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Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

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● (0915)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call the Standing Committee on Justice and Human Rights to order pursuant to our order of reference of Monday, October 30, 2006, Bill C-22, an act to amend the Criminal Code and to make consequential amendments to the Criminal Records Act. Today, Thursday, April 19, 2007, we continue our examination of Bill C-22.

We again have with us Carole Morency, acting general counsel, from the Department of Justice.

Mr. Comartin, you have a submission, I understand. Perhaps you could present that.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

The Chair: As a point of clarification, amendment NDP-1 is on the floor. You have presented that and I know you want to address it, so go ahead.

Mr. Joe Comartin: Yes, Mr. Chair.

You will recall that at the end of the last meeting there was a good deal of discussion around amendment NDP-1, and a decision was made to put it over to this morning, because of some of the exchanges that went on, to see if there was an alternative. That is what I am presenting this morning.

The amendment that I'm proposing this morning would replace amendments NDP-1 and NDP-2. So I will indicate at this point that I'm withdrawing amendments NDP-1 and NDP-2 and replacing those with the new form that you have in front of you. It's not numbered.

The Chair: Before you begin, I just want to put this before the entire committee.

Is that okay with the committee, for Mr. Comartin to withdraw amendments NDP-1 and NDP-2?

Some hon. members: Agreed.

The Chair: There is agreement.

Mr. Comartin, go ahead.

Mr. Joe Comartin: Thank you, Mr. Chair.

If I can go back to amendment NDP-1 to this extent, it was an amendment to proposed subsection 150.1(2.2), which would have been dealing, in effect, with the transition paragraph in the existing draft bill. I've moved the amendment that I was proposing for proposed subsection 150.1(2.2) into proposed subsection 150.1(2.1), thereby creating what in effect are new defences to the charge in sections 151, 152, 173, and 271.

The end result of this amendment would be to create what in effect would be two new defences in addition to the five-year near-age defence, if the couple was married or living...that's in the new paragraph 150.1(2.1)(b), or in (c), the relationship was a common-law relationship or a child had been conceived of the relationship, always with the provision that the relationship cannot be one that's abusive or exploitive, which is what paragraph (d) deals with. So that's a continuation of what's in the existing bill.

If I can add to this, the effect is that if we were to pass this amendment, I would then be moving to delete proposed subsection 150.1(2.2), because it would be redundant. At that point, it would no longer be necessary. The provision that's in the existing bill would no longer be necessary. I think that would be an inevitable result if we passed this amendment to proposed subsection 150.1(2.1).

If I can conclude with this, what I'm addressing here is the concern that I raised on Tuesday and the debate we entered into around the roughly 3,000 couples a year who are married or living in a common-law relationship. We don't know—we couldn't get that information—how many of those relationships may be of less than a five-year age differential. What I'm in effect attempting to do here is to protect those relationships from criminal sanction. As much as we did in the committee's work, which was fairly extensive on this point, we simply could ascertain how many of those in those marriage or common-law relationships were in a greater distance of age than five years. That's what it's designed to do, to protect us from criminalizing those relationships.

I think those are all my comments. Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Ms. Morency, did you have some comment to make in reference to those particular amendments?

Mrs. Carole Morency (Acting General Counsel, Department of Justice): Yes, I do. I think this also will help to clarify some of the information that we had before the committee on Tuesday.

Reference was just made to the number of couples; it was 3,000, or something in that range. Between the last committee hearing and today I did follow up with my colleagues at the Canadian Centre for Justice Statistics, the two witnesses who appeared before this committee, Karen Mihorean and Lynn Barr-Telford. We discussed the numbers that had been provided to the committee, which were that 0.07% of 15-year-olds were estimated to be involved in married or common-law relationships, and she had said as well that translated into 72 per 100,000. That's not for the total population of Canada, but for the estimated population of 15-year-olds.

On that point, to clarify, we don't have these data yet from the 2006 census on age and sex. What StatsCan does is work with the data that are available from the last census, 2001, and then project what the estimated population will be of that age group for the year in question. If you follow that through, what they've projected is that the 0.07% gives 316 as the number of 15-year-olds estimated to be involved in a legally married relationship or in a common-law relationship for 2006. That breaks down to 108 15-year-old boys and 208 15-year-old girls.

It's correct, as has been noted this morning, that we don't have the breakdown of what percentage of those relationships would fall within the five-year close-in-age exception as proposed by Bill C-22, or how many would now be caught because the partner is more than five years older. Bill C-22 contemplates those relationships that would exceed the five-year close-in-age exception and provides a transitional defence for those existing couples who meet that definition. Of the 316, based again on Statistics Canada's projected estimates of how many were legally married at age 15, the number I provided on Tuesday to this committee was five in total for Canada for the year 2005. Obviously it is not necessarily an exact science. If we take the 316 married or common-law projected for 2006 and take off that number of perhaps five—a handful—it leaves almost the entire group of 15-year-olds involved in a common-law relationship.

In the time I had available to me before today, I can't confirm to you with certainty that there are no 14-year-olds at all in those relationships, or that StatsCan doesn't collect the data for 14-year-olds who may be married. Prior to this it was my understanding that they don't collect the data on 14-year-olds, but I can't confirm it. The best information I can provide to the committee is that perhaps in the neighbourhood of 300 common-law relationships currently exist, and a handful of legally married.

From there, in terms of trying to understand if there will be a conflict between Bill C-22 and the age of consent and how provinces deal with age under their solemnization legislation, I have said in providing an overview to this committee that under the provinces' and territories' solemnization legislation—that is, who can obtain a licence to marry—three provinces do not allow anyone under the age of 16 to marry or to obtain a licence. Those are Quebec, Newfoundland and Labrador, and the Yukon Territory—so in three out of the 13 jurisdictions, it's never.

In the rest of the jurisdictions, four will grant an exception under the age that they set—meaning someone under the age of 16, or 15 in the two other territories—provided the female is pregnant. That means Alberta, the Northwest Territories, and Nunavut—in those two territories the age is 15 for solemnization of marriage—and also Prince Edward Island; it's 16 there and 16 in Alberta. In those four jurisdictions the decision is made by a judge, and again, it's on the basis that the female in question is pregnant.

● (0920)

If I translate that to how this plays out with Bill C-22, that means the person seeking approval to marry has already been the victim of a sexual assault under Bill C-22.

In the remaining provinces the criteria change a bit for one that's similar to what I've just described—a female is pregnant. In Manitoba, basically the court has the discretion to issue the licence, where the young person is under the age of 16. In 1970 the legislation used to be that if the girl was pregnant, it was an automatic right. They changed the legislation. So it's no longer an automatic entitlement; the judge has to consider the circumstances in the case.

In New Brunswick, for example, the marriage has to be shown to be proper. In Nova Scotia, it's expedient and in the interests of the parties. In Ontario, the circumstances justify the issue of the licence. In Saskatchewan, a court judge can do so retrospectively, if the parties have already consummated the relationship or have lived together by the time they apply for the licence.

To sum up the state of the marriage laws in the provinces, the majority either do not allow or only allow under the age of 16 where the girl is pregnant. The others look at the circumstances of the case.

I'm not sure if this would help you, but I can give you an example of how a court goes through the considerations of a marriage licence application.

There is a decision by the name of Al-Smadi, father and extra friend, from 1994, Court of Queen's Bench of Manitoba in Winnipeg. In this reported case, there was a 15-year-old girl seeking to marry her 27-year-old boyfriend. She was living with her father. The father was consenting to the application. The question before the court was whether it was appropriate in the circumstances to issue the licence to this 15-year-old girl in that relationship.

In the first application there was no evidence before the court that she was pregnant. The court, in that case, decided against approving the marriage. It wasn't in the interest of the child in that set of circumstances.

Either she knew she was pregnant and had not disclosed it or she subsequently became pregnant and the matter returned to the court. Recognizing again that the court had the jurisdiction to grant the exception, to issue the licence, the court in those circumstances did allow the marriage to proceed because she was pregnant at that point.

I have not been able to identify a lot of reported cases. I don't mean this to be cited as an example that they're all like this, but it's an example that the committee may find helpful in their deliberations.

Yes, there are some couples who would be affected right now if Bill C-22 were to come into force. Bill C-22 contemplates that and provides an exception.

I believe a question on Tuesday was this. If you don't meet the definition, for example, of common-law relationship—the couple hasn't been residing together for one year or more or they haven't been residing together for a shorter period of time and they aren't having a child or haven't had a child together already in that relationship—what happens?

Obviously, when Bill C-22 was being developed, the considerations were that if you were going to propose a change in the law, there was going to have to be a line drawn, and how would you justify where the line was drawn?

There is a varying treatment of what constitutes a common-law relationship across the country and the provinces for the purposes of family law. The Criminal Code already provided a definition of a "common-law partner", which was a conjugal relationship of one year or more. So Bill C-22 says that there is an established definition, an established understood context, but recognizes, again, that you could have a shorter period of time and you could have a child born of that relationship or expected, which is not inconsistent with what the provinces do in terms of how they establish common law for provincial purposes.

● (0925)

So Bill C-22 will affect some existing relationships. It does provide exceptions for those limited, established relationships. It will prevent or criminalize new relationships formed after Bill C-22 comes into effect, on the basis that Bill C-22 would say if you're more than five years older than a 14-year-old or 15-year-old youth, it's against the law. That would be the intention or the objective of Bill C-22.

Two years ago I had spoken to this committee on the former bill, Bill C-2, on the protection of children. We had some information provided to the committee that looked at what we knew about the age of the partners of these 15-year-old youths. The information had been provided to this committee in a chart form that had been prepared by Statistics Canada, the Canadian Centre for Justice Statistics. It generally showed that most of the partners who were identified through the 2001 census data were over the five-year close-in-age exception. We can't explain the nature of that.

● (0930)

Mr. Joe Comartin: I'm sorry, I don't want to be irritable, but a cell phone went off. Could you go back over that? I didn't catch it.

Mrs. Carole Morency: Two years ago, in the context of proceedings under a former bill, Bill C-2, the Department of Justice had furnished some information to the committee that talked about what we knew about 15-year-old youths in relationships, either legally married or common law, and the age of their partners.

I believe Mr. Comartin referred to this chart previously, and I know others have looked at it. I can table a copy, if its publicly available information, in English and French, with the clerk.

The information shows that for the 2001 census data, for 15-year-old youths who had reported being in a married or common-law relationship, the majority of their partners were over the close-in-age age group and were more than five years older. We don't have any data to explain how or why that is.

There's no question that we have limited data, but there is some data to show and confirm to the committee that some relationships will be affected. Bill C-22 contemplates that. Beyond that point, further relationships will be affected. The object of the bill is to prevent a 25-year-old adult from moving in or engaging in any kind of sexual activity with a 14-year-old or 15-year-old youth.

One last point I will remind the committee of is that the definition of sexual activity within the criminal law context is not only sexual intercourse. That's what many people have in mind when they think about these types of relationships. It's all sexual activity, ranging from touching through to and including sexual intercourse. It may be that a couple hasn't perhaps consummated a relationship, but they may still be involved in a sexual relationship.

The intent of addressing this through Bill C-22 is to provide comprehensive protection for 12-year-old or 13-year-old youths and in fact all Canadians. If it's non-consensual and it's a whole range of sexual activity, it would apply and would be caught by Bill C-22.

The Chair: Mr. Comartin, do you have something you want to add in reference to your amendment?

Mr. Joe Comartin: I actually have a question for Ms. Morency, if I could.

The Chair: Go ahead.

Mr. Joe Comartin: This is something I was thinking about in terms of the marriage figures we got from Statistics Canada, the number five, four or five.

Did you have any discussion with them as to whether it recorded marriages in the jurisdictions where you can still marry at 15 years old? Is it one or three?

Mrs. Carole Morency: It's three where you cannot.

Mr. Joe Comartin: There's only one of the territories where the marriage age is 15 years. Is that correct?

Mrs. Carole Morency: There are two, the Northwest Territories and Nunavut. They have the same legislation.

Mr. Joe Comartin: The reason I'm saying this, Mr. Chair, is that when I was personally practising family law, I did a number of these applications. I've done more than five in my career. I'm having a hard time believing the Statistics Canada's figure of five.

Somebody might point out I'm a little older than most of the people sitting around this table, and sexual mores have changed in the last decade or two, but I don't think they've changed that dramatically.

Did you have any sense from them that the only recordings they were giving were those of 15-year-old individuals who could go on their own without any permission, as opposed to those who needed permission, and Statistics Canada was not recording those?

Mrs. Carole Morency: Again, the legally married estimate that I provided on number five is based on a projection from the 2001 data. If I look at my chart for those who are 15 years old, I had said for all of Canada there were four females and one 15-year-old male. It was projected to be in Ontario. There were four females and one male in Ontario, where the age is 16.

Obviously, I'm not from Statistics Canada. But when data like this is reported, in terms of trying to understand the data, one of the difficulties we have is that persons could report on the census that they're married. A 15-year-old youth could say that, but he or she may have actually married in a different jurisdiction, and it wouldn't be reflected.

You could say there's a 15-year-old youth who's married in Quebec. How can that be? He or she may have married somewhere else, but we can't say that. It would be supposition or speculation.

● (0935)

Mr. Joe Comartin: Those statistics show no marriages of 15-year-olds in the two territories?

Mrs. Carole Morency: Not based on those projections. I had previously some indication of marriages, recorded through vital statistics, that Statistics Canada was able to give me, but they go back quite a number of years.

Going back to early 1990s, the numbers were more. For sure they were higher in the nineties than what I've just indicated to you, the five. I can't explain why that would be. Probably it's because more people would be involved in a common-law relationship. That might be a reasonable conclusion to draw from the 316 number we have.

The Chair: Thank you, Mr. Comartin.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

I just have a few questions for Mr. Comartin, questions of clarification.

One, the law we are looking at basically would grandfather the pregnancies, the marriages and the common law. What you're basically doing is making those exemptions permanent so that in future.... And it sounds like instead of 3,000, it may be a couple of hundred people a year who normally would get into these types of relationships. Now those will be legal. For instance, if someone can hide the fact they're doing an illegal relationship for a year, then they're common law, and they would have a defence. I want to make sure that's what this amendment does; I think that's what it does.

Second, I thought the reason we had moved to Thursday was that you were going to try to tone that down a bit to make it something that would be acceptable to the Bloc. I thought that was the reason we'd put it off until Thursday.

And third, if this doesn't pass, would you be willing to debate just having the marriage as the one permanent exemption and not the other two?

Mr. Joe Comartin: I forget what your first question was, but the answer I wrote down was “yes”.

No, the intent is to make it prospective, not just retroactive, not just grandfathered.

As to question two, with regard to toning it down, I did not think that, actually. My response here, in terms of changing the amendment, was that, in response to the suggestion from Mr. Lee, it was more proper from a drafting standpoint to put it in as a defence rather than to try to deal with it in this transition paragraph, as the government has done.

I thought I'd made it clear on Tuesday that what I was trying to do was provide protection to what I thought at that time was the potential for as many as 3,000 relationships to be criminalized on an ongoing basis. As I said to Mr. Dykstra, I think it's unrealistic for us to expect that at least a good number of those are not going to occur, and to criminalize them, I just wasn't prepared to do that.

Third, Mr. Bagnell, would I be satisfied with just the marriage? I guess my answer would have to be that you'll have to move that amendment if mine doesn't go through. Or perhaps you should move it now and delete the other parts of mine.

I'm having some difficulty accepting, as you can tell from my exchange with Ms. Morency, that there are only five marriages. I think we're talking a substantially larger percentage of those 200 to 300 annual relationships that we're trying to deal with here. I think there are more marriages in there that Statistics Canada just isn't catching. I'm not going to suggest it's even 50%—I don't think it is—but I would guess the rest of the numbers are about 50 to 100, somewhere in that range.

The Chair: Mr. Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): I want to make sure that I understand because we will have to vote afterwards. We will have to dispose of these Bill before the end of today's meeting.

My party has some concerns about your amendment. I took note of the 316 figure. Some 15-year-olds are in a relationship with persons who are more than five years older than them. If the Bill is passed, their relationship could be criminalized.

Mrs. Morency, will these people get an exemption under a grandfathering clause? Is Mr. Comartin right to say that, if the Bill is passed, some 15-year-olds who are married to persons more than five years older than them and who not caught by the official statistics, for various reasons, could see their relationships criminalized? How do you interpret the scope of this amendment? Would you recommend that we accept the amendment? There are two interpretations and two series of figures.

● (0940)

Mrs. Carole Morency: If the relationship existed when Bill C-22 comes into force, those persons in relationships with people more than five years older than them will have a line of defense.

[*English*]

But if it's a marriage, and common law, if a couple was together for one year, or there was a child, and it existed and it met that definition when Bill C-22 comes into force, again, an exception will protect them.

In a short period of time, the 14-year-old or 15-year-old will become 16 years old. So the exception will cover them off to that point.

If the relationship forms after Bill C-22 comes into force, or if it doesn't meet the common-law definition—so they've lived together for less than a year and there's no child—it will be criminalized under Bill C-22. But on the point about whether there could be a permanent exception just to marriages and not also to common-law relationships, that would raise charter considerations.

[*Translation*]

Mr. Réal Ménard: You are saying that, when the Bill comes into force, some people who are more than five years older than their partners could marry or be in a common-law relationship. You want the committee to provide them with a line of defense if they are accused but this would go against the very purpose of the Bill. If we find that this is justified and that the age difference does not exceed five years, what would you want to protect from the point of view of marriage and of common-law relationships?

Mr. Joe Comartin: If you allow me, I will answer in English to make sure that I express my thoughts correctly.

Mr. Réal Ménard: Sure, we have interpreters.

[*English*]

Mr. Joe Comartin: It seems to me that what I'm doing here in my position is, one, I'm agreeing that we should raise the age of consent in this country across the board to 16.

We should make some exceptions to that, significant ones in the five-year near-age defence. That's going to catch a significant number of relationships. We saw the numbers: 40,000 to 50,000 will be caught; that is, the near-age defence will protect those relationships.

What we're down to is a very small number of relationships for which I also want to provide a defence. One is the married, on an ongoing basis, people who have gotten married. You can see it any number of ways, even some coming in as refugees from other countries already married, not voluntarily. I know that in the immigration laws we don't recognize those marriages if one of the members of the couple is under 16, but if they're refugees, they may get into the country. So we'll have some of those.

We will have some, and I'm going to use the Territories as an example, where marriage may in fact be.... Granted, we're going to be into a constitutional fight for those. And again, we're talking small numbers.

Then we're going to have, and this is where the larger numbers are, probably 200 to 300 a year.... I don't see those common-law relationships stopping, as much as we're trying to protect it, and in the vast majority of cases those relationships are just going to be slightly over the five years, like the case that you heard from Winnipeg.

[*Translation*]

Mr. Réal Ménard: Why? I am just trying to understand, Mr. Chairman. We are talking of common-law relationships after marriage. If a 15-year-old has a partner, either through marriage or through a common-law relationship, who is more than five years older, he or she will be accused of a criminal act.

Some members: Yes.

M. Réal Ménard: You want us to pass Bill C-22 with its present clauses but you want us to authorize a criminal act. Why would someone start a common-law relationship and start having sexual relations knowing that it is a criminal act?

I would also like you to explain your proposal relating to refugees, which I do not understand either.

● (0945)

[*English*]

Mr. Joe Comartin: In the refugee situation you would have somebody who in fact is married and has fled here from another country and one of the members of the couple is under 16.

[*Translation*]

Mr. Réal Ménard: If they are refugees, the Immigration and Refugee Board will grant them permanent residency for humanitarian reasons and they will then start a recognition process that will allow them later on to become citizens.

Mr. Joe Comartin: As soon as they enter the country, their relationship is criminal.

Mr. Réal Ménard: With your indulgence, Mr. Comartin, I would like to check that.

Mrs. Morency, is Mr. Comartin's scenario exact? If the Immigration and Refugee Board were to grant permanent residency for humanitarian reasons to a person after Bill C-22 comes into force, for example in December 2008, and if that person was in a relationship that did not correspond to our legal rule relating to age, would that person be committing a criminal act, even though the marriage might have been celebrated in another country or the relationship might have been established before the person arrived in Canada?

[*English*]

Mrs. Carole Morency: Under the Immigration and Refugee Protection Act, Canada does not recognize a marriage or a common-law relationship of a foreign national if he or she is under the age of 16. That's what the law is, federally, and that's what Bill C-22 would be consistent with. It wouldn't necessarily prevent them from having access to Canada through the refugee process, but they wouldn't recognize the marriage or a common-law relationship for those purposes.

[*Translation*]

Mr. Réal Ménard: So, they would be penalized, as my colleague said.

Mrs. Carole Morency: That is my understanding.

Mr. Réal Ménard: So, Mr. Comartin is right to be concerned. I am not suggesting that you should have the same level of concern but he is right to raise the issue before the committee.

Mr. Joe Comartin: I am a more sensitive person.

Mr. Réal Ménard: That is well known and it makes you extremely endearing.

Mr. Joe Comartin: Thank you.

Mr. Réal Ménard: I will stop there, Mr. Chairman. I do not understand the second part of your statement when you say that you want persons to be able to establish a common-law relationship even though they know they will be committing a criminal act. I understand your position relating to refugees but I do not understand the second part.

[*English*]

Mr. Joe Comartin: I can answer that, Mr. Chair.

There are really two parts to that. My primary concern would be if there has been a child who has been born or is to be born of that relationship. So it's a relationship that's in existence and the female in the couple is pregnant or has had a child. It's worrisome that we would criminalize that, even if the age is greater than five years. We're looking at it as a stable or semi-stable relationship and then criminalizing it. That one gives me great, great concern.

To a lesser degree, and I'll concede that, if they have been living together for a year or longer and we have a stable relationship, should we be criminalizing that? We're recognizing—I'm sure I'm going to hear this from Mr. Moore—that as the relationship starts it is a criminal offence. It's the reality of what we're going to be faced with. There are going to be cases, which are going to come before criminal courts, where we have a relationship of a year or longer, there is no child, and we're going to say that's a criminal act. We're still going to see those cases. I've practised enough family law and criminal law to tell you that we can draft and pass whatever laws we want, but in the extreme cases we are not going to be able to avoid this.

I guess this is the other point that Mr. Moore will make, so let me anticipate it. Will that in effect undermine the whole legislation? I don't think so. The message is going out very clearly from this bill, from this House, that we are raising the age of consent in this country. So it will be the exceptional cases, the 200 to 300 a year, that we're dealing with.

The Chair: I think you've covered just about everybody's opinion so far.

Ms. Jennings.

Mr. Joe Comartin: I've done an excellent job, I'm sure.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I want to thank Mrs. Morency for the clarification she's brought.

In the context of the amendments Mr. Comartin is suggesting, I want to be clear in my own mind, so I'm going to give a hypothetical situation.

On December 31, 2007, a conjugal relationship begins between a 15-year-old girl and a 20-year-old male. On January 1, 2008, Bill C-22, as it now is—if the version the government has tabled is adopted—enters into force. On February 1, 2008, a month later, criminal charges are laid against the 20-year-old male, because the relationship is illegal, if I'm not mistaken, or you can answer that. On March 1, 2008, the young woman becomes pregnant. He's been charged, but he's out on bail. They managed to hook up at least once. She doesn't know she's pregnant. By the time he comes to trial, she's out to here.

In that circumstance, if in fact when the legislation came into force, given the relationship, he was committing a criminal act because the conjugal relationship began before, or the first sexual contact began—she's not pregnant when he's charged, she does become pregnant following the criminal charges—would they be able to go before a judge, in the jurisdictions that allow for "under-16 who are pregnant", to apply for a marriage licence? And would a defence be provided him?

● (0950)

Mrs. Carole Morency: In the precise scenario that you've given me, he probably wouldn't be charged, because he's probably within the five years, if he's just over.

Hon. Marlene Jennings: No, he's over. He's 21, she's 15. That's six years.

Mrs. Carole Morency: Well, you said 20, but anyway....

Hon. Marlene Jennings: Oh, I apologize. I've written "21" here.

Mrs. Carole Morency: It could happen, for sure. You have to think about the practicalities, and I think that's what we're trying to do. In a situation like that, where the accused is so close in age, within the five years or just over, in what circumstances would a charge be laid in those cases, right? Because the police have to have reasonable grounds that an offence has been committed. They could probably meet that test in this case. Would the crown proceed with a prosecution in that case? Again, they'd have to have a reasonable prospect of securing a conviction. I know the Supreme Court doesn't look favourably on individual police discretion as opposed to the rule of law, but in those circumstances I think police and crown would be exercising some discretion in terms of whether they could meet the burden they would have to meet in that situation.

Of course, those are always going to be the tough cases that are going to come before us. I think in that case, based on how we see cases proceeding, and other sexual assault defences—because no young person wants to be considered a victim in a sexual assault trial, particularly in this type of situation—I can't predict exactly how it would happen. Technically, under the law, the day the older person is five years or more older, it would be an offence. But even today, even before that "five-year" happens, it could possibly be an offence under the existing section 153, because the court's directed to look at the age difference.

Hon. Marlene Jennings: Sure. Thank you.

I have another question. If Mr. Comartin's amendments were to be adopted by this committee, and then Bill C-22 become law, as amended by Mr. Comartin, if my understanding is correct, the 21-year-old would not be in a criminal situation if he were able to establish that the conjugal relationship began prior to the day the law came into force but was less than one year. Is that correct?

Mrs. Carole Morency: Just to be sure we're talking about the same situation, the 21-year-old who's applied for or is in the situation where they've applied for a marriage licence—

● (0955)

Hon. Marlene Jennings: No, we're not talking about that yet.

Mrs. Carole Morency: Okay, are you talking about common law?

Hon. Marlene Jennings: Yes, we're talking about the same scenario. On December 31, 2007, the conjugal relationship begins between a 15-year-old girl and a 21-year-old male. We can say 26-year-old, whatever; it's a male who's more than five years older in age. On January 1, 2008, Bill C-22, as amended by Mr. Comartin, comes into force. That amendment that Mr. Comartin is proposing would result in this relationship not being deemed criminal.

Mrs. Carole Morency: That's my understanding.

Hon. Marlene Jennings: Okay, thank you.

The Chair: Thank you, Ms. Jennings.

Ms. Morency.

Mrs. Carole Morency: It would not be considered criminal if he meets the definition of common law here or if she's....

Okay, they're actually cohabiting, she's pregnant, but they haven't been living together for a period of one year, yes.

Hon. Marlene Jennings: So if she's not pregnant, but they've been cohabiting for less than a year, it would be criminal.

Mrs. Carole Morency: Yes.

The Chair: We'll have Mr. Lee, then Mr. Moore.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I see the logic of providing a defence, a very limited defence, as is proposed by the amendment, but I'm not inclined to support that the defence include the category of cohabitation simply as cohabitation. Because what we're actually trying to criminalize here is cohabitation when they're not close in age. We're actually saying, from a public policy point of view, that the 25-year-old cannot cohabit with a 15-year-old or a 14-year-old. We're saying that it's criminal.

So to reach back and say that it's okay if she's pregnant or if you can make it last 12 months simply induces the couple to either have a pregnancy or make it last 12 months. But we're actually trying to criminalize that circumstance. We want it to be criminal. We don't want it to be there. So I'm not inclined to provide a permanent defence for that, although we have provided a limited-time, transitional defence for that type of relationship, and that makes sense.

What I am inclined to favour is an exemption where there is a marriage, but I do that only because I think that in every case where a marriage of this type exists, it's because a judge has already said yes, there's a marriage. And that would be a marriage legitimized by the state through a court, or maybe legitimized by a religious ceremony. It may be the full monty of a marriage, and yet, if we don't change the law the way we have it now, we're going to reach back and criminalize the marriage.

Now, some will argue that by criminalizing it there will be a lot fewer of these marriages, because the judge who would approve such a relationship would say that we're actually not very inclined to have these relationships, so he's not going to approve the marriage. But on the theory that the provinces do allow judges to sanction these relationships as marriages, I'm very disinclined, on a public policy basis, to reach back and criminalize what a judge is otherwise capable of doing.

I would limit the exemption only to the situation where the couple is married. If they're married, that's cool. But you have to get married, and in order to get married in this circumstance, you have to go to a judge. And I say that the Criminal Code should recognize that if a judge says it's okay to marry, then I don't want to reach back and criminalize what a judge is otherwise able to do.

So I would support the continuing defence for a couple that is married, but only for that.

The Chair: Thank you, Mr. Lee.

Go ahead, Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair.

I agree with much of what Mr. Lee has just said, and Mr. Comartin was right on one of the points I was going to make, so thank you for making it for me.

I think, very clearly, in the case of marriage or common-law, we're not reaching back with this legislation, because we have the transitional provisions. The practical reality is that in a few jurisdictions in Canada, if you're under 16, you just flat out cannot get married. So the marriage exemption wouldn't apply.

In other jurisdictions, where a minister or a judge looks at the situation.... For example, in Nunavut and in the Northwest Territories, for them to grant that exemption, the female has to be pregnant. So in order for the marriage to be granted for that person who's under 16, the offence already has to have taken place.

A voice: Those two territories are not—

Mr. Rob Moore: Well, that's the information I have.

● (1000)

Mr. Joe Comartin: The age of marriage there is 15, not 16.

Mrs. Carole Morency: Under the age of 15, that's correct.

Mr. Rob Moore: So.

Mr. Joe Comartin: You're going to criminalize that relationship in those two territories.

Mr. Rob Moore: What Bill C-22 says is if you're under 16, if you're 14 or 15 years old, someone who's over five years older cannot have a sexual relationship with you. I guess from our perspective, the idea of creating an exemption because someone happened to get pregnant doesn't make a lot of sense.

Why should we treat a couple differently if there's a 27-year-old male and 15-year-old female, for example, and in one case the male is lucky enough that she is now pregnant, so he is exempted? To put those kinds of defences in I think would be too broad.

The practical reality is this law meshes very well with the provincial laws when it comes to marriage, in many cases. Also, with immigration, it's 100% consistent on the age of 16. In those situations where someone is under that age, in most cases the female would have to be pregnant, which means the offence has already taken place.

Mr. Joe Comartin: Or married.

Mr. Rob Moore: But for the marriage to have been granted, the female would have had to have been pregnant, that's the point.

Mr. Joe Comartin: Not if it's outside the country. Refugee cases.

Mr. Rob Moore: But in the refugee case, in the case of immigration, we already do not recognize the marriage unless the person is 16. In the case of someone under 16, in order for there to be a marriage, there has to be a pregnancy. In order for there to be a pregnancy, there has to have been the offence.

Hon. Marlene Jennings: If I may, just to correct, and not because I'm in opposition to what Mr. Moore is saying, from the information that Mrs. Morency gave us, there are several provinces where the exception to the legal age of marriage is that the girl has to be pregnant. There are several other jurisdictions that will allow for a marriage of an under-16-year-old for a variety of grounds, not just pregnancy. So this means that there would be situations where, if the girl is pregnant, and they can convince the judge, for instance, that when she became pregnant they were married, then the criminal activity has been exempted. In other cases, it may not be a pregnancy, it may be another issue, where the judge says yes, you can get married, and the criminal activity is exempted. And then you'll have other situations where they won't be able to convince a judge of marriage, for whatever reason, so the criminal activity is not exempt.

The Chair: I would like to interject here. I know there are a number of speakers yet on my list, and this looks like it could go on for the rest of this morning. I'm of the opinion—and I'm trusting that the committee is going to help me out here—that we have enough information before us on this discussion and I think the matter should be put to a vote.

Do I have the agreement of this committee?

Hon. Larry Bagnell: Could I just ask one point of clarification?

The Chair: One point of clarification from Mr. Bagnell, and then we're going to....

Hon. Larry Bagnell: For Mrs. Morency, can you just expand on what the charter challenge would be, explain the problem, if we just allowed marriages in Mr. Comartin's exemption?

The Chair: We're moving on with this.

Hon. Larry Bagnell: It's going to affect our vote, Mr. Chair.

The Chair: Quickly, Mrs. Morency.

Mrs. Carole Morency: On that issue, if you provide a defence to a married couple, you'd be denying the same defence to a couple similarly situated, and that would raise a concern about charter discriminatory treatment. Parliament has seen those issues in recent years.

So that would be a significant concern. In fact, it would be a very high charter risk to have that differential treatment. Based on the stats that we have, the majority of cases would fall in the category that wouldn't benefit from the defence.

● (1005)

The Chair: That's a good point.

Thank you, Mrs. Morency and Mr. Bagnell.

Now, I think the matter should be put to a vote.

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): No. I would like to ask a question, please, to Mr. Comartin.

The Chair: Please go through it quickly, then.

[*Translation*]

Mrs. Carole Freeman: We were on the verge of accepting marriage only but some details of Mr. Comartin's explanation escape me. I would like him to complete his explanation. He seems willing to do that in order to clarify his position for us.

[*English*]

The Chair: It's unclear.

Mr. Joe Comartin: It's unclear because of the comment Mr. Lee made. He's looked at this a lot, but he obviously doesn't appreciate this. If you simply put in the marriage as a defence, it's not going to be just marriages that are approved. We have three jurisdictions that allow for marriage under 16—no court approval, no approval from anybody else. If one of the parties is under 16—

Mr. Rick Dykstra (St. Catharines, CPC): Can we get a clarification on that?

Mrs. Carole Morency: Three do not allow any under 16.

Mr. Joe Comartin: But the two territories do allow—

Mrs. Carole Morency: They set the minimum age at 15, and a court can issue the licence to someone under the age of 15 in the circumstances that she's pregnant. Yukon doesn't allow an exception at all to under the age of 16.

Mr. Joe Comartin: I know Yukon doesn't.

Mr. Derek Lee: But over 15 is legal to get married.

The Chair: Is there a question?

[*Translation*]

Mrs. Carole Freeman: I would like this amendment to be split in two: the first part would be on marriage and the second part would be on common-law relationships.

[*English*]

The Chair: You can actually move a subamendment to remove part (c) of Mr. Comartin's amendment. Change the wording: “the accused is married to the complainant; and...”. Then it would go down to point (d).

Mr. Moore.

Mr. Rob Moore: On that issue, I think Ms. Morency has already raised.... I think everyone around this table has been around long enough to know that we probably can't get away—and it's odd that I'm the one raising this—from the charter. But to me it's glaring that we can't have a special exemption just in that one category and exclude the other. On its face, I think it would be a violation. And it sounds funny to hear myself say that, but it makes sense that that would in fact be the case.

Just generally speaking, I don't see why it's in the public interest that we create an exemption to what would otherwise be a criminal defence because someone either rushes to the altar or gets pregnant. I think we've taken in the transitional interest, but there is a reason why we are in agreement on raising the age of consent to 16: it is to prevent that type of exploitative relationship. I do think that would raise serious charter concerns.

The Chair: To keep things moving along here, we can take this amendment or this motion and deal with it all in one fell swoop and get rid of it, if that's the desire of the committee, or we can place a subamendment in and vote on it and still get rid of it. I guess that's what it's going to amount to.

[*Translation*]

Mr. Réal Ménard: She moved a sub-amendment.

[*English*]

The Chair: I'm sorry?

[*Translation*]

Mr. Réal Ménard: Mrs. Freeman has moved a sub-amendment.

[*English*]

The Chair: If she wants to introduce a subamendment, the matter is still going to be one of challenge. So what is your purpose?

● (1010)

[*Translation*]

Mr. Réal Ménard: No, Mr. Chairman, it would not be challengeable. We will see but there would be an argument for it not to be challengeable. There are already some provinces granting exemptions. When it is a matter of marriage and the woman is pregnant, she can get married with the approval of her parents, but it does not apply to [*Editor's Note: inaudible*] common-law.

[*English*]

The Chair: Mr. Ménard, we're getting back into a discussion again. I cut the list short. There have been people here who wanted to speak, yet this continues to go around in circles. I'm going to let Mr. Dykstra make one comment.

You have a point of order, Mr. Comartin.

Mr. Joe Comartin: Yes. I am not clear whether Ms. Freeman has moved a subamendment. Is that what's on the floor?

The Chair: That's where it's heading. It was a point she brought up, and she wants to move a subamendment to this motion. It's not on the floor yet.

Mr. Joe Comartin: That's what I'm asking.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Mr. Chair.

I realize that Mr. Comartin withdrew his motion from our previous meeting and that he has put this motion in as a replacement. I would like clarification, whether it comes from this side of the table or from our clerks: if we interject this into the bill, then it's actually contrary to the bill itself.

The Chair: This is certainly a point of debate that we have entered into over the last couple of days. I made note that on the one hand, as members have pointed out, it could be that the amendment creates an opportunity for individuals to get around the provisions of the bill and that this could be seen as going against the principle. On the other hand, as other members have argued, it would want to be mindful of unintended consequences and avoid criminalizing behaviour that the bill does not intend to capture. These are the two arguments that we're covering right now.

Mr. Rick Dykstra: Thanks. That makes it half pregnant.

The Chair: Yes, in a way it is. What does an amendment do procedurally...or if it's a legal issue?

Mr. Rick Dykstra: Exactly. And aside from everything else, do you create legislation to set yourself up for a charter challenge? No. Regardless of your position on any piece of legislation, it is enacted in order to be consistent with the charter.

The Chair: That is the very thing we are discussing. That is the legal issue. As far as the procedural thing on Mr. Comartin's amendment, his motion would be inadmissible.

Mr. Rick Dykstra: I guess you're ruling that it is admissible rather than inadmissible.

The Chair: I have been letting it go to this point to see what's going to wash out in the end. Thus far I would have to say it's admissible, but the vote is going to be cast and we'll see where it takes us.

Mr. Rick Dykstra: Okay, thank you.

The other question or concern I arrive at is this. Originally I thought Mr. Comartin was trying to address an issue that was retroactive. It's clear to me now that the amendment actually moves forward. If it were retroactive and we were trying to address issues that because new legislation is enacted someone who may have fallen under the existing legislation would need to be grandfathered or whatever the case may be, to make the exception based on retroactivity.... I don't know how we could support both of these pieces as an amendment, because it actually creates a loophole moving forward. That's where it is inconsistent with the bill and probably why we shouldn't be dealing with it.

The Chair: Again, it's the legal side of the debate that's going on here. Procedurally it's another matter.

● (1015)

Hon. Marlene Jennings: If you'll permit, Chair, I have a question for Madame Morency.

The Chair: Okay.

Hon. Marlene Jennings: You raised the point that should the defence of marriage to the complainant be allowed, it would be open to court challenges. I expect there would be challenges. You have 15-year-olds in certain provinces or territories who can become legally married. It is recognized by the state, yet because they are greater than five years older one of the spouses is charged criminally. I would assume that person would file a charter challenge. “The state recognizes my marriage and yet you're telling me I've committed illegal acts.” Either way we're in a quandary, are we not? Either scenario would allow for a substantive charter challenge.

The Chair: Ms. Morency, would you reply to that?

I'm going to move things along here at a much faster pace.

Mrs. Carole Morency: The charter risks are not at all the same for the two scenarios described.

If you provide a permanent defence to a married couple, but not to a common-law couple, the charter risk is very high. The charter risk in the other situation is in fact what Bill C-22 proposes, and we do not have the same risks.

Could somebody bring a challenge? It's always possible someone could bring a challenge, but the evidence is there to mount a very significant, meaningful defence against that challenge.

You would be in a different situation. That's our assessment.

Hon. Marlene Jennings: Okay. That's what I wanted to hear.

Thank you.

The Chair: Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): I find the discussion interesting to a great degree, and I appreciate Mr. Comartin's experiences as a lawyer in family court, dealing with these kinds of issues.

I hope he, in turn, will appreciate the things that I experienced as a school principal, which involved the 40,000 or 50,000 or 60,000 that were mentioned, who live in these relationships without the permission of the parents. The parents want their kids out of these situations.

So this bill fulfills that. That's the main purpose of this. I appreciate all the discussions, but I think we're getting into a little bit of nitpicking—and that may not be a fair word—about what we're trying to accomplish with this bill.

I do think Mr. Moore pointed out that the bill was constructed in a way that will take into consideration those kinds of relationships that we don't really want to criminalize. But we have to start thinking of the 40,000 to 50,000 to 60,000 kids who are living in these relationships because they think they're old enough to make these wise decisions and the parents are insisting they can't, yet the parents have no avenue.

Let's help the situation by moving forward with this bill. I call for the question, Mr. Chair.

The Chair: The question has been called.

Hon. Marlene Jennings: It's been called on...?

The Chair: On NDP-01.

Mr. Myron Thompson: The subamendment was never moved.

The Chair: Madame Freeman's subamendment was never moved.

[*Translation*]

Mr. Réal Ménard: We just did it.

[*English*]

The Chair: She doesn't have the floor, actually, at the moment.

The discussion, if you will take heed, Ms. Jennings, is that I suggested what could be done, but it was never moved by Ms. Freeman.

Ms. Freeman, you have the floor.

[*Translation*]

Mrs. Carole Freeman: I took the floor to tell Mr. Comartin that we approved the first part of his amendment, relating to marriage, but not necessarily the second part. I also asked...

[*English*]

The Chair: Do you have a subamendment you wanted to move? Move it.

[*Translation*]

Mrs. Carole Freeman: I wanted a sub-amendment in order to split the amendment. Therefore, I move a sub-amendment to spit the amendment in two parts.

● (1020)

[*English*]

The Chair: Ms. Freeman, you have to move a subamendment that will remove proposed new paragraph 150.1(2.1)(c) of Mr. Comartin's amendment. Is that what you're seeking?

[*Translation*]

Mr. Réal Ménard: Yes.

[*English*]

The Chair: That is what she's seeking.

[*Translation*]

Mrs. Carole Freeman: Yes.

[*English*]

Hon. Marlene Jennings: May I suggest something? In order for Ms. Freeman's subamendment to flow, this is how it should read. If we go to proposed paragraph 150.1(2.1)(a), it would be:

> is less than five years older than the complainant; and

and the whole paragraph that's under (d) would remain. So the original clause would remain. It would then add paragraph 159.1 (2.1)(c). It would say:

> the accused is married to the complainant

So it would say:

> (a) is less than five years older than the complainant; and
>
> (b) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

That's all the original clause. The period would become a semicolon, and would be followed by "or (c) the accused is married to the complainant."

[*Translation*]

Mrs. Carole Freeman: What you are suggesting, Marlene, is to have a), b)...

Hon. Marlene Jennings: What you want is that this be added and that the other part be struck out, is it not?

Mr. Réal Ménard: No, we only want...

[*English*]

The Chair: I'm going to suspend for a few minutes until this subamendment is worked through.

● (1020)

(Pause)

● (1025)

The Chair: I call the meeting to order.

Ms. Freeman.

[*Translation*]

Mrs. Carole Freeman: In order to clarify, we have tried to draft a sub-amendment that would merge paragraph a) and paragraph d) and that would read as follows: "a) is less than five years older than the complainant and is not in a position of trust..."

The second paragraph would be paragraph "b) the accused is married to the complainant", preceded by the word "or" and by a semi-colon.

● (1030)

[*English*]

So in (a) we put “is less than five years older than the complainant”; it's put with (d), “is not in a position of trust or authority”; and the second...it's (b), “the accused is married to the complainant”.

The Chair: Do you have it written down? I'm a bit confused by this second round here.

Ms. Jennings.

Hon. Marlene Jennings: This is how the subamendment would read:

> (a) is less than five years older than the complainant; and
>
> (b) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant; or
>
> (c) the accused is married to the complainant.

The Chair: Okay. So it's (a), (b), and (c).

[*Translation*]

Mrs. Carole Freeman: It is the same principle: a), b) c). We would take out what relates to common-law.

[*English*]

It's just to make sure that in certain authorities...they have the marriage, that's all; we do not open the doors.

[*Translation*]

I had merged paragraphs a) and b). You are merging paragraphs a), b) and c), Marlene. Paragraph a) was made up of paragraphs a) and b).

Hon. Marlene Jennings: It depends on drafting. It is only a matter of drafting.

[*English*]

Mrs. Carole Freeman: In fact we just leave this one here, right? So it's (a), (b), and (c).

The Chair: Just for the record, you'll note from the bill that we keep (a) as is; (b) is actually (d), “is not in a position of trust or authority”; and at the end of (b), after “complainant; or”, is (c), “the accused is married to the complainant”.

● (1035)

Mr. Rob Moore: Can you say that again, Chair?

Mr. Joe Comartin: There's one error in that, just before you read it. After (a) it should be “and”, not “or”.

The Chair: That's according to your amendment. I was reading from the bill itself.

Mr. Moore.

Mr. Rob Moore: I asked you to repeat it, but I heard

> (a) is less than five years older than the complainant; and
>
> (b) is not in a position of trust or authority

That doesn't make a whole lot of sense to me the way it's worded.

The Chair: The original bill says,

> (a) is less than five years older than the complainant; and
>
> (b) is not in a position of trust or authority...

Then it goes down to:

> or (c) the accused is married to the complainant.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): When I listen to your reading of the Bill, Mr. Chairman, I understand the request of my parliamentary secretary. I do not see the word “and” in the Bill. if you add “and”, when the lawyers start using this clause, they will say “less than five years and...” This means that it is a conjunctive but there is no “and” in the Bill at this time. Whether one uses “or” or “and” makes a difference. I do not see why you said there is an “and” when there is not. That is what Mr. Moore was saying: there is no “and”.

When I read the sub-amendment, I see a paragraph a) submitted by Mrs. Carole Freeman, and paragraph d) becomes paragraph b). There is no “and”. And, if I understand correctly, there is a comma after b). The semi-colons and commas are important to lawyers: sometimes, they might save someone's life. If I understand correctly, there is a full stop after paragraph c). It is not a conjuctive, they do not add up. The way it is presented, the accused would have to prove “less than five years”, that he is not this or that, whereas they are three separate defenses. If you add “and”, they become three defenses that have to be used together. Any lawyer will destroy you with that. So, the “and” should not be there and I suggest that it be withdrawn.

[*English*]

The Chair: I'm told it's the different drafting conventions, but Ms. Morency may want to reply to that point.

Mrs. Carole Morency: If you look at what's in the bill introduced by the government, in proposed paragraph 150.1(2.2)(b) you have the exception that the accused is the common-law partner and is not in a position of trust. That is the formulation that would better reflect the concern that I think Monsieur Petit was mentioning.

If the subamendment were to be worded in a similar way, it would read that the accused

> (i) is less than five years older than a complainant; and
>
> (ii) is not in a position of trust; or
>
> (b) the accused is married to...

That is as you had proposed. The concern is that when you list them as (a), (b), and (c), from a drafting perspective that is not the correct approach.

Hon. Marlene Jennings: That's how it's drafted in the original Bill C-22 in proposed subsection 150.1(2.1).

Mrs. Carole Morency: That's right, because that provides only one exception, which is less than five years. But in the amendment Mr. Comartin proposes to merge these together. That's why I'm suggesting that if the intent of the subamendment is to follow through with the normal drafting convention, you would follow the model you have before you in proposed subsection 150.1(2.2).

● (1040)

Hon. Marlene Jennings: The English and French drafting in proposed subsection 150.1(2.1) in Bill C-22 is exactly how the subamendment is displayed. There's an "and" in English, but there isn't one in French.

Mrs. Carole Morency: That is because it does not have to be exactly word for word the same in English and French, the context, as long as you end up with the same point.

The point I'm trying to address is that with the subamendment, because there's a merger of the two current transitional defences into one section, the concern that Monsieur Petit has highlighted between (a), (b), and (c) would suggest a parity between the three, and that's not what's being proposed or intended, as I understand it.

If you were to reword it—not that we're proposing that—to understand the subamendment that would address the concerns that I believe have been addressed, (a) would be "the accused", then subparagraph (i), "is less than five years older than the complainant",

[*Translation*]

as can be read in paragraph (2.2).

[*English*]

The Chair: Excuse me, Ms. Morency.

I'm getting somewhat confused here about the procedure that's happening right now. We have Mr. Comartin's motion and then a subamendment, but now we're down into proposed subsection 151.1 (2.2).

Mrs. Carole Morency: I'm trying to explain—

The Chair: First of all, before you get into the explanation, for my benefit, are the motion and the subamendment satisfactory in the way they are crafted?

Mrs. Carole Morency: I don't believe so.

The Chair: Okay, let's get into it then.

Mr. Derek Lee: Mr. Chairman, Ms. Morency has quite properly pointed out that because of the way we're providing a subamendment, we have moved from two criteria to three. As a result, it may be visually confusing as to whether we have a conjunctive or a disjunctive, an "and" or an "or" in different places. So to clarify that, she's proposing that we move the two criteria dealing with five years and not in a position of trust together under one paragraph, which would be called (a)(i) and (ii), and under a second paragraph that is disjunctive, or (b) married to the complainant. She is simply restructuring the three criteria, so instead of having "and"s and "or"s all over the place—(a), (b), (c)—we have proposed paragraph (a) broken into two parts with two conjunctive conditions, and proposed paragraph (b), which is the married exemption.

I agree with her. It is easy to do. I'm sure Ms. Freeman agrees as well.

The Chair: Do we need to suspend here just to get a written copy of this, or is it clear?

[*Translation*]

Mr. Réal Ménard: Why do you not allow Mrs. Morency to make sure that everything fits properly?

[*English*]

Mr. Derek Lee: What seems to work, Mr. Chairman, is if Ms. Jennings reads it out. Everybody seems to listen and nod their heads. So if that would be acceptable to our counsel, then go ahead, Ms. Jennings, and read it out.

Hon. Marlene Jennings: This is how the subamendment would read, and I'm going to take it from the very beginning of proposed subsection 150.1(2.1) so everyone can read along:

> (2.1) When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 14 years of age or more but under the age of 16 years, it is a defence that the complainant consented to the activity that forms the subject matter of the charge if
>
> (a) the accused
>
> (i) is less than five years older than the complainant; and
>
> (ii) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant; or
>
> (b) is married to the complainant.

● (1045)

Mrs. Carole Morency: That correction just means the accused is married. It should be "(b) the accused..."—

Hon. Marlene Jennings: No, but it starts at.... Okay, "(b) the accused". Yes, sorry.

Mr. Derek Lee: I agree with Mrs. Morency again. Add the words "the accused".

Hon. Marlene Jennings: Yes.

The Chair: Duly noted.

Does everyone agree that this is now the subamendment of Madame Freeman?

Some hon. members: Agreed.

The Chair: Debate? I know there's going to be some comment about this.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: I have a question for Mrs. Jennings, Mr. Chairman.

You read the words « un moyen de défense si l'accusé ». It is at the last line. Did you keep the words « à la fois » in the French version? You did not keep them, didn't you?

Hon. Marlene Jennings: I read in the English version. In the French version of the Bill, there are these words: « si l'accusé, à la fois ». This will still be in the French version.

Mr. Daniel Petit: You kept those words?

Hon. Marlene Jennings: Yes, in French It will be part of the subamendment.

Mr. Daniel Petit: You understand the meaning of the words « à la fois »? It is the same thing.

[*English*]

Hon. Marlene Jennings: In case you didn't hear, I neglected in (b) to repeat "the accused"—"the accused is married to the complainant."

The Chair: Mr. Moore.

Mr. Rob Moore: Thank you, Chair.

I'm looking at the amendment, and I appreciate what Mr. Comartin is trying to do, but I think we have to remember that we're all in agreement on the issue of protecting people under 16 from exploitative relationships. We've been going over this for some time now on the five-year close-in-age exemption, which is a very clear and powerful and broad exemption that protects against criminalizing teenagers and their relationships.

I think we have to remember why we're doing what we're doing. It's to prevent young people who are under the age of 16 from exploitative relationships. I and the government are not interested in creating an exemption—which I feel, incidentally, would be an unconstitutional exemption—an exemption where someone's married. We're not interested in creating an unconstitutional exemption or a loophole.

We've seen in some U.S. states where these loopholes exist, and I don't think that's the way we want to go, to say to someone, you can avoid what would otherwise be an exploitative and criminal relationship by getting married to this young person. And we've heard testimony here where a young person has left home, and the parents go to the police and ask, "What can I do? My 14-year-old is living with a 27-year-old, and they won't come home." The police say, "There's nothing we can do."

So around this table we've all been in agreement that that's what we wanted to address. Now we're saying that if these people are married we want an exemption to that. I'm not in favour of creating that loophole, pushing people, making a bad situation worse, probably in many cases making a bad situation worse.

We've seen what some American states have done. It's not been successful, in my view. Although I appreciate the effort that's gone into crafting this amendment, I won't be supporting it.

The Chair: Thank you, Mr. Moore. I have to share your comments, quite honestly.

Mr. Joe Comartin: You're supposed to be neutral, Mr. Chair.

The Chair: I am, in most cases.

Some hon. members: Oh, oh!

Mr. Réal Ménard: You don't sound like it. Would you like to have a vote on that, Chair?

Mr. Rick Dykstra: That would be a biased vote.

The Chair: Okay, let's call the vote here.

Mr. Rick Dykstra: I call for a recorded vote.

● (1050)

The Chair: The question now is on the subamendment, a recorded vote.

(Subamendment agreed to: yeas 7; nays 4)

The Chair: The subamendment has been adopted.

Now to the NDP amendment, or the motion as amended.

A voice: Clause 1.

The Chair: No, we're not on clause 1 yet; we're on the amendment.

Do you want a recorded vote here again?

Mr. Joe Comartin: Mr. Chair, I'll simply withdraw that. I'll withdraw the balance of the motion and let the last vote stand.

A voice: As amended?

Mr. Joe Comartin: It would have to be as amended.

Hon. Marlene Jennings: That's right.

The Chair: Yes, it's on the amendment as amended, a recorded vote.

(Amendment agreed to: yeas 7; nays 4) [See *Minutes of Proceedings*]

The Chair: Mr. Bagnell, you had an amendment. Are you going to be dealing with that still?

Hon. Larry Bagnell: My amendment, which you should have, is L-02. I'm not sure if the wording is appropriate, but I want you to see the issue I'm trying to get at and see if anyone else has any thoughts on it.

The way the law is written now, with the grandfathering, if a couple has been happily cohabiting for 11 months, the day this law comes into effect, if they stay there another day or are involved in any sexual activity, it will be criminal. I'm not sure if that's an intended consequence of this bill and if there is any way around that. That's the intent of this. I'm not stuck on the wording.

I'm just wondering if we should try to resolve that problem.

The Chair: Ms. Morency, could you comment on that?

Mr. Rob Moore: On the issue of this amendment, I see what Mr. Bagnell is trying to do, but I think we've made the decision to draw the line somewhere. We are all in agreement that there is going to be some line drawn.

Mr. Bagnell's amendment would make this law virtually unenforceable, because if someone is legally engaged in a sexual relationship, that can mean anything, because a sexual relationship is not defined as sexual intercourse. It could mean they have any kind of physical relationship. And these are the types of exploitative relationships we are trying to avoid.

I hear what Mr. Bagnell is saying, but I think this amendment, as worded, goes way beyond even what he had been contemplating. So it's not an amendment we could support.

We have an amendment on the transitional period that protects established relationships, but this would go far beyond that.

The Chair: Thank you, Mr. Moore.

Questions?

● (1055)

Hon. Larry Bagnell: I'll withdraw the amendment.

The Chair: The amendment has been withdrawn.

(Clause 1 as amended agreed to)

The Chair: We have amendment L-0.1, on the title. Is it withdrawn?

Mr. Derek Lee: I'll move it, on the assumption there won't be any debate.

If there has to be an amendment to it, if it's not ready for prime time, I'll withdraw it. I'll withdraw it, if that's okay.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill, as amended, to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: That completes our discussion on Bill C-22.

Motion for adjournment?

Some hon. members: Agreed.

The Chair: The meeting is adjourned.

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