau du Québec, will start.

Thank you.

Ms. Nicole Dufour (Lawyer, Research and Legislation Service, Barreau du Québec): Good morning.

Denis Mondor, President of the Barreau du Québec was detained by other business. He sends his apologies.

My colleague, Lori-Renée Weitzman, will make the presentation on behalf of the Barreau du Québec and of the Ordre professionnel des avocats du Québec, which now has more than 20,000 members.

Ms. Weitzman has been a Crown attorney for the District of Montreal for 18 years and a member of the Committee on Criminal Law of the Barreau du Québec for nearly eight years.

Mrs. Lori-Renée Weitzman (Lawyer, Member of the Committee on Criminal Law, Barreau du Québec): Thank you.

My comments will be brief. My main purpose is to look at the specific details of the legislation and to offer a few suggestions for corrections on points which we think pose a problem.

As you can see from our brief, I'm going to address four problems.

The first specifically concerns subsection 163.1(6) proposed in subclause 7(7) of Bill C-2. This is a detail. Since Bill C-20, you have amended the way of wording the defence in the act. You'll note that you've used the same wording as in subsection 162(6) proposed in clause 6 of the bill, that is to say that the defence applies if "the acts that are alleged to constitute the offence".

This was understandable in the case of a voyeurism defence because it could be understood that the act as such, for example filming someone, could have a legitimate purpose related to all kinds of things. But here, the wording has changed since Bill C-20. The expression "the material related to those acts" was used in that bill. The defence was based to the material related to the acts, that is to say whether the possession of pornography as such had a legitimate purpose. I believe the wording should remain as it was in Bill C-20.

Bill C-2 refers to the defence that exists "if the acts that are alleged to constitute the offence". However, in the view of our committee, it is not really the acts of possession that will constitute the offence, hence the defence sought. It's more the material related to those acts as such that they perhaps provide a defence. It's a matter of wording. It was clear and more appropriate in Bill C-20.

The second point concerns the amendment made by subsection 163.1(7) proposed in subclause 7(7) of the bill. You've removed an important question, that of the assessment of the jury, that is to say the trier of facts, in every criminal case. You say that:

> It is a question of law whether any written material, visual representation or audio recording advocates or counsels sexual activity with a person under the age of 18 years that would be an offence under this Act.

In doing so, you remove the right to a trial by judge and jury for a person who is charged with an indictable offence. Ultimately, the central issue is whether or not the representation counsels the prohibited activity. That's another comment we had to make.

Our third comment concerns something less important, in clause 15 of the bill. The proposed subsection 486.1(6) states that "no adverse inference may be drawn from the order contemplated by section 486.1. We think it would have been preferable simply to mention that no inference should be drawn, whether unfavourable or favourable. There should be no reference to any effect whatever in favour of or against the accused. The problem may be resolved simply by stating that no inference should be drawn, without characterizing it.

I have a little more to say on the fourth point. The proposed legislation makes a major change to subsection 16(1) of the Canada Evidence Act. We find these changes raise a number of problems.

● (0925)

We note from the act that an inquiry must be conducted when the mental capacity of a witness is impugned. However, with a statement to the effect that any person under the age of 14 is deemed capable of testifying, we have a somewhat illogical situation, because there is a presumption in favour of every witness, even if he or she is two or three years old. However, we do not really think it is logical that such a presumption should apply to very young children.

Furthermore, as regards circumstances, we have two regimes here, since the presumption exists only for children under 14 years of age, whereas for children over 14, but whose mental capacity is impugned, there is no presumption in the act. We think this gives rise to a situation that is not entirely logical.

Furthermore, the second subsection codifies the lack of obligation for witnesses under 14 to take an oath or make a solemn affirmation. Testimony may be received if the witness is able to understand the questions and respond to them and promises to tell the truth. Such testimony will have the same effect as if it were taken under oath. However, under the bill, this witness may be two years old. Even if the witness is six or, more likely, eight years old, the logic of the bill means that it cannot in any way be known whether that witness understands what it means to "promise to tell the truth". This matter is not subject to any review. Here we're talking about a young witness who does not have to swear an oath. The idea is simply to determine whether he or she is able to understand the questions and respond to them. It is not determined in any case whether that person, who promises to tell the truth, knows what that means. We feel an element is missing here that would make it possible to ensure that the testimony is received in due form. Since no corroboration is required, that testimony has to be credible and trustworthy.

Subsection 4 imposes a reverse onus, which, I agree, already existed. It requires that the person who challenges a party's capacity to testify has the burden of satisfying the court that that is true. In our view, it would perhaps be appropriate not to place the burden on the person challenging a witness's capacity to testify. Instead we suggest that, once the capacity has been challenged, the burden of proof be on the person who called the witness. It may appear that the person required to testify has problems, because of his or her youth or mental capacity. The party calling the witness is likely in a better position to know the witness and the witness's skills, qualities and problems and to inform the court of them.

Those are our comments on certain details of the bill. Thank you.

● (0930)

The Chair: Thank you, Ms. Weitzman.

[*English*]

Now from the CBC we have Ms. Edith Cody-Rice for approximately 10 minutes.

[*Translation*]

Mrs. Edith Cody-Rice (Senior Legal Counsel, Privacy Coordinator, Canadian Broadcasting Corporation): Good morning, ladies and gentlemen. I am Senior Legal Counsel at the CBC.

[*English*]

I have provided you with a paper or submission, which I hope you have; it was sent over to the committee yesterday, and I also brought paper copies this morning. I also gave you this PowerPoint presentation, because it's a short form of our concerns, which you can flip through if you want to use them for the questions you may have.

The CBC does have concerns about Bill C-2. I'm going to focus this morning on journalism, although we have read the presentation of the Writers' Union to you some days ago that we think raises very serious artistic concerns. We would agree with many of the points in their brief, particularly those concerning description of written material, which are similar to some of the points raised this morning.

The CBC is of the view that although we understand and sympathize with the objects of Bill C-2, we have concerns about its effect on freedom of expression, including freedom of the press. The media conduct important investigations into the concerns of society, including those concerning public morals and child pornography. The legislation as it stands contains no reasonable prospect of permitting a defence of freedom of the press, and the offence outlined in proposed section 162 is so broadly stated that it leaves uncertainty, and it will cast a chill on journalists working in the public interest.

The defence of "public good" does not traditionally protect journalism or a free press, but it protects artistic creativity, education, and medical research, the kinds of elements contained in the proposed subsections 163.1(6) and 163.1(7).

The CBC is clearly concerned about the consequences of this bill for free speech. The current subsection in the current law, subsection 163(2), has some protection in stating that "Every one commits an offence who knowingly, without lawful justification or excuse" commits the offence. The proposed section 162.1 does not contain the lawful justification protection. That's just one.... At least there should be something there to try to show that you had a lawful justification, and having a lawful justification may include doing an article on child pornography in the public interest, or on something that you've seen that would be an offence under section 162.

The penalty of five years in prison is high enough to cast a chill on legitimate journalism, and I would say the same for artists. The penalty is quite high. The concern is that you might be successful in a defence, but meanwhile you've been charged under this legislation; you have been dragged through the courts for a year or two years; you have a spent a huge sum on legal fees; and then you might or might not be convicted. This is a huge burden for artists and journalists to face.

It is our position that the legislation should allow for a defence of journalism in the public interest. This should be added to the public good defence and should be included in proposed subsections 163.1 (6) and 163.1(7), which are the legitimate defences against a charge of child pornography.

I just happened to be going back to the bill yesterday and noticed on another subject not in my presentation that there is a section that would increase a right to place a ban on publication. This is not in the materials you have before you, but I just wanted to make a few comments about it. The proposed subsection 486.5(2) saying that a ban on publication can be put on any justice system participant will allow an accused to have his or her identify protected. There's a long tradition in our law that the identity of an accused should not be protected unless such identification would identify a protected victim; for example, you don't say in a sexual assault trial that the father, as named, is charged with abuse of his daughter, because you would then identify the daughter. So we don't identify the father in those cases. In one sweep, the proposed subsection may change all of that law.

The CBC is becoming increasingly concerned at the number of publication bans being imposed by judges. In many cases, we and other media have moved to overturn these. The right of the press to gather and publish news is a constitutionally protected right, and a publication ban, as Justice Gomery has recently noted, is a limitation of a charter-protected right. There are many legal decisions dealing with the importance of the press reporting relatively unfettered the proceedings in a court of law. I note here the comments of the Supreme Court of Canada in dealing with Alberta legislation that limited reporting of certain materials.

● (0935)

This is a quotation from the judgment of Madam Justice Wilson in that case:

> [There is a] public interest in open trials and in the ability of the press to provide complete reports of what takes place in the courtroom. [This interest] is rooted in the need (1) to maintain an effective evidentiary process; (2) to ensure a judiciary and juries that behave fairly and that are sensitive to the values espoused by the society; (3) to promote a shared sense that our courts operate with integrity and dispense justice; and (4) to provide an ongoing opportunity for the community to learn how the justice system operates and how the law being applied daily in the courts affects them.

The second, from the same decision, is a comment of Mr. Justice Cory:

> The importance of freedom of expression and of public access to the courts through the press reports of the evidence, arguments and the conduct of judges and judicial officers is of such paramount importance that any interference with it must be of a minimal nature.

We are very concerned about the expansion of the right to impose publication bans generally. We're not concerned about—we support, in fact—protecting the identity of victims, and child victims in particular and particularly in sexual offences, but we do not support protecting the identity of an accused when there is no other reason to protect that identity. We're concerned that this is how this proposed amendment will be used.

Thank you very much.

● (0940)

The Chair: Thank you. Now we'll go to questions from the members.

Leading off will be Mr. Thompson, for five minutes.

Mr. Myron Thompson (Wild Rose, CPC): Thanks to all of you for coming this morning; we appreciate your being here.

I want to say to Ms. Kingsley, I'm very proud of a person like you, who has come out of these environments to work so hard to protect children. I really admire you for that.

I also want to make a statement, and I'd look for some response from anyone who would care to respond. Back in 1993 and 1994, when I was first elected to this office, I was asked to do some critic work in the penitentiary system. I travelled the country very extensively and hit many of the penitentiaries and visited with a number of not only Corrections Canada employees but many inmates. I was shocked at the number of inmates who were incarcerated and sent to prison for violations involving sexual abuse, particularly of children. The numbers are extremely high.

Doing some investigating, and talking with case workers and psychologists, and talking with inmates themselves, I very quickly determined in my own mind that child porn was a definite precursor to the attacks on these children. It was really obvious that this was the case. This was confirmed by practically every case worker and every psychologist in every penitentiary across the country.

I found it equally shocking, when I started dealing with the police departments, to find out that the number of items under investigation that had been confiscated from individuals was in the millions, and that the profits from this act of exploiting children were huge.

It was then I determined, in 1995, that I was going to do everything I could in my power to see to it that we got some legislation in place that will protect the children of this country. That's my personal objective, and I have many colleagues who agree with me that we need to do this.

Personally I understand the rights of freedom of expression. I will say loud and clear that if I'm ever going to make an error in judgment, it will be an error in favour of protecting our children over the right of freedom of expression, if that situation ever comes to be. The importance of protecting our children in this land overrides many of the rights that are trying to be defended in this land.

I have introduced private members' bills that would strike from the present bill the words “or art” from the legislation. Scientific, medical, educational, I don't care to argue about—I think there might be some merit there—but the art section particularly has always been a problem for the last 10 years.

So that's where I stand personally, and I have many colleagues who are with me on this.

The Chair: Are you going to allow some time for a response, Mr. Thompson?

Mr. Myron Thompson: That's what I'm asking for now, a response.

The Chair: Good.

I see Ms. Kingsley is wishing to respond.

Ms. Cherry Kingsley: Yes. I actually appreciate what you said and I appreciate some of what this bill may represent to you.

I work with thousands of young people who have been exploited. That's what I do. I grew up in the sex trade as well, and all of the people I worked with in the sex trade were young too. But what frustrates me sometimes is that I feel like the potential for that one case, those rare cases, those isolated cases, where an artist is put on the stand.... There are thousands of young people whose cases go before the courts all the time and they never see justice; they never see protection. They're humiliated in courts. They're humiliated in the public. They're humiliated by the sentences that are handed out. They are humiliated in the communities through exploitation. Do you know what I mean? There are thousands of cases like this that go before courts. In that one isolated case where an artist may or may not have to defend himself...it doesn't mean I don't have some kind of human compassion for that person. I don't think that's fair. Do you know what I mean?

I certainly don't support that happening. I'm not here to try to create persecution against artists or anything like that, but I'm talking about those thousands of children whose cases go before courts and there isn't any form of protection for them. Never do they see, not in the community or the systems or anywhere....

So how do we balance that? Do you know what I mean? There has to be some push for those cases as well, and not overemphasizing the potential of that one isolated case that may or may not ever happen. We need some level of balance here.

At the same time, I don't want it to be pushed as a moral issue because I feel it's a rights issue. How do we balance the rights of children and the rights of artists? I don't want it to become this big morality debate, but more of a human rights issue.

I appreciate what you said. It's really nerve-racking for me because there are lawyers here and there are artists here, and I'm saying, but what about the children? Sometimes that can seem like a really lame argument, but I hope it doesn't represent that way because I think it's an important argument as well.

● (0945)

The Chair: Did anyone else on the panel want to respond?

Yes, Ms. Cody-Rice.

Mrs. Edith Cody-Rice: I would like to respond.

I don't think we are any less interested than you are in the protection of children, Mr. Thompson. I think the problem may be that if you do make an error in passing this legislation, it may be struck down by the courts, and then you will have nothing or you will have amended legislation. Although I didn't say so in my remarks, you'll see in my submission that I think the bill, as it stands, could be struck, or portions of it could be struck, if there's a court challenge to it under the Charter of Rights. Freedom of speech, freedom of expression, and freedom of the press are charter-protected rights. The rights of the children are not less important, but freedom of speech is not unimportant either. So I think, one, we have to try to not make any errors in passing Bill C-2. It's a very important bill.

The Chair: Thank you.

Mr. Myron Thompson: May I have a point of order here. I want to make sure they understand that I agree, probably everyone in this room wants to help children. I have no doubt about that. How do we get that accomplished, is my point.

The Chair: Thank you.

I'm sorry, Mr. Greyson, did you have a comment?

Mr. John Greyson: Thanks. I want to briefly note that York Professor Thelma McCormick did a study of the causal relation between child pornography and crimes against children in the mid-nineties. She did a study of all the available literature in Canada and actually concluded the opposite of what you just put forth: that in fact there was no causal link demonstrated. The studies that claim to cause a link, in fact, were methodologically flawed and not conclusive, and that the conclusion had been drawn was much more in the eye of the beholder than based in any fact.

In response to the question of balancing, I think it's very important to separate out the question of child pornography from the exploitation of children. When we're talking about thousands of children in the courts, we're quite importantly and rightly talking about the direct abuse of children. Those cases I think you're referring to...I don't know that it's constructive to make a continuum of all abuse and then the specific cases that involve child pornography, which are quite specific. Specifically, I think it's very important to hold onto those cases where real children are involved—I'm trying to finish my point, sir—versus cases where it's a representation. As you said, the point the Writers' Union made in their brief around the concerns of real children is and should be all of our focus.

Thank you.

The Chair: Now we move to Monsieur Marceau *pour cinq minutes*.

[*Translation*]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chairman.

I would like to thank our witnesses for coming and making their presentations this morning.

First, Ms. Weitzman, you're an experienced Crown attorney. Your work has been praised to me by one of your former bosses, who is seated on my left. I'd like to have your opinion on a concern you've heard about but was expressed slightly differently today by Mr. Greyson and Ms. Churgin. That concern is about the vague definition of child pornography in Bill C-2, as well as the vague defences offered in it. They are concerned because the bill contains the expressions “dominant characteristic” and description “for a sexual purpose”. In their view, these expressions are too vague, and thus too broad, and could result in a legitimate artist being charged carelessly by a prosecutor.

What's your opinion on that subject?

● (0950)

Mrs. Lori-Renée Weitzman: I think we should make certain choices when we legislate. I believe everyone agrees on our objectives, which are entirely laudable.

I also believe our system is established in such a way that we must trust the Crown attorneys, who have broad discretion. We cite extreme examples, such as that of Alice Munro, who could be prosecuted for certain scenes in her literature. I believe you have to trust. The examples cited wouldn't be prosecuted, even if a zealous police officer were involved. Of course, there may be zealous police officers, but we have all kinds of barriers and protections in the system. After the police officer, a Crown attorney would examine the case and definitely say that that's never been subject to the law, that it's clearly not what we had in mind when we were talking about child pornography. If ever a zealous police officer meets and equally zealous attorney, with ideas that don't seem to be consistent with the aims of the act, then judges will examine the case.

We have to trust the system and the judges. Of course, it's vague in the sense that the subject itself is hard to define. I don't think there is a fault in the legislation. It necessarily reflects what we're trying to legislate. Similarly, we leave it up to judges to decide what is obscene material, what obscenity is and what social mores are, which are constantly evolving. How can we determine today that a particular type of behaviour is obscene and will violate the values of society? We know perfectly well it's not at all like what one might have said about the same events 20, 30 or 40 years ago.

So I believe you have to trust the system. I wouldn't want to say in answer to your question that it's as clear as the nose on your face. No, it's a concept that must be vague, that must lend itself to interpretation on a case-by-case basis. In response to the justified considerations of my colleagues, who advocate freedom of expression, freedom of the press and so on, I would say that we must have defences. We must have the opportunity to accept that certain forms that might technically represent child pornography are in fact not child pornography because of their artistic aim.

Thus, in response to all these considerations, I believe that the act must be able to be handled by the parties that will have to enforce it. We have no problem with the wording of this bill.

Mr. Richard Marceau: Thank you very much.

Mr. Greyson, I'd like to have your response on that.

[*English*]

Mr. John Greyson: Would you like to respond?

Ms. Audrey Churgin: The notion that we should trust that a case such as Alice Munro's would not be prosecuted is very scary to me. Like you, we're not lawyers either. We're ordinary people, ordinary artists who are struggling to express ourselves through our work. There are many of us who are not as well known or as successful, and the trust that's referred to here presumes the public knows an artist through their work and presumes there's a lot of experience and that because they're doing well they should be trusted.

But what about those artists who are lesser known or emerging into the field and will be intimidated by the possibility that they wouldn't be trusted and who therefore stop making work on these topics and exploring them? This is a form of curtailing freedom of expression, by putting out there the threat that they would be prosecuted if they delved into topics that could be misinterpreted. A lot of people feel that way now.

● (0955)

[*Translation*]

Mr. Richard Marceau: I'm going to ask you another question. I've already put it to other people in the artistic community who have testified before us. They aren't afraid of being found guilty, but rather of being charged. That's what you just said. First you have to encounter a police officer, then a Crown attorney, who has a lot of leeway, as Ms. Weitzman said. They're afraid of all the legal problems. Their fear is not that they'll be convicted, but rather that they might be charged.

So here's my final question. We as legislators have to strike a balance somewhere. In borderline cases — since these are always borderline cases — if we have to make a choice between protecting children and the possibility that an artist might be prosecuted but not convicted, don't you believe that protecting the child has to be more important?

[*English*]

Ms. Audrey Churgin: You're speaking to somebody who's more a professional mother than anything else. Of course it matters intensely to me to see children protected. The problem is—and I would, speaking as an artist as well, consider the possibly of being incarcerated for making art that crossed other people's lines just as scary as going through the whole legal process—I believe most pedophiles have a great variety of activities that they do. For the few of them who make art, the art is only one activity among many that makes them qualified for that title of pedophile.

The criminal net catching them is there. There are many places they will be caught. But by having an opportunity for an artistic defence in there, what you're doing is leaving a hole for legitimate artists to pass through while the pedophiles are caught. It gives us an opportunity to explore the topics that confront our society. We can't pretend they're not there.

[*Translation*]

The Chair: You may make a final comment, Ms. Weitzman.

[*English*]

Mrs. Lori-Renée Weitzman: Mr. Chairman, I of course picked up the example of Ms. Munro because it was one of your many examples. Certainly that was not what I was aiming at.

The point was that anything that can be found in what could be potentially a work of art—some artist's rendition of what seemingly has some artistic merit—is something we have to leave to the various players in each individual case to examine. We're talking about balance, and in fact the only answer that would seem to meet all of your concerns would be an absence of any limitation. I think certainly that would serve all the artists, but we're missing out on the other side of the balance. I think that if as a consequence—which you deem unfortunate, I understand—of this legislation some artists are going to be reticent, from the feeling that we're throwing cold water on the creative process, because of the fear of perhaps...never mind being convicted, but even being accused.... I understand that in itself is a big deal.

We're trying to balance it very carefully. The law specifically includes in its legislation artistic merit, so the artists know there is that component. If in addition we are telling the world—artists in particular—just be careful for those who might consider that this is a perverse use, a degrading use of children.... If we're including in our legislation something that will make artists who are on the fringe—because clearly we're not talking about all art; we're talking about art that possibly depicts children in a manner that resembles juvenile pornography.... If artists engage in that, which is on the fringe, and we are making them stop for two minutes to consider if they have gone too far, if in their creative process they have gone so far as to offend and use children in a manner that is not acceptable in Canadian society, I don't have a problem with the law that does that.

● (1000)

Ms. Audrey Churgin: Neither would I, if it involves real children.

Ms. Cherry Kingsley: If it's pictures of children, they're children.

Ms. Audrey Churgin: Absolutely, real children. But when you're talking about acts of the imagination through writing, through drawing, things that do not involve any real person who would be harmed, the limits are the issue.

The Chair: Thank you.

Mr. Comartin, for five minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I want to take this up, Ms. Weitzman. The court of appeal for Ontario just came down on Friday with this decision, which it seems to me does expose the Munros and artists like that by introducing this implicit-explicit dichotomy into the process.

I don't know if you've seen the decision.

Mrs. Lori-Renée Weitzman: I'm sorry, I haven't.

Mr. Joe Comartin: In effect it gets us back to Ms. Churgin's point, which is that you don't have to have a real victim in order to trigger the use of the existing law. Quite frankly, the artistic merit defence is going; it's going to be legitimate purpose.

Mrs. Lori-Renée Weitzman: Right.

Mr. Joe Comartin: It seems to me that opens up even more so to this type of a result.

Given the material that was in here, quite frankly, you can see why we need the defence, Mr. Chair, of law and medicine being able to... because the material in here is grossly offensive, as just reported in the decision. There's no question that the material wouldn't meet any defence. It's not artistic at all. But they've introduced now this defence, and I think we're doing the same thing in this legislation.

So, Ms. Weitzman, the point here is that what they've done is they've said—we're back to the Sharpe decision now—you can counsel implicitly, you don't have to do it explicitly, and if you do it explicitly, you cross the barrier and you're going to be convicted of creating and owning child pornography. That's in effect what the decision has done. I think we're doing the same thing in this legislation.

At that point, Alice Munro does get exposed.

In *The Island Walkers* the description of some of the juvenile sex gets exposed if a judge makes the conclusion that this in some way is counselling, that this behaviour, this conduct, is in fact legitimate.

That's really what we're into.

Ms. Kingsley, I want to say to you, and I said before the break I did a lot of work in protecting children in my professional career before I became a member—I think I'm saying it to both of you—what about just having the defence that if it's not a real victim, the material is acceptable?

The Chair: Ms. Kingsley.

Ms. Cherry Kingsley: I have some concern when newsletters are created, illustrations are created, and stories are written that detail boys being flogged or whatever, as in the Robin Sharpe case, and then links are made and those kinds of discussions happen. You can say technically that no real children have been used in that, but they have been; that is, in their lifetime.

And how it came to be that he was exposed is through some of that networking and through those links being made, newsletters and illustrations being distributed. I don't know what you guys would say in that circumstance, but that's done for this purpose. That has nothing to do with any art. That newsletter and those illustrations are created to make those links and to see who bites. It's put out as bait and it's put out to share stories. So I don't know....

The Chair: Mr. Greyson, you had a comment?

Mr. John Greyson: I think in response to both of you, it seems to me there is a fundamental separation between flogging the boy, which is clearly against the law and assault charges can be brought, and depicting that in a short story. And it's not just Robin Sharpe, but many award-winning authors have depicted this in their literature. I think we have to hold on to that distinction between real children and representations of children.

● (1005)

The Chair: Mr. Comartin.

Mr. Joe Comartin: I still want an answer from Ms. Weitzman, but before we do that, I have a quick point.

Mr. Greyson, you made reference to that review that was done of the literature in the mid-nineties. I haven't heard of that. It was McCormick who was the....

Mr. John Greyson: Thelma McCormick, a York university professor in women's studies.

The Chair: On that issue, we'll be having expert evidence coming. Some psychiatrists are going to be coming to show the links between pornography and the actual committing of crimes.

Mr. Joe Comartin: As a prosecutor—

Mrs. Lori-Renée Weitzman: I'm sorry that I haven't had the chance to read that judgment yet. I'm usually up on these things, but I haven't read it yet, so it's hard for me to comment on that judgment.

The Chair: That doesn't stop people around here from doing it.

Some hon. members: Oh, oh!

Mrs. Lori-Renée Weitzman: I'm just a visitor here, and we're going to keep it that way!

Actually, I understand the concerns. If the legislation's aim is to protect from material that clearly counsels or suggests activity with children that goes beyond the bounds, or is clearly degrading, humiliating, or offensive concerning children, I don't think the fact that there is no true or particular victim involved, a Mr. A or a Ms. C., renders the legislation contrary to the charter principles we seek to protect.

I haven't read the judgment, and I'm sorry I can't give you a clear answer on that.

The Chair: Thank you.

Thank you, Mr. Comartin.

Mr. Macklin, for five minutes.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you, Chair.

Thank you, witnesses, for being with us today.

Today, I'd like to start with the Barreau du Québec. In terms of talking about the competency of children to testify, recently we had a witness before us who was part of the Child Witness Project of the Queen's University Faculty of Law, Professor Nicholas Bala. He made one statement in his brief that I'd like you to comment on. He said:

> Much of our research over the past few years has dealt with issues related to the competency inquiry and children's promises to tell the truth. The present law requires children to be put through an intrusive inquiry which is upsetting to children, a waste of court time, and does nothing to promote the search for the truth.

In your situation, though, you're advocating that there be an inquiry. Could you comment on that?

Mrs. Lori-Renée Weitzman: Yes, I can.

First of all, one of the things we discussed in our committee before presenting this brief was that we weren't sure of or couldn't find the source of the need to change subsection 16(1) as it exists—which might be something you're more aware of. We didn't know, or were unaware, of any problems or reported cases where the application of subsection 16(1) was creating difficulties in the criminal court system.

Although I've certainly heard of and respect Professor Bala, who is well known, I disagree with the brief quote you've just read to me. The purpose of our intervention on this particular aspect was to indicate that by presuming all children under 14 are competent to testify, and at the same time removing any possibility to truly test whether or not the testimony received is worthy of any kind of credit or reliability, the legislation is putting the judge in a very difficult position. As I said, although the law presumes the competency of a two-year-old, I think it goes without saying that their testimony wouldn't be received. But when the child is of the age to understand and answer questions, and seems to be a witness whose information can be received, without this witness testifying by saying, "I promise to tell the truth"....

I have no doubt that inquiry can sometimes be time consuming and difficult for children. In our office I've dealt exclusively with sexual assault matters for about 10 years, and I know what it is for a child to be put through that—it is not easy. I don't think this in itself is a reason not to ensure that the courts are scrupulously ensuring that testimony received can be put into a judgment and faith be placed in it.

Where do we see children? We see them in the most reprehensible and horrible crimes in the Criminal Code, sexual offences against children. That's where children are called upon to testify; that's where we want to make sure—as in all offences, but particularly in these—that we are not opening any doors or possibility for false convictions through testimony that is going to be received that shouldn't be.

If we are allowing a six-year-old to say, “I promise to tell the truth”, and we are not giving the defence lawyer the opportunity to at least verify if there is any content to that.... Do you understand what it means to promise? Do you understand what it means to tell the truth? Do you understand the importance of this? We're not asking for a solemn affirmation; we're not asking for an oath. Where can we ensure that the witness of that age understands the solemnity of the occasion? The witness has no idea what the court system is about. With adults we can presume certain things; with children we can't.

We have to have some safeguards, and I'm saying that from a prosecutor's perspective. It's important for me to make sure that the true culprits are convicted and sentenced properly; it's important for me to protect the children—that's all I did. On the other hand, I don't want to be part of a system that makes it too easy and possibly allows the six-year-old to say, “Yeah, yeah, I promise to tell the truth”, and no one is ever going to test whether he understood the meaning of those words. That's our concern.

● (1010)

Hon. Paul Harold Macklin: I think part of what the professor was also bringing forward, though, is that it is extraordinarily difficult for many of us to explain what we mean when we're talking about promising to tell the truth. I guess the question in the end is, have we gained much ground by going through this process if in fact it's an extremely difficult concept to convey? Therefore, does putting a child through this process really benefit the court in the end?

Mrs. Lori-Renée Weitzman: The discussion is certainly not moot. When I say I disagree, it's not that I'm dismissing it by brushing it off. It's a very difficult question, and that's why we did away with the requirement of having the child explain what it meant to swear on the Bible. At a certain point in the 1980s we were going through discussions of who was God, and what does it mean to believe in God, and what does it mean if you lie after you swear on the Bible. I certainly wouldn't ask an adult to do this, and it was ridiculous to try to ask children to do it, so I understand the difficulty.

On the other hand, I don't think the inquiry is too much to ask. For the child to be able to explain in his or her own words, and this is a child who's of an age to be able to testify, at least that he or she is cognizant of the importance of the occasion, that speaking in court is different from speaking to your friends in the school yard, than speaking to your parents, than speaking to your teacher, that there's something more grave about it—not necessarily the consequence to the accused—that there's something more serious going on.... If we can't do it at least by questioning the truthfulness or the sincerity of someone who is saying, I promise to tell the truth, then I wonder...I certainly understand the concerns. I think there's a way to do it, and I think by removing it completely we might be making the inquiry a lot easier, but I'm not sure we're gaining in what we need, which is the satisfaction, the understanding, that we are closing the door to anything improper, to mistakes, because we are specifically targeting young children here.

I wish I had the answer. I don't have a great solution. I understand his concerns, but I think the inquiry can be done properly.

The Chair: You have time for one short one.

Hon. Paul Harold Macklin: All right. I'll keep the question short.

Why should we give journalism a special defence?

Mrs. Edith Cody-Rice: It's not giving journalism...well....

Hon. Paul Harold Macklin: You're advocating a special “journalism is in the public interest” defence.

Mrs. Edith Cody-Rice: I'm saying “journalism in the public interest”. I suppose that anyone...journalists professionally go out and investigate things. I suppose police also go out professionally and investigate things, but they have different powers. But for journalists, their whole profession is based on freedom of speech, freedom of expression, and freedom of the press. And journalists do bring important stories to the public attention. Anybody could bring them to the public attention, I suppose, but journalists do it as their profession.

That's why I think—it may not be worded as journalism, but some thought should be given to the fact that Bill C-2 as it is presently drafted would bar any person, not just journalists, from the right to a defence because he or she has brought an investigation or a public interest story to the attention of the public. There wouldn't be a defence on that basis, because public good doesn't traditionally include journalism or free speech as such. It includes artistic merit. Well, you can't always say that journalism—and I'm sure you would agree—is always of artistic merit in those terms.

Hon. Paul Harold Macklin: I would agree.

Mrs. Edith Cody-Rice: However, journalism covers a very broad spectrum. There are people who are not reputable, journalists who do not do reputable things in that profession, but there are many people who do very reputable things in that profession. They would not have a defence under this law, while medicine does, science does, and artistic merit does. I think people whose job is to bring matters to the attention of the public also should have some way of defending themselves, even if they're charged.

● (1015)

The Chair: Thank you.

Thank you, Mr. Macklin.

Mr. Warawa for five minutes, please.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chair.

Thank you to each of the witnesses for being here. I found your comments informative, and particularly your comments, Ms. Weitzman; they were very thought-provoking.

I'm going to be asking a question of Ms. Kingsley regarding the age of consent. But before I do that, the comments made here regarding the chill on the right of creative expression.... The desire of I hope every member of the committee is to come up with legislation that would protect our children. My wife and I have five children—they're grown now—and I have one grandchild, so children are very important to me; I love children. I believe our responsibility as a democratic society is to protect the most vulnerable, and I believe children are the most vulnerable. If we are going to err, I believe we need to err on the side of protecting our children.

If there's this—and here's this new catchword—"chill", I believe that chill has to have a balance. I don't believe a picture of one of my children in the bathtub is child pornography. Could it be used by a pedophile? Is that picture child pornography? Absolutely not. I think society and the courts would be able to determine very clearly what child pornography is. We're not talking about a picture of a child in a bathtub.

Also I've heard the comment that "if it's not a real victim...", that it has to be a real victim before it's considered child pornography. Some of these lines are vague. I've just recently received in my e-mail a petition that's being passed around regarding the Paul Bernardo story and the atrocities that happened in his life. Should there be a film made about real victims? The actors would be portraying real victims. But Canadians are having great difficulty with some of these lines, not only in this committee but in our country. Should a film like that be made? There are grave concerns in Canada that I think we need to deal with.

The goal of Bill C-2 is to make sure our children are protected. I am disappointed that it doesn't deal with the age of consent, but I have a question for Ms. Kingsley regarding that. And I found your presentation to be very professional and informative.

● (1020)

Ms. Cherry Kingsley: Thanks.

Mr. Mark Warawa: Before being elected, I was very involved with child pornography and prostitution from a local government perspective. I found that people around the age of 14 were being drawn into prostitution by being told things they wanted to hear by somebody who was older and more experienced and who knew how to draw people in.

You said you got involved at age 14 and were involved from 14 to 22. When I deal with the age of consent, I'm not talking about two 16- or 17-year-olds having relations; I'm talking about a 14-year-old being drawn in and being victimized by, say, a 28-year-old.

I'm concerned because in my riding of Langley we have a young man convicted of a sexual assault who received a conditional sentence to be served out of his home, and his victims live on either side of him. I'm concerned about the way the courts are dealing out their conditional sentences.

On the age of consent, when you have, say, a 14-year-old being drawn into a relationship with a 28-year-old, do you believe the 14-year-old or 15-year-old has adequate maturity and cognitive skills to make those choices, to be able to give consent?

We are one of the lowest in the world.... Last week we had a witness who showed us the chart, and most in the world are at age 16. I'd like to have the age raised to 16.

I'd like your comments on that, please.

Ms. Cherry Kingsley: The law allows for a query into the nature of the relationship and whether there's some kind of exploitation taking place through the relationship, whether it be providing food, shelter, drugs, alcohol, or money to that person, or whether somebody else in some way is profiting or controlling that child. I think the law allows for the protection of any child under 18, without having to begin to create laws. What it does is hold the adults accountable, and I like that, and it removes even the debate about consent, which I like, because for so long that debate has raged around young people and their exploitation and the relationships, and a lot of them were exploited.

I like the removal of the whole consent issue from the debate, period, while still raising children with rights concerning their body. I think the exploitation of children is a removal of rights—at its worst, around a child's body—and I don't think we address it by continuing to chip away at their rights. I think we address it by holding those responsible accountable and protecting the child's rights to their body.

Mr. Mark Warawa: Thank you.

The Chair: Thank you, Mr. Warawa.

[*Translation*]

Mr. Ménard, you have five minutes.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Mr. Chairman, as you know, I've just joined you. I wasn't notified of the subject that would be addressed this morning. I didn't expect to be getting into such a delicate matter. Before addressing it, one has to do some thinking. The idea is to strike a balance between two profoundly important purposes. For the first and perhaps last time, I won't have to use the five minutes you're allotting me. I'll merely ask Ms. Weitzman a question.

I understand that you've been a Crown attorney for 18 years now and that you have been involved most exclusively in prosecutions. However, you've come here to give us the results of the work done by a committee. To enable us to assess the thoughts you've communicated to us and that appear to impress a lot of members of this committee by the balance they display, I would like you to explain to us the experience of the people who were on your committee. I'd also like you to confirm whether you are in fact here to express that committee's views.

Mrs. Lori-Renée Weitzman: Absolutely. I'm pleased you've asked me the question. As this is the first time I've testified before this committee, I wanted to ensure it was understood that I'm here as a member of the committee, not as a Crown attorney. What I say here is the upshot of the committee's discussions. Our committee is quite balanced between Crown attorneys and defence counsel. All views are represented. We have very animated discussions and we proceed by consensus. Each subject is thoroughly discussed until we find a common answer that satisfies all our members. We occasionally have disagreements and we take note of them.

I can assure you that the document we sent you, as we do each time, represents the consensus of the committee, and thus the ideas expressed by both prosecution attorneys and defence counsel. You can also imagine that our committee comprises members who are balanced in the nature of their profession and in personal terms. We are entirely capable of prosecuting, as I do, for example, but also of understanding the problems and important considerations of the other party. The ideas I've just transmitted to you here are thus those adopted by consensus of the committee as a whole.

● (1025)

Mr. Serge Ménard: More particularly, I'd like to know who was on your committee. I understand there were lawyers who had defended in cases and others who had prosecuted. Did your members include lawyers whose practices were oriented toward media defence or who had experience in the artistic or journalism communities?

Mrs. Lori-Renée Weitzman: I'll hand over to my colleague Ms. Dufour. She's responsible for our committee and knows all the members. She can probably give you a better answer.

Mr. Serge Ménard: You could also tell us how many of you there are.

Ms. Nicole Dufour: Mr. Ménard, unless I'm mistaken, the criminal law committee comprises 18 members. We normally have 12 or 14 sitting. At our meetings, we try to maintain entirely equal representation of defence and Crown counsel, that is, for example, five, six or seven representatives from each side.

With regard to your question, I can't answer you off the top of my head: we took part in the project some time ago. I don't believe any member of my committee has defended or prosecuted in a freedom of expression case. And none of our discussions gave me any reason to believe that was the case.

However, I can tell you that discussions took place in committee on this aspect of matters. As Ms. Weitzman very clearly explained, we're here to represent the Barreau du Québec and, more precisely, that working group. There was a consensus within our group on all the subjects addressed in our document.

Mr. Serge Ménard: Thank you, Mr. Chairman.

The Chair: Thank you.

Only 15 seconds of your five minutes are left.

Mr. Comartin.

[*English*]

Mr. Joe Comartin: Ms. Cody-Rice, I've had real problems with the defence in the voyeurism section, so I was interested in yours because you're one of the few people who've come forward to try to defend that defence—the protection.

The provision in the act will be that if it's a surreptitious gathering, taping really of—-

Mrs. Edith Cody-Rice: Observing is an offence, remember.

Mr. Joe Comartin: I think you have to be careful there. I'm not sure I agree with that interpretation. I've read the—

Mrs. Edith Cody-Rice: We can debate that, but you'll see observing is an offence—observe or record.

Mr. Joe Comartin: Except it's the use of the recording that's the offence.

Mrs. Edith Cody-Rice: No, observing is in itself an offence. If you look at the section...and I think in my paper I indicate that observing itself is an offence. That's a concern.

You say to yourself, now what do all these terms mean? To give a sense of how broad these things are, and I know it is very difficult to determine what things are, what is sexual activity. Is a kiss sexual activity? To me a kiss is sexual activity, but then maybe that's my generation and I would consider it that; maybe it's not considered sexual activity by young people.

What is surreptitious? We had a debate about that when Bill C-20 came along. I think that probably is not as difficult. “For a sexual purpose”—normally journalism is not done for a sexual purpose, but what does that mean? I'm not as concerned, in a way, that our journalists anyway would be convicted, but I'm certainly concerned—-

Mr. Joe Comartin: Can I stop you there? Let me deal with the sexual purpose, because that's where I don't see where you're right about the observe and the observation. It has to be done. This is cumulative. You have to show all three of these conducts. So it has to be the privacy, etc., and then the observation has to be done for a sexual purpose. If you're doing it for investigation, as you put in your PowerPoint presentation, it's not being done for a sexual purpose, so there is no exposure there on the part of the media.

Mrs. Edith Cody-Rice: I do not have the faith that Ms. Weitzman has in the system.

Mr. Joe Comartin: I don't either, but I don't see how any police officer or prosecutor could see that the media is doing this for a sexual purpose if you're doing it for an investigative purpose.

There's another problem with this section, and I want to go over that in a minute, but I want you to address this: how could anybody see that the media doing an investigation is doing it for a sexual purpose?

● (1030)

Mrs. Edith Cody-Rice: That may be a question raised when someone is doing the investigation, because people don't know who they are or who they're doing it for. I suggest that if someone is publishing it in *The Globe and Mail*, probably it would not be assumed to be for a sexual purpose. But they may publish something in a smaller newspaper.... And again it comes back to the same argument: if it's an Alice Munro, you're not going to pursue her, because she's well-known and she's reputable, etc. But everyone can recall cases of people who were starting out who were prosecuted because they were not known to be reputable.

For one thing, you have the reporter carrying out the investigation; then it depends where it's published. And what does "for a sexual purpose" mean? At the end of the day the judge may say, "Oh, this wasn't for a sexual purpose", and that is a long way down the road.

Even in what we suggest, putting in a defence for journalism or for something like journalism—just to add to my comments about journalism—journalists are regarded as an essential portion of a free society, and that has been recognized by the courts many times. If someone is able to say "But I'm a journalist doing an investigation" right from the get-go, there will be some consideration given to that by the person doing the charging. Right now there's none, but there would be some consideration.

Take, for example, artistic merit. A policeman might say, I had better be somewhat careful, because this is an artist—maybe or maybe not, but at least there's some warning. But in here there is nothing for the profession of journalism or other people that would put a caveat on someone doing the charging or prosecuting. At the end of the day you would have to say there's not even a defence of doing that, because the public good does not traditionally include journalism, or journalism in the public interest.

That's why we're asking that this be added.

But "for a sexual purpose"? That will be a good question, and you'll come to defend yourself and say, "But I wasn't doing it for a sexual purpose." Yes, you were; no, you weren't.... It's open; "for a sexual purpose" is fairly open.

The Chair: Mr. Comartin, on that point, proposed subsection 162 (1) says at the end of paragraph (b): "or (c) the observation or recording is done for a sexual purpose". So it's not cumulative. The CBC or journalists could be included in (a) and (b), and they don't require the "sexual purpose".

Ms. Kingsley had a comment to make as well.

Ms. Cherry Kingsley: A couple of things are not sitting very well with me. One is the insistence that it doesn't matter if it's not a real child. That's not sitting very well with me for some reason, because I think it does matter when you create a venue or any kind of environment that supports, advocates, or promotes raping or torturing children. I just do; I don't know why. Maybe it's a moral thing, I don't know. I had to make that comment: it doesn't sit well with me that it doesn't matter unless it's a real child.

I think there has to be some allowance somewhere that it should matter, and whether that's in law, or courts, or with police, somewhere somebody should be allowed to say, "Do you know what? It does matter." If that stuff is being distributed or if it's being put into my community or put into a venue with children, someone should be allowed to say that it does matter. I'm sorry, I just feel that way, and I don't know if it's my right to say that.

The Chair: It certainly is.

Ms. Cherry Kingsley: The other question is, are there really a lot of freedom of speech cases? Is that prosecuted a lot in Canada?

Really? Okay, I didn't know that. I just questioned....

Mrs. Edith Cody-Rice: Could I just make one additional comment concerning your question, Mr. Comartin? We were focusing on sexual purpose, and again, as pointed out by Mr. DeVillers, sexual purpose is not required to commit the offence. Observing itself is an offence, and publishing anything that was recorded—

● (1035)

Mr. Joe Comartin: You have to tie "surreptitiously" in with it. It's somebody who intentionally places a video in a washroom—

Mrs. Edith Cody-Rice: You don't even have to place a video in a washroom. Just observing is an offence.

Mr. Joe Comartin: I'm sorry.

Mrs. Edith Cody-Rice: However, I'm thinking of what you may be aiming at in this legislation. It's things like cellphones that take pictures, and that has been a problem where people go into washrooms and take pictures with a cellphone. I believe, or we believe, that you're catching legitimate journalism, and maybe you don't intend to. I hope you don't intend to.

Mr. Joe Comartin: But if you're there, you're with police on a stakeout investigating child porn or child abuse in one form or another, a child prostitution ring.... I'm having difficulty understanding—and people have a right to expect privacy—why the public media would be entitled to put that into.... What public good is advanced?

Mrs. Edith Cody-Rice: I'll give you an example. Let's say we're investigating the involvement of police—and let's leave aside child pornography for the moment because voyeurism doesn't deal with child pornography necessarily—and we're doing an investigation on police involvement in abusing prostitutes, for example. We wouldn't be with the police on a stakeout. We, as the CBC in any case, in most cases identify ourselves as reporters and people know who we are—and we never misrepresent who we are; we don't say we're somebody else.

There are certain cases, and I pointed out some situations, where we might have a reporter go "undercover" for a period of time to do an investigation. You may remember a program, some of you, years ago in which we investigated the mob—

Mr. Joe Comartin: Organized crime.

Mrs. Edith Cody-Rice: —excuse me, organized crime—in Toronto, and that was very dangerous for the reporters, and the reporters did go undercover and they wore body packs and all of that. I think it's hard to envision every circumstance, but I think circumstances could arise where this would be a problem if you don't have a defence of some kind. You have a defence of public good, but you don't have a defence of the interpretation of public interest or journalism protected in the public interest.

The Chair: Thank you.

We have to move on now.

Ms. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you, Mr. Chair.

Ms. Weitzman, I want to direct my question to you. I'm not a lawyer—

Mr. Richard Marceau: That's curable.

Ms. Anita Neville: I'm not taking that cure, thank you.

Voices: Oh, oh!

Ms. Anita Neville: In your brief here you indicate that in the preamble it's more of interest in terms of intent than of interest in terms of real interpretive value. It's page 4 of your brief. I wonder if you could elaborate on this and tell us a little bit how the preamble or the bill could be changed so that the intent of the bill is interpreted correctly and to the fullest extent possible.

Mrs. Lori-Renée Weitzman: Are you referring to our previous brief on Bill C-20?

Ms. Anita Neville: Yes, Bill C-20; that's what I have, I'm sorry.

Before you answer, I want to put the same question to the CBC, and to Ms. Churgin and to Mr. Greyson, that I've asked other witnesses. Can you can comment about the anticipation of this bill and the impact on the chill that might be affecting journalists or artists? That's of considerable concern to me.

Mrs. Lori-Renée Weitzman: Our comment is a comment we've made elsewhere as well with various bills. We see a problem with the use of the preamble, which is very helpful at the beginning when the legislation is first introduced, and it's clear that the legislation has to be interpreted to be read in conformity with the principles that are enunciated in the preamble. But as the code in this case becomes consolidated and the laws are replaced, the preamble slowly but surely disappears and we're left with only the law and no longer a reference to the principles that were in the preamble. So our position is simply that if the principles in the preamble are important enough, then they should be included in the text of the law itself, because otherwise we won't be able to maintain them, as was the intention of the legislator in the first place.

● (1040)

Ms. Anita Neville: Thank you. And my question to—

The Chair: The “chilling” question.

Ms. Anita Neville: The chilling question. I meant to—

Mr. John Greyson: I'll jump in on the chill. I think artists right across the disciplines, when they address issues such as sexuality and youth, often are drawing on their own experiences. We all make art from our own lives, and we're struggling to describe how we came of age sexually, at whatever age we did, whether it was in our teens or later. The sort of chill that sets in, of course, is that this is the first work we would stop doing, and what loss would that be to the culture? It's massive, when you think about, again, Alice Munro. Why does Alice keep going back to her childhood and her memories, observations, very vivid experiences? It's because they not only matter deeply to her, but she knows they matter in turn to a new generation of young women reading those stories.

I think one of the greatest losses a chill would result in would be of the meaning of that work for teens today.

Ms. Anita Neville: My question, though, is really how the introduction of this bill has affected artists already—just in anticipation of the bill.

Mr. John Greyson: Since 1993, we've been living with this chill. We've been living, in visual arts particularly, with the fallout of the Eli Langer case. I think we've seen, in representation, artists making exactly the call I'm describing: moving away from certain sorts of subject matter they previously dealt with, explored, etc. That's been across disciplines, especially in photography, because photography and video are probably the places where those issues are the most dynamic, the most volatile—the most difficult too, because of course in photography.... I think of the famous cases in the States, and we've had them here in Canada, of photographers—particularly women photographers—shooting their children, the Sally Mann case being one of the most famous.

I just met a woman—this was an American photographer—who lost her child, had it taken away from her because photographs, such as of her child in a bathtub, were deemed by the U.S. authorities to be pornographic, even though in every way an extraordinary defence was mounted demonstrating the opposite of abuse. This was a photographic practice of a loving family. Still, her child was taken away. That's a result of similar legislation in the States and a huge chill in the States.

That's what we're lurching towards. That's what we're concerned about.

Ms. Audrey Churgin: It has also affected public funding, the possibility for artists to be supported for their work and be able to make a living at what they're doing. Again, there's the U.S. example, the crash of the NEA and the Mapplethorpe issue. There are many precedents that have happened in the U.S. that are having a fallout on us here as well.

Additionally, there is a chill that goes outside of this subject. Whenever we cross into territory that potentially is considered criminal activity, when we're depicting something outside of what's considered respectable....

I'll give you an example. An artist phoned my office one time to tell me about a lawyer's recommendation that he not show his work. CTV wanted to air a video he had made on gang activities. These were all criminal activities, and he had been going along filming them and had produced this video, which was very interesting for the public to know about; however, his lawyer recommended to him that he would be considered an accessory if this were shown, so he was told not to show it.

He called me for advice. I told him I wouldn't advise him to do anything that would get him into jail or cause him trouble, but I had to ask him a question: why was he making this art if he didn't want to show it?

This is fundamentally the question. We need to sometimes traverse lines of acceptability in the general perception of things in order to question the legitimacy, to bring back to the public perception whether this is still a relevant issue, whether it is still something we consider the same way. Do we want to make it stronger? Do we want to make things weaker? It's the role of the artist to reflect back on society, and if you cause this chill we're not going to ask these questions. But that doesn't mean these things aren't happening.

● (1045)

The Chair: Ms. Cody-Rice, then Ms. Kingsley.

Mrs. Edith Cody-Rice: For CBC, I would say we obey the law as it is at the time, so we're concerned about this bill, but it hasn't yet.... Because journalism tends to be quite immediate, we do today what we do today and move on tomorrow. But what will happen, if this bill is passed as it is, is we'll just not do stories. We obey the law. Unless we decided we wanted to challenge it for a good reason under the charter, we would just not do stories. And that's really the danger: we would stop doing stories on certain subjects because we wouldn't be able to get the material.

I want to come back for a second to the question of "surreptitious", when we're talking about what is surreptitious. If, for example, we were doing—and we have done, by the way—an investigation on police involvement with prostitutes, taking favours from prostitutes and demanding favours from prostitutes, and if a prostitute invites us into her bedroom to film or observe what a policeman is doing, you have her consent, but is it surreptitious because he doesn't know? The policeman doesn't know you're there. When you look at the *Oxford English Dictionary* definition of "surreptitious", you'll see it could well be considered surreptitious.

So even "surreptitious" itself involves a problem of interpretation. But in terms of chill, we just won't do the stories. We're not going to disobey the law. If we think it's an important story and it's going to be against the law and we think we can mount a charter challenge, we'll do so.

The Chair: Okay.

Ms. Kingsley, and then we have to move to Mr. Breitkreuz.

Ms. Cherry Kingsley: I just want to support Ms. Weitzman's earlier comment about allowing the system to have some kind of check or balance. I understand your concerns, but I still feel that young people are probably going to be safer as long as somewhere within the system there's some kind of check and balance about some of it, rather than eliminating all systemic checks or balances.

The Chair: Thank you.

Mr. Breitkreuz.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): Thank you, Mr. Chair.

The Chair: Did you write it down, Garry? Have you got it?

Mr. Garry Breitkreuz: We do not have enough time before this committee.

I just want to point out one thing before I get into the main part of my question. Mr. Greyson brought up something about a university professor stating that there's no study linking child porn with criminal activity. To me, that's a very serious twisting of reality. In fact, we have been told by various previous witnesses that there haven't been any comprehensive studies done on the causal link between the viewing of child porn and the enactment of it. As unbelievable as it may seem, adequate studies haven't been done. So in a sense you are right, there are no studies linking child porn with criminal offences. But there isn't anything showing the opposite either. You've said, Mr. Chair, we're going to have witnesses coming before the committee, and I look forward to that.

I'd also like the committee to remember that we had the Toronto Police Association quite some time ago come before this committee. Some of us couldn't stay here, because what they were showing us was just too much to stomach, but they told us up to 40% of those viewing this child porn on the Internet could be motivated to enact it. That's just from what's—

The Chair: They're coming back.

Mr. Garry Breitkreuz: They're coming back, yes. It's been quite some time, so I'm glad they're coming back.

Anyway, getting to my main point, there are gateway drugs and there's gateway pornography. It doesn't matter if it's a real or virtual child, because you can't tell the difference, we were told several days ago.

Ms. Kingsley, I found that your testimony was very refreshing because you are someone who has come before us who can give us a perspective and observations from real life. I appreciate that very much. I think we need more of your perspective to get closer to the reality of what is really out in our society.

● (1050)

Ms. Cherry Kingsley: Thank you.

Mr. Garry Breitkreuz: My question is this. Just as there is child pornography that could be defended on the basis of artistic merit...it creates an appetite for more serious pornography. Shouldn't it be our job as legislators to try to remove all child pornography from society if we can possibly do so?

I know that often the media in Canada and artists will say it's our job to make people aware of this, and through the media their product is marketed. But people complain about this, that we focus on the negative or baser aspects of human behaviour, and then through the focus on these and publicizing them, the thinking and attention of the general public is focused on them. It has the effect of making people dwell on these things, so what we are doing is taking gateway pornography, just like gateway drugs, and opening up the door to some pretty serious stuff.

I would like your comments on that, because that's what we, as a committee, have to deal with. Ms. Kingsley has pointed out that sometimes we can get caught up on one side with these discussions, but the reality is that on another side people aren't looking at these things with that in mind.

The Chair: Ms. Kingsley.

Ms. Cherry Kingsley: I want to make a couple of comments. For me, as now a mother but as somebody who grew up in the sex trade —and a sex trade that involves many thousands of young people in our country—it is important that the government make a statement and that politicians make a statement about the sexualization of children in general and not just individual children, that there be a broader definition that children aren't allowed to be used in this way.

To me, that's an important statement and an important distinction: that in our country children are not allowed to be—and that as much as possible we don't provide venues where it's allowed to be advocated or promoted that children be—used in this way; that there be some licence within courts so that the Alice Munros and the lesser-known Alice Munros aren't prosecuted, because they're not trying to advocate or promote the abuse or use of children as they relate their own art. There never has been a statement, you know, and I think it's important that we start making some statement that the use of, and abuse of, and exploitation of, and the rape—that we make some statement that allows for that and that allows for that intervention.

So yes, I think that's important, and I think it's important that government take the lead and that politicians make that statement.

Mr. Garry Breitkreuz: Does it matter if it's a virtual image or a real image? Does it matter if it's a 17-year-old portraying a 13-year-old? When people view this stuff, it opens the door and makes them dwell on this, and it affects their thinking.

Ms. Cherry Kingsley: What I'm saying is you can target an individual child as a victim of exploitation or you can say children in general. Do you know what I mean? It can be virtual, it can be acts of imagination, it can be.... Do you know what I'm saying?

There has to be some statement that children in our communities and in our society aren't allowed to be abused or raped, or that we're not going to promote it and advocate for it, and that we still allow for art to occur, obviously, and freedom of expression. But I'm talking about the kinds of literature, illustrations, and digital images that are actually advocating and promoting the abuse, rape, torture, and exploitation of children.

I think it's very different from what potentially you're talking about. There has to be some systemic check somewhere. There has to be some allowance for someone, whether it be police, or someone in the community, or some politician, to say that it's okay, that there's some systemic check somewhere.

Mr. Garry Breitkreuz: Thank you.

The Chair: Thank you.

Maître Weitzman.

Mrs. Lori-Renée Weitzman: Thank you.

This is a brief comment, partly in answer to Mr. Ménard's question about how our committee worked and how the consensus-building was done, and how we reached these decisions.

The discussions we're having today were very much part of our discussion, and clearly the need to balance. In our discussions we weren't discussing Alice Munro, but we were discussing Nabokov's *Lolita*, and whether that work of art and literature would be...whether the net is too wide.

Of course, those were the discussions we were having. I think as a committee of lawyers working within the system we were hopeful and were confident that the defence as it's stated in proposed subsection 162(6) was going to be and would be sufficient to make sure the legislation was appropriate to catch the most disgusting, degrading, humiliating activities that may be advocated.

I had a chance, while we were doing other things, to read the case of Beattie that Mr. Comartin was referring to. As you mentioned, the police videos were too disgusting for some of you to stomach. Well, so are the facts as depicted in some of the judgments where the judges have to go through the sexual activities that are being videotaped with very young children and that are quite horrific.

Clearly the need for the legislation was not in question with any of us. The question, of course, was, is the net too wide? We were confident that the “legitimate purpose” exception and the “not posing an undue risk of harm” exception were going to be sufficient.

We haven't discussed this in our committee, so I'm speaking simply because we're in the throes of the discussion, but to answer the concern of Ms. Cody-Rice and the media's position, I wonder, without a specific journalist's exception, whether we are not covered by “a legitimate purpose related to the administration of justice” in consideration of the link we have, the role the media play in our entire system of administration of justice.

Take Supreme Court cases such as Dagenais and Mentuck that ensure the section 2(b) rights of the press and ensure the importance of the purpose of the press's reporting accurately, bringing to the public what goes on in our legal system. I think that defence would cover reporting of this type of assorted activity.

● (1055)

The Chair: Good. Thank you.

Mrs. Edith Cody-Rice: I think that would be a very novel use of "a legitimate purpose related to the administration of justice". I don't think we do our work to relate to the administration of justice; that's not our primary goal. It would really be novel if we were able to use that section to defend ourselves.

The Chair: Thank you.

We're going to have to go to Mr. Maloney to conclude this session.

[*Translation*]

Then Mr. Marceau wants to put the motion he introduced last Thursday. Consequently, I ask committee members to stay after we've finished hearing our witnesses.

[*English*]

Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you.

Is it possible to deal with the motion some other time?

The Chair: He's asked that it be done, so if we could—

Hon. Roy Cullen: We all have meetings at 11 a.m.—other committee meetings.

The Chair: We had witnesses.... I don't think it would take a long time.

We'll go to Mr. Maloney, and then we'll have to suspend and deal with this very quickly.

Mr. John Maloney (Welland, Lib.): This is a question to Ms. Churgin and Mr. Greyson. You represent 15,000 artists from various disciplines. How many of those would be flirting with the line we have drawn on this? And are you advocating unfettered discretion, or are you advocating a line somewhere else? What would satisfy you?

Ms. Audrey Churgin: What I'm advocating, I think very similarly to what Ms. Cody-Rice is advocating, is that there be a legitimate defence for us to make use of in the law that's written. By no means do we want to see children at risk either, but we do want to see that artists have the right to make expression with freedom, and that there be a place for us to go in order to defend ourselves should we be accused under the current law.

Mr. John Maloney: But you're not suggesting any specifics?

Ms. Audrey Churgin: I'm really not sure what you're asking there.

Mr. John Maloney: I want some direction on where that line should be drawn. You're saying yes, there should be, but you're not giving me any direction—

Ms. Audrey Churgin: Well, if you have a defence and you have a jury of peers to determine whether it has artistic merit, to me it puts it squarely on the back of the artistic community to decide if in fact community standards, which are then artistic community standards, are being met. And if they're not, then indeed that would be what I would consider child pornography.

Mr. John Maloney: Ms. Cody-Rice, I'm looking for some direction from you also. You have suggested there should be a caveat to protect journalists as well. Do you have anything other than what has been suggested by Ms. Weitzman?

Mrs. Edith Cody-Rice: There have been protections for artistic merit, science, and medicine. I think journalism is a very important function in society and that there should be some protection for journalists who are doing stories. We're more concerned about, and you'll see that my presentation really is about, the offence of voyeurism, although we are also concerned about the child pornography section. We just want to be able to do stories in the public interest—and I'm quite willing to add "in the public interest".

I know that seems a broad statement, but it means you could make a determination. If a judge decided it was not in the public interest, journalists don't have carte blanche to do whatever they want. But if you're doing it in the public interest, then that is a legitimate defence. And we think there is nothing in here. You'll see in proposed subsections 163.1(6) and (7), where they've outlined the defences that include science, medicine, artistic merit, that those are what "public good" is interpreted as in the law. Generally speaking, "public good" is science, medicine, artistic merit.

You have to recognize also that we do unpopular stories, there's no doubt, and that not only does it have to be public good—and we might not pass that test, because it's not generally included—but it must not extend beyond what is public good, and that will be a question for a jury to decide. So you will have a jury deciding whether our story—if it passes that first test, which is doubtful—is only limited to what is in the public good. Now, how do you determine that? And it's not even a judge determining it; it's a jury determining it, who are triers of fact. It may be an unpopular case. We may have brought to the attention of the public some things they would really rather not know. It's very concerning.

● (1100)

Mr. John Maloney: Okay.

My final question is to Ms. Kingsley on a related matter, in light of Mr. Breitkreuz's comments about a very fresh perspective from someone on the front lines. You are a former sex worker, a youth sex worker who has exited the trade. You have spoken at international conferences. As you are aware, there is a subcommittee of this committee examining our prostitution laws. I'd be interested in your comments on the benefits and merits of that committee travelling to foreign jurisdictions for input.

Ms. Cherry Kingsley: I think if you guys are committed to real change and real reform, then there is benefit. We have to change the conditions; that's the reality. We have to address child and youth involvement in sexual exploitation in a real way, and we have to address the living and working conditions of thousands and thousands of women.

It can't continue the way it is any more. Women are literally not only vulnerable to violence, rape, and murder, but torture, as we've seen in the Baker case. I keep bringing torture into this room because women are literally being tortured, and the courts in Vancouver are debating consent—whether or not women consented to it. I just keep bringing it in. We're not talking about one or two women; we're talking about 55, and in Vancouver it's 68 missing women, many of whom were found murdered on a pig farm. We're talking about thousands more who survive.

I recently formed a national coalition of women from different aspects of sex work, and 18 out of the 21 women, who then represent many more hundreds of women, had underage experience—18 of the 21. I'm talking about a woman who represents the dancers, a woman who has had experience in adult film, women from massage, from escort, and from street-based prostitution. Collectively we represent thousands and thousands, and 18 of the 21 had underage experience.

Something has to move forward. We have to have strong laws that protect children, and we have to change the living and working conditions that so many women are not living very well in and are dying in.

I commend you guys on trying very hard to move forward on both issues—and I see them as separate, by the way.

So thank you.

The Chair: Thank you, Mr. Maloney.

I thank our witnesses for their attendance, and I will ask if you could please take your leave as soon as possible. I'd ask members to not engage the witnesses in conversation. That will slow the process.

We'll suspend for a couple of minutes to do that.

Thank you.

● (1103)

(Pause)

● (1105)

[*Translation*]

Mr. Richard Marceau: This could be very brief, Mr. Chairman. We can vote immediately, if you wish.

[*English*]

The Chair: Ms. Neville, you had a point.

Ms. Anita Neville: Mr. Chairman, I don't mind discussing the motion, but the agenda for the meeting indicated we were meeting from 9 to 11 o'clock. You asked us now not to engage with the witnesses so we could move on. We sat here waiting. Some of us have other commitments that are equally important and equally pressing. I'm more than willing to deal with this motion, but in the appropriate timeframe, and that's my difficulty.

The Chair: Monsieur Marceau asked that it be done today. In fairness to the witnesses who were here, I thought we had to give them their full hearing. We started late because all members weren't here, and if we finish early, I don't think it's respectful to the witnesses. We are trying to be cooperative and deal with it.

Mr. Myron Thompson: On a point of order.

The Chair: Yes.

Mr. Myron Thompson: I was the first guy in here, and this meeting started at about eleven minutes past 9 o'clock. So we've got two minutes...and we had an hour. I think you've done very well to get it through in an hour despite the fact that many people came late.

Mr. Garry Breitkreuz: My point of order—

The Chair: If we spend the whole time on points of order we won't get there either.

Mr. Garry Breitkreuz: My point of order should save us time. Why can't we go directly to this? We've all had this in our possession for quite some time. We've had a chance to think about it and we can vote on it.

An hon. member: Question on the motion.

[*Translation*]

The Chair: Mr. Marceau.

Mr. Richard Marceau: Mr. Chairman, I introduced this motion for the reasons explained when the minister was here, and I would ask that the motion be put.

[*English*]

The Chair: Is there further discussion?

Mr. Macklin.

Hon. Paul Harold Macklin: Mr. Chair, when we look at this motion, I think it's very important that we look at its component parts and what it really says and what it stands for. First of all, let's look at what the motion says.

In the first instance, it says we are expressing disappointment with regard to the proposed appointment process. Well, I guess that's fair. The committee can express its emotionality as it relates to issues before it, and I don't see anything particularly wrong with that. However, denouncing "the overly broad discretion given to the Justice Minister and the Prime Minister in the suggested process", to me, really doesn't take into account the constitutionality of what we're dealing with. Primarily, constitutionality reserves this to the governor in council, and in fact it is that which constitutes the basis upon which we go forward.

Secondly, what the committee recommended in earlier proceedings was that they wanted more public input and they wanted parliamentarians to be involved in the process. I submit to you that the way in which this has been structured really does engage Parliament and the public and all of the players, including the judiciary and the attorneys general throughout the country, in this process.

When you're looking at this concept of "overly broad discretion", I don't see it as being at issue. In fact, what we're really doing here is trying to limit the way in which that discretion is exercised, by bringing forward a process that in a sense judges all of the applicants who are brought forward, and if the advisory committee looking at the merit of the individual candidates who have been suggested decide in their wisdom that those candidates are not sufficient in number, or in fact certain people have been left off the list, that committee is allowed to go forward and add more. Therefore, theoretically, it could in fact be recommending to the Minister of Justice and Prime Minister three individuals as candidates who were never even on the original list. So not only does it allow for broad participation, including by members of the public initially, but it puts it through a process where there is input and discussion and review of the merit of each one of these candidates.

I think at the end of the process what you have is a process that has done what the committee wanted to do—in other words, have input in the process of bringing the selection to a short list. In the end, the ultimate decision is limited to the governor in council. I don't think anyone has suggested at this point that this should be changed. In fact, it would require constitutional change to effect that.

So is overly broad discretion given? I ask, how can it be overly broad? I think we're limiting it through this process, and I think it is an all-inclusive process and one that will lead to candidates being judged on their merits by those other than the Prime Minister and the Minister of Justice.

Last on this particular motion, it says they want a more important role for the parliamentarians and the provinces. What could be more important than creating the short list, bringing forward your suggestions and ultimately having a chance to have them vetted through the advisory committee process leading to two or three candidates in the end being presented to the Prime Minister and the Minister of Justice? How much more important can it be within the constitutional context?

I submit that in fact they're playing the role that is meaningful, that will in fact lead to a good, broad range of candidates being presented. In the end, I submit that I don't know whether you could have a more important role for parliamentarians and provinces in the process of creating the short list than in fact to have the ability to add to or subtract from the list the Minister of Justice created in the first instance.

Accordingly, I would suggest that although the committee could express disappointment, the reality is that the minister has gone a great distance to make this a very inclusive, open, and broad process to help determine the candidates who ought to be put before the Prime Minister and the Minister of Justice for selection for the Supreme Court.

● (1110)

I submit this motion should not be accepted by the committee.

The Chair: Thank you.

Mr. Breitkreuz.

Mr. Garry Breitkreuz: In the interest of saving time, I refer this committee to the comments we made when Mr. Cotler was before the committee. We made all of our points then, so that's why we're going to be supporting this motion. We clearly raised our concerns at that point.

The Chair: Are there any further comments?

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: Thank you.

We are adjourned.

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