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Chair

Mr. Dave MacKenzie

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•(1105)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): We'll call the meeting to order. This is the 27th meeting of the Standing Committee on Justice and Human Rights. Today, pursuant to the order of reference of Monday, December 12, 2011, we are considering Bill C-310, An Act to amend the Criminal Code (trafficking in persons).

Before us today, we have Joy Smith, the MP from Kildonan—St. Paul—she is the sponsor of the bill—and some witnesses who will appear before the committee.

We'll start with Ms. Smith.

Mrs. Joy Smith (Kildonan—St. Paul, CPC): Thank you. It's a pleasure to be here today. I'm honoured to be before this prestigious committee on this important issue. I'm pleased to have this opportunity to speak to my private member's bill, C-310, an act to amend the Criminal Code, trafficking in persons.

I want to begin by thanking the honourable members for their support at second reading. Legislation rarely enjoys unanimous consent. However, the unanimous consent for Bill C-310 at second reading is very encouraging. There are a few matters of justice that require our careful and constant attention, and there's no issue more pressing than modern-day slavery.

Cases of human trafficking are beginning to appear regularly in the media. For example, last fall an Ottawa man was arrested after trafficking a 17-year-old girl from Windsor to Ottawa and starving her until she agreed to service men. This happened in a hotel just blocks from where we're sitting right now.

You've probably also heard of Canada's largest human trafficking case involving 20 Hungarian men brought to Hamilton for the purposes of forced labour. They were fed scraps once a day and locked up at night.

You may have heard of the 24,000 women and children freed over the past year in China. This is only the tip of the iceberg. This happens here in Canada daily. Modern-day slavery exists in all corners of our globe, and our resolve to eliminate it must grow stronger. Bill C-310 is a very simple bill that has only two clauses but will have a significant impact on the anti-human trafficking efforts of Canada here at home as well as abroad.

The first clause will amend the Criminal Code to add trafficking in persons, sections 279.01 and 279.011, to the list of offences that if committed outside Canada by a Canadian or a permanent resident

can be prosecuted in Canada. I will also be welcoming a friendly amendment today to add to section 279.02, receiving financial benefit from trafficking in persons, and to section 279.03, concealing, withholding, destroying travel or identification documents. This will ensure that all offences surrounding trafficking in persons are prosecutable.

Extending extraterritorial jurisdiction to Criminal Code offences is rare and is typically reserved for matters of international consensus. This was noted by the parliamentary secretary to the Minister of Justice as well as the NDP justice critic during second reading. I want to refer to an extensive report on the practice of extraterritorial jurisdiction released by the Law Commission of Canada entitled, "Global Reach, Local Grasp: Constructing Extraterritorial Jurisdiction in the Age of Globalization".

This report states that:

...most exercises of extraterritoriality are deliberately multilateral, and those which are not are supportable by general international consensus on when it is legitimate to claim such jurisdiction. That is not universally true, however. It is open to Canada to act extraterritorially in advance of consensus having formed: in effect, to attempt to lead international opinion by example.

What is most notable is that the report provides Canada's child sex tourism laws as an example of this, and states:

...one might note that the child sex tourism provisions, though now perfectly in line with international treaties, actually preceded the signing of those treaties.

There are three primary purposes for designating trafficking in persons as an extraterritorial offence and they are as follows.

First, an extraterritorial human trafficking offence would allow Canada to arrest Canadians who have left the country where they engage in human trafficking in an attempt to avoid punishment.

Secondly, an extraterritorial human trafficking offence would ensure justice in cases where the offence was committed in a country without strong anti-human-trafficking laws or strong judicial systems.

Finally, an extraterritorial human trafficking offence would clearly demonstrate that Canada will not tolerate its own citizens to engage in human trafficking, inside or outside of Canada.

Bill C-310 is an opportunity for Canada to again take international leadership in combatting such a heinous crime. We will join countries like the United States, Germany, United Kingdom, New Zealand, Australia, and Cambodia, which have already extended extraterritorial jurisdictions.

I want to tell you about a joint presentation on human trafficking at the U.S. embassy by Canadian and U.S. law enforcement that I attended just a few weeks ago here in Ottawa. During the presentation by U.S. Homeland Security, the officer reviewed the U.S. legislation on trafficking of persons known as the Trafficking Victims Protection Act. In the U.S. they have to renew this legislation every three years, and it includes funding, immigration, and criminal aspects.

It may seem tedious, but it allows them to update and tweak their laws. I have to say that the agent was particularly enthusiastic about the changes to the 2008 Trafficking Victims Protection Act, which extended extraterritorial jurisdiction to trafficking in persons' offences. He expressed how this change was so important for U.S. law enforcement to be able to catch and prosecute their citizens who travelled abroad to engage in human trafficking in other countries.

The second clause of Bill C-310 recognizes that courts and law enforcement would benefit from an interpretive provision to provide clear guidance on what exploitation consists of. The heart of this amendment is to provide an aid to the courts that clearly demonstrates the factors that constitute exploitive methods. In proposed subsection 279.04(2) I have proposed including the use of threats of violence, force, and other forms of coercion and fraudulent means.

I also welcome a friendly amendment to change "fraudulent misrepresentation" to "deception", and to add another description of exploitation as "abused a position of trust, power, or authority". This will ensure that the language is consistent with the Palermo Protocol and international definitions, and it will ensure that this bill accomplishes what we all want to do.

Interpretive aids are already used in our Criminal Code. In fact, the interpretive aid found in subsection 153(1.2) of the Criminal Code provides greater clarity to the courts on what constitutes sexual exploitation of a minor.

There's also an interpretive aid found in subsection 467.13(1) that provides additional guidance on what constitutes participation in organized crime. This amendment has received broad support from Canadian NGOs. For example, the Canadian Resource Centre for Victims of Crime has noted that the definition of exploitation in Canada's trafficking in persons offence requires clear and specific wording. The Canadian Women's Foundation states, and I quote:

Strengthening the definition of exploitation in the criminal code creates important clarity for police, prosecutors, and the judiciary and hopefully will lead to increased charges and convictions.

Bill C-310 will not only strengthen the definition of exploitation but will align it with international trafficking protocols.

I believe that's very important.

Honourable members, trafficking in persons is a fast-growing crime in terms of profit, and it is incumbent on all of us as parliamentarians to confront slavery in all of its forms, both within

our nation and abroad. Over the past few days I've received a number of e-mails from Canadians writing to this committee regarding Bill C-310. By the way, I didn't solicit those e-mails; they came. I was even surprised at the number of them. They want to see this legislation become law.

People like Michelle Brock from the organization, Hope For the Sold, wrote:

It is essential that we waste no time to protect those who are vulnerable and abused, and Bill C-310 is a huge step in that right direction.

Saskia Wishart, a Canadian currently working for the Not For Sale campaign in the Netherlands, wrote:

Clarifying laws that define exploitation will provide members of our legal system who seek justice the tools they need to properly prosecute criminals who deal in the buying and selling of human beings for the purpose of exploitation. Similarly, Canada has a responsibility to the global community to implement extraterritorial laws that will allow law enforcement to seek out and prosecute those Canadians who exploit individuals, no matter where in the world they may try to hide.

Betty Dobson, president of the Zonta Club of Halifax, wrote:

The Zonta Club of Canada fully supports the recommended amendments to the Criminal Code in Bill C-310. We cannot allow Canadians to commit human trafficking offences in other countries, and return home to hide.

By supporting Bill C-310, each member of this House plays an important role in strengthening the tools used by police officers and prosecutors, and in helping to secure justice for victims of trafficking, both here in Canada and abroad.

Once again I want to express my gratitude for your support for Bill C-310 in second reading. By working together I know we can effectively combat human trafficking in our country, as well as abroad. I look forward to your assistance in helping me get this law through, as we have cases right here in Canada. We have Canadians right here in Canada—we know where they live, who they are, and what cities they're in—who are exploiting children abroad, and we can't touch them.

Thank you for your time.

• (1110)

The Chair: Thank you, Ms. Smith.

Now we have two people here from Walk With Me. I think it's been explained in correspondence that the time allocation is by group.

Ms. Nagy or Mr. Hooper, if you want to share your time, that's fine.

Ms. Timea E. Nagy (Program Director, Front Line, Walk With Me): Thank you.

Good morning. My name is Timea Nagy. I am a founder of the Walk With Me organization and a survivor of human trafficking. Mr. Hooper is the chairperson of the board of directors of Walk With Me.

Walk With Me Canada Victim Services, or Walk With Me, is a front-line and secondary service provider to victims of all forms of human trafficking. We have been asked to appear before the Standing Committee on Justice and Human Rights concerning Bill C-310, which suggests amendments to the Criminal Code of Canada concerning human trafficking.

Let me tell you who we are. Walk With Me is a Canada-wide organization with a mandate to provide services to persons rescued from modern-day slavery, also known as human trafficking. Walk With Me has been involved in the rescue of trafficked human victims in the labour and sex trades.

The mission statement of Walk With Me is as follows:

Walk With Me Canada Victim Services is a survivor-led organization dedicated to raising awareness and providing education on issues of slavery, delivering and coordinating services supporting "victims to become survivors" and advocating action for change.

The vision of Walk With Me is as follows:

Transforming the lives of victims of human trafficking while eradicating slavery.

Bill C-310 purports to make two amendments to the Criminal Code of Canada. They include: making the offence of trafficking in persons an extraterritorial offence for Canadian citizens and permanent residents, and adding a subsection to give evidentiary assistance to courts on factors to be considered in defining exploitation.

On extraterritorial trafficking in persons, the proposed amendment to section 7 of the Criminal Code is to add proposed subsection 7 (4.11), which states:

Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.01 or 279.011 shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act.

Walk With Me's position is that this is a necessary and desperately needed amendment to the Criminal Code of Canada.

Walk With Me has had significant involvement with Project OPAPA, which is about the Hungarian labour trafficking ring in southwestern Ontario. Conceivably, as the Criminal Code presently stands, a Canadian citizen or a permanent resident could set up an office in eastern Europe and traffic in human persons to Canadian soil without the threat or worry of prosecution when they return to Canada.

It is our anticipation that Project OPAPA will force the parties involved in modern-day slavery to move to a more sophisticated cultivation of trafficking in human persons. It is our view that it will include having Canadian citizens and/or permanent residents set up shop outside of Canada and deliver the potential trafficked persons to Canada via a foreign country.

Given the mandate of our work inside of Canada, we have not seen a significant amount of involvement of extraterritorial shipments of trafficked persons; however, it is clear that the Roma people involved in Project OPAPA specifically had agents in Hungary shipping people to Canada. Some of those people who were the conduits in Hungary eventually came to Canada, requested

status after sending the shipment of trafficked human beings, and became permanent residents.

It is our anticipation that this crackdown and the prosecution of this group of organized criminals will lead to parties attempting to set up a shop extraterritorially.

I'm going to pass this on to my team member.

●(1115)

Mr. Robert Hooper (Chairperson, Board of Directors, Walk With Me): As was necessary in the case of sexual offences and the amendments made to subsection 7(4) of the Criminal Code, it's our view that this amendment is necessary not only to deal with trafficking in persons outside of Canada but to prevent parties from infiltrating Canada, becoming permanent residents and/or Canadians, and then moving offshore to deliver persons trafficked to Canada to be exploited for labour or sex.

Proposed subsection 279.04(2) lists the factors that are proposed in the amendment. Walk With Me is in complete support of adding factors that a court may consider when determining what constitutes exploitation. The factors that are listed are necessary to give teeth to the legislation.

The position of Walk With Me is that these additional factors are required to assist courts in assessing the exploitation of persons in this country. Walk With Me thinks these factors will be extremely useful in reviewing the conduct of accused persons before the court system in Canada.

Some of the things our front-line workers have witnessed first-hand include victims being isolated; their passports and other official documentation being stolen; victims being forced to commit fraudulent acts, including those involving government forms; and the withholding of essential services, such as those for learning English as a second language or health.

In the Project OPAPA situation, some of the victims were not overtly threatened with violence or death, but a very subtle version of coercion was placed upon their lives. There was never an explicit threat to their safety, but the complete isolation of the victim, leaving him or her bereft of any dignity, help, or any hope, was used as a tactic to exploit those people. They were left with absolutely no avenue to escape, left to the unknown, without language, funds, or safety. Included in the systematic, subtle coercion was the removal of official paperwork, including immigration documents and passports, from these people who had recently come to Canada.

Also, there is often no direct threat, but a formula. It was best described by a police officer testifying at a bail review. He stated:

Well, place yourself, sir, in their shoes. They come to a country...they don't speak the language. They've lost contact with their families. You have an individual who has offered them a better life. They are grasping for that. They are hopeful of getting a better life in this country... And someone graciously pays their way here...only to find out that [they] are here to be used...[they] are here to commit acts that [they] may or may not commit...that the money [they] are promised [they] never receive. They come from a country where the relationship with the police is not particularly good; as a matter of fact they are very fearful of the police back in Hungary. And [they] come here, not speaking the language and all of a sudden [they] are embroiled in this horrendous drama, so everywhere [they] look [they're] fearful. The expression is better the devil you know than the one you don't. They know no one else so they will go back.

Walk With Me fully supports the four factors enumerated in proposed subsection 279.04(2). They are very necessary tools for the court system.

Walk With Me front-line workers have witnessed the following activities by human traffickers in both the sex trafficking and labour trafficking situations: isolating the victim; withholding language services; withholding essential services, including health services; forcing victims to falsify government applications and documents; controlling their bank accounts and all their financial means; and taking control of their passports and/or their other immigration documents.

It is our view that these are but a few examples from the front line that show the absolute necessity to add the factors outlined in the proposed amendment to assist the courts in assessing such conduct of exploitation.

Walk With Me would ask the committee to consider the following recommendations: first, that the bill be amended by adding the offences listed in section 279.02, receiving financial benefit from trafficking in persons, and section 279.03, concealing, withholding, destroying travel or identification documents, to clause 1; and second, that the bill be amended to add as a factor to clause 2, “abuse a position of trust, power or authority”.

As chairperson of Walk With Me Canada, I'd like to take the opportunity to thank the honourable members for allowing us to present in front of the committee. We are very grateful and thankful for the work you're doing to eradicate slavery in this country.

Thank you.

• (1120)

The Chair: Thank you very much.

Now we have Beyond Borders ECPAT Canada.

Ms. Prober.

Ms. Rosalind Prober (President and Co-Founder, Beyond Borders ECPAT Canada): Beyond Borders, Au-delà des frontières, is a national, bilingual NGO that works in solidarity with sexually exploited children.

I am president, and I founded Beyond Borders, in 1996, with Mark Erik Hecht.

Our NGO is now the Canadian arm of an international NGO based in Bangkok, Thailand, called ECPAT: End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes.

Both ECPAT and Beyond Borders were founded to combat cross-border sex crimes against children, including all forms of sex trafficking and child sex tourism.

Bill C-10 proposes that human trafficking be added to the list of extraterritorial offences. Beyond Borders early on endorsed this bill, as it includes child sex traffickers and supports the tireless work of MP Joy Smith on the issue.

Ethical cosmetics company The Body Shop raised awareness of this issue with Beyond Borders. Over half a million Canadian customers signed a petition asking the government to do more to stop child sex trafficking. This bill validates the incredible efforts of

that company and its staff. Canadians clearly want child sex traffickers held accountable wherever they choose to abuse and exploit vulnerable children for profit.

Extraterritorial crimes against children committed by Canadians are the focus and expertise of Beyond Borders. Thanks to the Minister of Foreign Affairs at the time, Lloyd Axworthy, I appeared before this committee in 1996 on Bill C-27, on child sex tourism. In its wisdom, this committee in 1996 agreed with my suggested amendments and made all sex crimes against children extraterritorial. The committee referred to the new legislation as the “Prober amendment”. At the time, there was, of course, no legislation on human trafficking, as there is now.

Today before us is another bill making human trafficking law, including child trafficking, extraterritorial. What has happened in Canada after our new sex tourism extraterritorial law came into effect in 1997? Well, it has worked to a limited extent. There are lessons to be learned from the last 15 years, which leads to the recommendations Beyond Borders is making today.

Since 1997 Canada has had four successful prosecutions in Canada of child sex tourists abroad: two in Vancouver, one in Montreal, and one in Windsor. That's four in 15 years.

I always enjoy discussing the Windsor case, as it concerns a pedophile priest who got tremendous funding from the good people in Windsor, through Hearts Together for Haiti, to bring technology, etc., to the children in the remote village in Haiti where the priest was sexually abusing the boys. Using that Canadian technology, one of the Haitian victims e-mailed the Windsor funders to inform them of the sexual assaults.

The constitutionality of the extraterritorial law—Criminal Code subsection 7(4.1)—on child sex tourism was challenged in the latest child sex tourism prosecution, *R. v. Klassen*, in the B.C. Supreme Court. The main issue before the court was whether it was constitutional to apply Canadian law to acts committed overseas by Canadians.

Justice Cullen decided that the child sex tourism legislation was constitutional. He ruled that Parliament has the power to enact extraterritorial legislation, adding that the majority of the world's countries, including Canada, have signed the United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography.

He disagreed that the rights of the accused under the charter would be infringed when the crimes were committed outside of Canada, stating that the accused was still guaranteed a fair trial in Canada under our charter.

Creating legislation like Bill C-10 is, of course, when it comes to extraterritorial crimes, the easy part. The investigations and prosecutions of our child sex tourists in Canada have been extremely complicated, costly, and a huge investment of law enforcement and prosecutors' time. *R. v. Klassen* took six years.

Sentencing of our child sex tourists has been all over the map, from extremely lenient to what I would call "fitting the damage done".

A recommendation from Beyond Borders was proposed recently by another of our legal counsel, David Matas, who appeared before the Senate justice committee on sentencing. Beyond Borders proposed a sentencing commission for Canada. I am today recommending that solution as well.

• (1125)

Post-incarceration, the reality is that not only do our convicted high-risk sex offenders, including convicted child sex tourists and child traffickers, get out of jail, but they also get passports, allowing them access to low-cost, high-speed foreign travel. Of course, vulnerable, young, at-risk children can easily once again become their targets in foreign countries.

Today I'm recommending that Canada use our sex offender registry to have a designation for, at a minimum, all convicted extraterritorial child sex offenders to be declared unfit to travel. Canada has signed and ratified the Convention on the Rights of the Child, where countries commit to putting children first, not globe-trotting convicted pedophiles and sex traffickers.

There are presently scant resources and too few liaison officers in embassies abroad to combat all global crimes. Another recommendation is therefore that if you're going to take trafficking seriously and really crack down, there will have to be more RCMP liaison officers abroad and much more focus on preventing sex crimes against children by travelling Canadians.

As of December 2011, in a landmark step for children's rights, the UN General Assembly adopted a new optional protocol to the UN Convention on the Rights of the Child, establishing a complaints mechanism for violations of children's rights. The new treaty will enable children or their representatives to bring a complaint to an international committee of children's rights experts if they've not been able to get remedies for these violations in their countries. Canada has not signed on to this new complaints mechanism and should do so forthwith.

Presently Beyond Borders is running a national campaign supported by The Body Shop, reaching out by using Canadian male celebrities to speak to all men in an effort to sensitize them on the tremendous damage their gender is doing to children. The demand or perpetrator side of child sexual exploitation results in an endless supply of trafficked children prostituted both here in Canada and abroad. The campaign is called "Man to Man/Homme à homme". Much more focus in Canada has to be put on child sex consumers, as stopping demand will prevent more damaged children.

It is essential, to ensure global justice for children, that Bill C-10 is supported by this committee. At the same time, it is essential that

systems are in place in Canada and abroad to make sure the law will work.

One case out of Nova Scotia, *Regina v. MacIntosh*, is so disturbing, so full of injustice for victims in Canada and victims in India, that nothing less than a full inquiry is necessary to ensure a global child abuse case like this never happens again. Previously convicted sex offender MacIntosh, while under warrant status in 1995 for 43 new child sexual abuse charges of many Nova Scotia boys, lived in India for 11 years in flight from justice. He got passport renewals to stay there, travelled back and forth from India to Canada, and was reported by the *Toronto Star* to be sexually exploiting boys in India. He twice got visas, while wanted for sex crimes here, to bring an Indian boy to Canada with him. That boy, according to the *Toronto Star*, joins many other Indian boys who say they were abused by this Canadian, in India or here.

Every system put in place to stop sex crimes abroad, including the extradition system, was bungled. The law on child sex tourism was ignored. Officials in India were widely quoted in the papers saying they were dumbfounded that a wanted Canadian had access to Indian boys for years and years and they were never aware that he was previously convicted and also wanted. They are stunned that he, remarkably, was getting passport renewals and visas to travel with minors while under warrant status. The Canadian passport office was asleep, at best.

A first recommendation, obviously, coming out of this case is that Canadians under warrant status for sex crimes, including trafficking, should not get passport renewals.

Holding global child sex traffickers accountable wherever they exploit and not providing a safe haven for them here, if detected in another country and they flee home, is necessary at this time of globalization, cyber-pimping, and trafficking. The law is constitutionally valid.

• (1130)

We can no longer turn a blind eye to those Canadians who befriend, romance, control, abuse, and then traffic children in countries like the Dominican Republic, sadly a Canadian biker gang hangout.

Thank you.

The Chair: We are at our time limit. Thank you very much.

Professor Attaran.

Professor Amir Attaran (Professor, Faculty of Law, University of Ottawa, As an Individual): Good morning, ladies and gentlemen, members of the committee. I'm Professor Amir Attaran, professor of law and medicine at the University of Ottawa.

Thank you for asking my opinion on Bill C-310. You know the subject of today's hearing, of course. It's human trafficking.

The image attached to the crime is at times caricatured but nonetheless meaningful. For example, it is that of a woman from eastern Europe who is induced to come to Canada by false promises or threats, and upon arriving she's forced into prostitution, just as Timea said.

That sort of thing happens, surely, but it is only one example of the phenomenon. Men are trafficked too. They can be coerced into agricultural labour, farming, or domestic help. Certainly, women in Canada who are not immigrants but Canadians themselves are trafficked too. It seems as though first nations women have it especially bad in that regard.

In this context, Bill C-310 is a very helpful bill. It's necessary. It's constitutional. It definitely should pass. I'm not exaggerating when I say that the people behind it are heroes. I'm surrounded by heroes on each side right here.

The heart of the bill is really those provisions that clarify the meaning of exploitation and trafficking and that make trafficking a Canadian crime worldwide. Let me explain those a bit.

When trafficking is committed abroad by Canadians or persons normally resident in Canada, at the moment they cannot be prosecuted in Canada. The bill will change that. It will enable the prosecution of Canadians or permanent residents who do this sort of thing abroad. That sort of global criminalization is a large step in the direction of what lawyers call "universal jurisdiction".

The clarification of exploitation in the bill means that traffickers who use psychological pressure to control their victims, rather than brute threats of force and violence, will be criminals. For years, they slipped through this loophole. They could use all the psychological pressure they wanted, and as long as they didn't resort to physical endangerment, they were innocent. That's foolish.

So I'm delighted that all parties seem to agree on closing that loophole and invoking universal jurisdiction. Bravo. Please pass the bill.

But now, as clear as I am in my praise, let me also be clear and at times brutally honest in some criticism. Why is this House so under-ambitious? Although you're doing a wonderful thing by toughening the laws on human traffickers, haven't you forgotten about the victims to some extent?

Bill C-310, much as I like it, does nothing for the victims. Earlier I put in evidence to the clerk, and I hope it is now with all of you, the United States law on trafficking. It's here, and the citation is "28 Code of Federal Regulations, Part 1100, Subpart B".

Look at what the American law does that Canadian law does not, even after Bill C-310. American law requires the trafficking victims be housed and be given legal help and medical treatment as victims. They are not imprisoned as criminals.

In America, the law gives foreign trafficking victims the right to stay lawfully in the country with protection so they can turn star witness and help put the trafficker in prison. If you deport them, you

can't do that. But in Canadian law, we don't have those victim protection measures right now.

Listen to me on this, please. You cannot deal successfully with human trafficking by only taking aim at the trafficker. You also need to think of the victims. That is what Bill C-310 currently does not do.

•(1135)

Put yourself, please, in the shoes of being a trafficked, prostituted woman yourself. I know this is very hard. Thank goodness it is very far away from our experience, those of us in this room. But put yourself in those shoes anyway. When you're not on your back being sexually exploited, probably the thing you want is for someone in uniform to kick in the door and slip handcuffs on your trafficker. Imagine how that wish can easily turn into a nightmare when it happens, because the men and women in uniform come into the room and they slip handcuffs on you. Why? Because the trafficker, for example, tore up your passport—that's part of the control—and now you don't have a valid visa to be in Canada. So the handcuffs go on you.

That trafficked, abused victim who you've hypothetically imagined yourself to be has just been locked up in a jail cell and treated like a criminal. Are you going to tell the men and women in uniform what they need to hear to lock up your trafficker? Are you going to turn crown witness and help them bust the large organized ring of criminals that brought you to this place? No way, because you simply won't trust the authorities.

It's a question of trust. That is why I say Bill C-310 is an extremely worthwhile bill, but it's also inadequate. Both can be true. Pass the bill, please, but don't come out of here, any of you, saying that you're making Canada a world leader against trafficking. You aren't. You simply aren't. The best that can be said is that Canada moves from being absolutely appalling on human trafficking, which is our present reality, to merely being backwards, somewhere behind the United States and the American law that I told you about. The U. S. law will still be miles ahead.

Enough of my tongue-lashing. Thank you for being patient and hearing it out. But, friends, friends in this House, members, members of all parties, I really applaud you for doing this, but surely you can do better. Do you want Canada to be a second-rate, also-ran country? I'm sure you don't. Here's your chance to be first-rate in this bill and in the next steps that need to take place. Be ambitious and beat trafficking.

Thank you.

•(1140)

The Chair: Thank you very much.

Now we begin our rounds with the members of the panel. It's five minutes each for questions and answers.

We'll begin with Mr. Harris.

Mr. Jack Harris (St. John's East, NDP): Thank you all for your very interesting and passionate presentations on this extremely important issue.

I'd like to speak to Ms. Nagy, but I have a technical question, which I hope can be dealt with quickly by Professor Attaran.

We support the extraterritoriality provision, and we support this bill, so the details are not worrisome as presented. The question is that the extraterritoriality applies to Canadian permanent residents or Canadian citizens, but will this apply to someone who may be, for example, engaged in trafficking in Hungary or Europe and then comes to Canada, either with or without his or her victims, and is now inside of Canada? Could they be prosecuted under this legislation for crimes that were committed prior to them coming to Canada and prior to them coming under Canadian law?

Prof. Amir Attaran: If that person was a Canadian citizen or a permanent resident at the time of the wrongful act, then yes.

Mr. Jack Harris: But not otherwise.

Prof. Amir Attaran: But not otherwise. You cannot reach backwards; you cannot have an element of retroactivity in the law, such as I think, if I understand you correctly, you're hypothesizing there.

Mr. Jack Harris: We do prosecute war criminals who come to Canada, who don't commit their crimes here, have no right to be in Canada until they come here, but they have committed crimes beforehand. But you don't think it would apply to this legislation—

Prof. Amir Attaran: That's why I said this bill takes a step in the direction of universal jurisdiction. It's not universal jurisdiction in its purist form.

Mr. Jack Harris: I understand that. I have made a speech about that in the House of Commons.

I have a question for Ms. Nagy. I thank you for coming and telling us your views on this, because I'm concerned about how victims are dealt with. I thank Ms. Smith for bringing this up, as well as our colleagues in the House. I have looked at, as I'm sure you've seen, what Ms. Joy referred to as that Palermo Protocol, which is a protocol to prevent, suppress, and punish trafficking in persons, especially women and children, that Canada signed on December 14, 2000, and ratified on May 13, 2002. We're 10 years down the road trying to implement some of the provisions with respect to the criminal law, which is expected of states prior to this. There's a whole section here as well—article 6(3)—which says:

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including...in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society...Appropriate housing...Counselling and information, in particular as regards their legal rights...Medical, psychological and material assistance...Employment, educational and training opportunities.

Secondly—and I've put them both together so you can answer fully—in addition to these measures in article 6, there should be consideration of adopting legislation or measures that permit victims of trafficking and persons to remain in this territory temporarily or

permanently in appropriate cases, and give consideration to humanitarian and compassion factors. That's kind of the legal lingo that deals with what Professor Attaran was talking about. Canada signed this 10 years ago.

I'm wondering whether you, as an individual, or your organization, can tell us what you think may need to be done, or what you think of the current state of both the immigration law as it might affect deportations, or whatever, and the state of assistance and services to victims of human trafficking who find themselves in Canada.

•(1145)

Ms. Timea E. Nagy: Thank you for that question, but unfortunately, you're not going to like the answer.

I'm going to start by answering the second question you had regarding immigration laws. There is one thing that Canada has graciously done, and that is to introduce a temporary work permit for human traffic victims that actually answers some questions you had earlier. If a woman or a man believed to be a victim of human trafficking is discovered by police officers, he or she has the right to apply for a temporary work permit that gives her immediate access to health services. She also gets a very small start-up fund and social assistance. This includes access to pretty much anything a refugee or a permanent resident can get, which is fantastic, and it has helped us a lot in the last two years.

I have seen victims ordered deported, but because of the free legal assistance they received, they were able to turn these decisions around. Immigration has decided not to deport them and they are still in Canada. I think we are becoming very successful on that end.

Mrs. Smith, myself, and a lot of other advocates have been doing a lot of police training for the last two to three years. Officers are actually turning out in big numbers. I have trained about 60,000 through the RCMP and other police agencies. We are painting a very serious picture of human trafficking and its victims. Based on the front-line calls we get, about 60% to 65% of the police officers we have trained no longer put the handcuffs on those victims. I think the RCMP and all the other agencies are learning to identify the signs very quickly. Mrs. Smith is doing a fantastic job on educating law enforcement, so I think we're doing really well in that department.

The last thing that will be very sad for me to sit here and tell you is that there has been no support for agencies like mine that are helping these human traffic victims. We work for no salaries. None of the agencies that do front-line work for human traffic victims receive salaries. We can't be paid, because there are no grants available. There are no safe houses, because there is no money for safe houses. Every single thing we have done we are doing by the grace of God and private funds.

There is a huge need to create a national NGO task force. We have been crying for this for the last two years to officials. We want somebody to sit down and recognize that NGOs need to come together. We need more services, a big plan. Our prayers were heard by Mrs. Smith. Last year she consulted with many NGOs, front-line workers like me, and asked us what we needed in the way of better services. We want to catch up with the United States and provide the appropriate services for victims.

Mrs. Smith created a national action plan. We've all been praying for something to be realized in legislation or become legal, because every agency I know of across Canada is hurting badly in manpower. We need counselling services sometimes and there is nothing available for these victims.

• (1150)

The Chair: Thank you very much.

We went quite a bit over, but I think the information was worth our while.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): I want to thank you all for being here this morning. As a colleague, I know of Mrs. Smith's hard work and the earnestness with which she tackles these difficult issues. I know that all of you on the front line of this problem are putting your hearts as well as your intellects to the task. I thank you all for that.

Did I pronounce your name correctly?

Ms. Timea E. Nagy: That was fine.

Ms. Kerry-Lynne D. Findlay: I know that days like this must be very difficult for you. But you've faced many of them in having to come forward and put a public face on what is a very difficult issue.

I've read your history. I know that you were forced into work as a sex slave in Toronto. Coming from Hungary, you were stripped of your identification, and you thought you were coming for a completely different summer experience, as I understand it, and miraculously you somehow managed to escape and make your way back home. Yet you didn't find the support at home either, as I understand it, from the Hungarian police and others. You've come back to Canada, and it's our good fortune that you're making this your home now.

It is my understanding that you have been working with Detective Bert O'Mara and the Canadian police force. I think you've said that you have done training for some 60,000 people, which is amazing. I believe you've been talking to people in Immigration and in the RCMP and other law enforcement as you go about the work you're doing now.

I also understand that in March of 2004, after many long years, the trial, which I'm sure you would have liked to end differently, found that your exploiter and sexual assaulter were acquitted of the charges.

So here's what I'm interested in. You are the person here with the unfortunate experience that we're talking about today. It's fine academically to talk about universal jurisdiction and all these things we're trying to do, but for you, as someone who has both

experienced this and is now an advocate, I'm interested in hearing how you feel this bill would have made your experience different.

If we had had this bill then, how do you think your life would have been different, as well as the lives of those who you obviously have come into contact with, who have gone through the same unfortunate experience, and who are being exploited as we speak?

Ms. Timea E. Nagy: Thank you very much for the question. I really appreciate that.

The first human trafficking law that was put in the Criminal Code—section 279.03, I believe—would have changed my life right away, because at the time that my case happened, it was only exploitation, and there was no law at all about exploitation.

The second law that our Parliament graciously has put in place—and I was very grateful to see it—again would have changed my life at the time, because that would have provided me with a temporary work permit. I would have been able to go to a doctor. I would have been able to learn English. This way, I had to watch a lot of *Friends*, with the subtitles. Anyway, one way or another, I manage to speak English now.

But at the time, I wasn't allowed to work. I wasn't allowed to go to the doctor. After everything I had been through, my medical bills were, like, \$5,000 or \$6,000, and I had to work minimum wage at three to four jobs for six years to pay that off.

So that was the second law that I really, really welcomed. It would have changed my life big time.

My court went on. It became just sexual exploitation against only one Canadian man, because the men who recruited me from Hungary were already gone from Canada. So there was nothing.... They could do nothing about it.

What would this law have done? It would have never even allowed me to get to that in the first place: it would have prevented this. My life would be completely different. I wouldn't be sitting in front of you right now and talking to you. If there had been a law like this, I would never have got on that plane because the people who recruited me would be held accountable, and they would know that as soon as they would come back to Canada, if I were to go to the police, they would go to jail for what they did in Hungary.

• (1155)

Ms. Kerry-Lynne D. Findlay: Thank you.

The Chair: Thank you.

Mr. Casey.

Ms. Kerry-Lynne D. Findlay: Is there no more time?

The Chair: I'm sorry. You're out of time.

Mr. Casey.

Mr. Sean Casey (Charlottetown, Lib.): Thank you, Mr. Chairman.

Ms. Prober, I listened to you talk about the MacIntosh case.

Ms. Rosalind Prober: There's an appeal to the Supreme Court. I should be clear about that. So any inquiry would be if it goes to the Supreme Court. After that.... If it doesn't, hopefully then it would carry on.

Mr. Sean Casey: Would this bill have changed anything with respect to that case?

Ms. Rosalind Prober: No. The only reason I'm really raising this case is in regard to the systems that have to be in place if you're going to do extraterritorial, if you're going to have an extraterritorial law and make it effective. Everybody has to be up to speed. Everybody has to be trained. I might turn this over to our legal counsel to talk about....

But generally that's why I'm raising this. It's great that we do it, but then let's look at a situation where things fall apart. Or there's the other case, the case of Wrenshall. He was an individual who unfortunately set up a brothel in Bangkok. That would be an instance where an individual would be held accountable for human trafficking in Bangkok and couldn't be. He was held accountable by the United States; they caught him in England and brought him back on conspiracy charges because he was actually offering the boys to American citizens. So there wasn't anything there for him at the time.

But I don't know if Mark wants to add anything.

Dr. Mark Erik Hecht (Senior Legal Counsel, Beyond Borders ECPAT Canada): I will just add that with the work Beyond Borders does, we're always very cautious not to promote any kind of amendment to legislation that would be really operating in a vacuum. So with respect to the other times we've presented in front of committees, what we always tried to raise was the fact that there has to be a more integrated kind of approach to this. It's very good if we get the legislation in. That's definitely very important and necessary. But we also have to ensure that whatever we do on the criminal side works closely with the other protocols in place, as, for example, immigration, which was raised, but also specifically with the MacIntosh case, the whole issue of the passport offices and the role they play in helping enforce extraterritorial legislation.

That's why we always try to bring it up, so people are aware that it's not only the work that's being done in this committee, but the effect the work in this committee has on work going on in other areas of the federal government.

Mr. Sean Casey: Ms. Prober, you referenced another case with respect to someone who set up a brothel and was ultimately pursued in the United States.

That leads me to my next question. In terms of particular cases that we could point to, where there is a gap in our legislation that this addresses, are there particular cases that this addresses? Or is this a problem that is pervasive and can't be reduced down to individual cases that we're dealing with?

I pose that question for you, but I expect there may be others on the panel who would like to address that as well.

Ms. Rosalind Prober: When you look at the issue of child sex trafficking, it is generally the local or national children in Canada who are trafficked. Certainly that is a reality. In fact, I don't think we have before the courts any cases involving trafficking of children

that are not, at the moment, involving local children, not children brought into Canada. Generally, if you look at sex trafficking, the use of children for profit, it's a local phenomenon.

You actually mentioned the United States. Sometimes I worry about the United States getting too much of a pat on the back. In actual fact, the money from The Body Shop in the United States with our American ECPAT group went to bringing in legislation so that children in prostitution are not arrested. It may well be that the United States has looked very closely and done some good work about trafficking foreigners into the United States, but in terms of children in the United States, they are way behind the eight ball, and they still arrest them in many states.

Back to your question, is this going to address a phenomenon or is a phenomenon out there, as I think you are asking? One of the things

• (1200)

Mr. Sean Casey: I'm asking more whether there are specific cases where prosecutions have failed because we don't have this bill. That's where I'm going.

Ms. Rosalind Prober: I think if you look at the polygamists in B. C., we know full well that the polygamists in B.C., the FLDS, were going into the United States and bringing back and forth child brides. That would certainly be an incidence where criminal activity was going on and there was no legislation to prevent it.

Mr. Sean Casey: Thanks.

Mrs. Joy Smith: Go ahead, Mr. MacKenzie.

The Chair: Go ahead.

I had Ms. Nagy first.

Mrs. Joy Smith: We know right now of cases that are sitting there. We know Canadians right now who are doing exactly that. They have brothels. We have a man who set up a brothel in Haiti. Publicly I hate to say too much because we're just waiting for this bill to get through. His youngest victim is four years old. Not only that, he comes back to Canada and he continues what he does to Canadian children. It's a matter of putting as many tools in place for police officers so they can grab these cases.

If you look at our history right now, we had Bill C-49, our first trafficking bill, which had royal assent in 2006. That's a brand-new law. Then my bill went through, Bill C-268, mandatory minimums, and now we're getting more tools for them. If you look at the grid, we used to have no trafficking cases. To date we have 19 human trafficking cases in Canada with specific charges related to Bill C-268, and we have 55 human trafficking cases now before the courts that are related to other laws that we have here in Canada. Of the 19 cases or 55 cases, what I am trying to get across is we used to have none. Now, suddenly because we have put those laws in place, they are catching these people, and with Bill C-310.... I know right now of one case extremely close to the Hill that we've been looking at for some time.... We can't touch him unless he goes through the States, and he doesn't.

The Chair: We're way over our time.

Ms. Timea E. Nagy: There's one area that has been overlooked, which I haven't mentioned yet.

There hasn't been any prosecution about this type of trafficking. That's simply because there is nothing for the prosecutor to even do any cases on. There's one thing that's very well-known and that has been happening for some years now and is becoming worse by the month. Our Canadian girls are being lured by Canadian traffickers to Las Vegas, Atlantic City, Miami. Girls are leaving Canada to find their dream boyfriend in Las Vegas. The situation is so bad down there that the Las Vegas police have a unit called "PIMP task force". They actually have a database on Canadian traffickers. And nobody can touch them.

Thank you.

The Chair: Thank you.

Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Joy, you've done great work on this. I'm proud to be one of your many seconders of this legislation.

The bill is going to codify Canada's ability to prosecute TIP offences committed by Canadian citizens and permanent residents in all cases. Do you think it's still going to be necessary to provide a real and substantial link when a particular prosecution is undertaken under this new legislation?

Mrs. Joy Smith: Could you clarify what you mean by "link"?

Mr. Kyle Seeback: I mean a real and substantial link to Canada.

Mrs. Joy Smith: A link to Canada is absolutely necessary, and just by virtue of being a Canadian citizen you are linked.

We're doing many good things, as Timea said, such as the national action plan that is being put in place right now to help victims of crime. But this particular bill will surely tighten up many things that are happening. Many organized crime organizations are taking care of business by trying to set up business outside our shores.

I don't think that link will be very hard to find. If you're a permanent resident or a Canadian citizen, you're the link.

•(1205)

Mr. Kyle Seeback: I was looking at some of the proposed amendments that we have here. In the text itself you give a list of

your version: "used or threatened to use violence; ...used or threatened to use force; ...used or threatened another form of coercion", etc.

I know it's not an exhaustive list. Is there a reason why, including the amendments, you've chosen those particular words, or are there other descriptors?

To anybody else in the panel, are there any other descriptors that you think we should be looking at adding to make sure this covers off every possibility?

Mrs. Joy Smith: These are the words in standard use in other countries. But even above that, our big problem here in Canada is that often the perpetrators get off because it isn't spelled out. This is like a tool, a help for the court system, to clarify exactly what they're talking about.

Right now in Canada, human trafficking has been far below the public radar screen. Police officers had to be trained in what human trafficking was; judges had to be informed of what the laws were. They didn't recognize human trafficking for what it was. That's why I was very specific in extending the language. I heard over and over again from police officers, from crowns, and from victims that the definition of "exploitation" was not adequate. So I put it in there.

The Chair: Mr. Attaran.

Prof. Amir Attaran: This part of the bill is really well drafted. My hat is off to you; the wording is really good. It lists examples that could be regarded by a court as exploitation, but it also has these magic words: "among other factors". So it's not an exhaustive list. If those words weren't there, I'd be quite worried, but they are there.

Mr. Kyle Seeback: Okay.

Thank you.

Ms. Rosalind Prober: I want to say that, having worked, Mark and I, on the child sex tourism legislation, when we were doing that a lot of the folks who were opposed thought the sky was going to fall if you did this. But the reality is that the alternative is to have your country as a safe haven for criminals who have committed offences abroad. That's the reality, if you want to accept that reality. If you don't have this, that is the reality: they will just skip home and say tough luck.

The Chair: You have one minute remaining.

Mr. Kyle Seeback: I'm content. I'm happy to pass my time to any of my colleagues who may want to use it.

The Chair: Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you.

I will carry on where my colleague left off in relation to the definition and some of the things that were included within the definition.

When courts look at this type of case, in Canada at least, they look at the total evidence. They look at all the evidence. Do you think there's anything further that could have been included within there?

I'm talking specifically to Mr. Attaran.

Prof. Amir Attaran: What can I say? I think it's great. I really don't have a problem as far as that section goes.

Mr. Brian Jean: You've talked about, and in fact criticized, some of Canada's laws on the international scene as far as this goes. I understand that laws reflect society and things move very slowly, but can you cite specific examples, other than the United States, that have similar laws that in your opinion would be superior to these?

Prof. Amir Attaran: Let's not mix apples and oranges. Bill C-310, as far as it goes, does a great job. My criticism is that this House has to go farther. I'm no expert in procedure to say whether that occurs—

Mr. Brian Jean: If I may say, as I've only got one minute, you're suggesting in relation to the victims after, current, and/or during...?

Prof. Amir Attaran: Correct. The treatment of victims....

Mr. Brian Jean: I understand that. We have very generous social programs other than that, but I don't know the specifics in relation to that.

As far as the law goes and the definition section goes, and as far as what it's trying to do extrajurisdictionally in the world, do you think it goes far enough compared to other countries?

Prof. Amir Attaran: On that part I give it a big thumbs up.

Mr. Brian Jean: An A-plus?

Prof. Amir Attaran: You're asking a professor for a grade?

• (1210)

Mr. Brian Jean: Exactly. That's exactly what I was asking for.

Voices: Oh, oh!

The Chair: Ms. Boivin.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair.

We will all give ourselves a nice A-plus after the passing of this bill.

Ms. Smith, I want to thank you not only as an assistant spokesperson for justice, but also as the main spokesperson for the status of women. This is an issue which is close to my heart.

Mr. Attaran, I have carefully listened to your comments. Nevertheless, I think you might wish to make your heartfelt appeal some other time. We are now addressing the issue of transborder trafficking in persons and that is one way to correct the situation. If there is something we should do after that, we will do it. One does not necessarily exclude the other.

I want to ask a question. Could we not have a conflict of jurisdiction at some point? If Canada wanted to start proceedings against one of his nationals who is abroad and who is responsible for that type of appalling act, and at the same time, the country where that person is wants to do the same, what would we do? Would we not be facing a conflict of jurisdiction? That is one of my concerns.

I do not know which expert can answer that. Ms. Smith, I imagine you have thought of this possibility.

[*English*]

Mrs. Joy Smith: For extraterritorial jurisdiction, as I said in my opening remarks, that is something that is normally not done by a private member's bill, but in this case it's exactly what should be done.

A number of countries have already extended or included extraterritorial jurisdiction in trafficking and purposes, but I want to ask you to look at a report. The report of the practice of extraterritorial jurisdiction by Canada was released by the Law Commission of Canada and it states that most exercises of extraterritoriality are deliberately multilateral. It is open to Canada to act extraterritorially in advance of a consensus having been formed.

I think that's what you're saying, that the consensus isn't there, that we should do extraterritorially per se in a private member's bill, but —

Ms. Françoise Boivin: It's not exactly that. But maybe I'm not exactly clear.

Let's say that Canada was in a position of prosecuting somebody who's in Switzerland, and Switzerland wanted to prosecute for the same thing. Is there a problem of conflict? That's my question.

Mrs. Joy Smith: No.

Sorry.

Prof. Amir Attaran: Can I address it?

Ms. Françoise Boivin: Whoever can give me an answer.

Prof. Amir Attaran: It's not a problem. We have many such extraterritorial offences.

Of course, Rosalind mentioned the child sex laws, which are extraterritorial, but there's also torture, hijacking, certain terroristic offences, attacks on internationally protected persons, and offences involving the nuclear trade—plutonium and that kind of thing. In all of those cases you've at least got some or even maybe total invocation of universal jurisdiction, which hypothetically can lead to the sort of conflict with other countries wishing to prosecute that you raise.

[*Translation*]

That being said, in reality, it is not a frequent issue. We have enough experience with that type of situation to know how to resolve this conflict.

Ms. Françoise Boivin: Therefore, it would not allow somebody to... so that, this case would not go on forever, because these two countries would be competing with each other to know which one will lay charges against this offender.

Prof. Amir Attaran: I think, this is academic. In reality, we do not have this problem.

[English]

Ms. Rosalind Prober: I want to add that in general there are only so many dollars to go around, there are only so many prosecutors, etc. The general principle is that wherever the person was caught, that country—say, for example, a Canadian in Bangkok, Thailand....

And we have one in Bangkok, Thailand, haven't we? You all know of Christopher Paul Neil, Mr. Swirly, who thought he was going to outfox the German police? He was caught in Bangkok.

He didn't make it home to Canada. He would have tried, but he wouldn't make it. So they tried him there. Had they said they were shipping him off to Canada, Canada would have picked it up.

But generally, the principle in child sex tourism is that if they're caught, for example, in Cuba or the Dominican Republic, and if they want to try them for crimes against their citizens, they have the right to do it. If they don't, then they ship them home. It's very simple.

• (1215)

Ms. Françoise Boivin: Excellent. That's a great answer. Thank you. That's what I wanted to hear.

Am I already done?

The Chair: Yes.

Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much.

I would like to personally thank Joy Smith for her work on this. Like my colleague, Mr. Seebach, I was very proud to co-second this bill. I think it's a remarkable thing that in the 21st century we are still having to talk about an issue like this and call it what it is: slavery. We have a different idea of ourselves from that, so it's great to get this out in the open.

If I can be permitted a moment of levity, I would like to thank Professor Attaran. I think that of all the academics I've had the opportunity to hear at this committee, you're the first one who has said "that's only a theoretical problem, so let's not worry about it". Every other academic I've heard has been happy to go on at great length about theoretical problems, so I appreciate your candour.

I would like to pick up on the question Madame Boivin raised. Before I do, I'll recognize for the record that I want everyone to know that parliamentarians have been very supportive of your efforts, Ms. Smith, including the former Bill C-268 and motion M-153, which was unanimously adopted by the House of Commons in February 2007, calling on the government to adopt a comprehensive strategy to combat trafficking in persons worldwide.

Dealing with the sovereignty of foreign countries and also with the issue of individuals who are charged with offences, Madame Boivin asked what would happen if two or more countries wanted to prosecute the same person.

I think it's eminently sensible that the country in which the individual happens to be is going to do the prosecution. But from a

legal perspective, is there anything to prevent a second country from undertaking a prosecution as well?

I'll put it in the most commonly presented way. For example, if someone were prosecuted in the United States for an offence relating to trafficking and, let's say, was acquitted and came back to Canada, would the defence of *autrefois acquit* apply, or would Canada be able to prosecute for those facts?

Or let's say that someone was convicted overseas and then came back to Canada. Would that conviction legally prevent a prosecution? I imagine there would always be discretion in our prosecutors, and maybe it comes down to that. But I'm also imagining that the Supreme Court would have something to say from a charter point of view, if there were a duplicate prosecution.

These are legal kinds of questions; you'll have to forgive me for that. I'll start with Ms. Smith, and then if others want to add to it, I would appreciate hearing from them.

Mrs. Joy Smith: There are two things I want to bring out. I think it's highly unlikely that you could prosecute that person again if they've gone through a trial in another country. You'd have to have a darn good lawyer, Mr. Woodworth. It could happen, but you never know what can happen in the courts. I don't know of a case where this has happened.

Mr. Stephen Woodworth: Even if there was an acquittal on the charge in the other country, we wouldn't do it here?

Mrs. Joy Smith: No, not to my knowledge.

I will defer to the lawyers on the panel to answer that because they have far more expertise in a court of law than I have.

Maybe I'll defer to that to you. Maybe there's more you can add to that.

I'm asking both of you.

Prof. Amir Attaran: You have to be a fool as a lawyer to speculate on this, so allow me to be a fool.

Probably if you've been acquitted in another country as a Canadian or permanent resident charged with trafficking in that country and you return to Canada, first of all, it's unlikely that prosecutorial exercise in Canada would be used to prosecute you again. If it did happen, and if you had a good defence lawyer, you can enter the plea of *autrefois acquit*.

• (1220)

Mr. Stephen Woodworth: Even though it's a foreign acquittal?

Prof. Amir Attaran: Yes. There would be a question—a very interesting question of law, and I don't actually know this off the top of my head—about whether the legal standards used in the country where you were acquitted were comparable enough to Canadian legal standards that the acquittal would stand and your plea of *autrefois acquit* would work.

That's going to be fact-dependent. I think you really can't make a general prediction about it.

The Chair: Okay. Ms. Prober, go ahead.

Ms. Rosalind Prober: I'm overtalked. Our lawyer here knows about this.

Dr. Mark Erik Hecht: It would be an interesting test, I agree.

What I can say is that it happens in civil litigation all the time. With multinational corporations, it happens all the time. They're held to a different standard in different jurisdictions.

The U.S. has the Alien Tort Claims Act, which specifically allows, in the area of human rights, for a multinational corporation to be sued in various jurisdictions for basically the same human rights crimes. It would be novel to see how it would work in criminal law, but it definitely works on the civil litigation side.

Mr. Stephen Woodworth: So it's complicated. I'll take it at that. But I do—

The Chair: Thank you. We're over time.

Ms. Freeman, go ahead.

Ms. Mylène Freeman (Argenteuil—Papineau—Mirabel, NDP): Thank you, Mr. Chair.

I will ask one question, and the remainder of my time will go to Mr. Harris.

Professor Attaran, in speaking to this committee, you seem to want this Parliament to be more forward-thinking. Indeed in Canada, aboriginal women and aboriginal girls are disproportionately victims of human trafficking for the purpose of sexual exploitation.

Given this reality, what could this Parliament do to make provisions in the law to address the specific needs of aboriginal women in this country?

Prof. Amir Attaran: I don't feel qualified to single out exactly what legal provisions are needed for aboriginal women, per se.

I hope you have another—

Ms. Mylène Freeman: Domestic, perhaps.

My interest is in aboriginal women, but just generally domestic—

Prof. Amir Attaran: On domestic, I mentioned in my main testimony that the difficulty is that in these busts, too often handcuffs do go on the victim.

Timea is saying it's getting better—it is getting better—but to take her own statistics, she said that 60% to 65% of the time that doesn't happen. Well, do the arithmetic. It means that over a third of the time it does happen.

In any other context, if a third of the time we were arresting the victim, there would be an outcry. We shouldn't be doing it a third of the time; we shouldn't be doing it 1% of the time.

There is a very long way to go there. There are needs for mental health services to be provided to women when they're domestic victims. That's all the more important for the foreign victims. The foreign victims can get temporary resident permits, but they don't get housing. They don't necessarily get translation services. The temporary resident permit does not automatically come with work permission; you probably need a lawyer to help you apply for that.

This is on the face of the current policy: CIC's guide IP 1 in this area, section 16. I recommend that you look at it.

More needs to be done to make the process more sensitive, whether you are domestic or foreign. That's my point.

The Chair: Ms. Nagy had some comments there.

Ms. Timea E. Nagy: It's just that you actually don't need a lawyer to get a work permit. It's included in your temporary work permit.

Prof. Amir Attaran: It's not.

Mrs. Joy Smith: Can I just make a comment?

The Chair: Yes.

Mrs. Joy Smith: Being forward-thinking was the point of your question, I think, Ms. Freeman. Am I correct?

Ms. Mylène Freeman: Yes.

Mrs. Joy Smith: I just want to take one example, which might help a little bit. And I agree with Mr. Attaran that we need to be doing much more.

Having said that, I've worked for a very long time with the victim of Imani Nakpangi, the first trafficker who was tried and went to jail under Canadian law. She was 15 and a half years old when he caught her. He made \$360,000 off her. How the police caught him is that she made a journal and they were able to take her.... Since then, she's graduated from grade 12.

People working with her and working with other victims like that say they need an opportunity, they need a safe place to be, they need an education. I think that is encompassing in the national action plan that we talk about in Parliament. We need to pay careful attention to the needs, the personal needs. They even need clothes. They have no clothes at all when you rescue them.

I hope that helps a little bit.

• (1225)

Ms. Mylène Freeman: Thank you.

The Chair: Thank you.

We're down to one minute, Mr. Harris.

Mr. Jack Harris: That's not much time, but I have to say to Ms. Nagy that I was a little confused by your answer. You started off saying you didn't think I'd like it. Then you said things were okay, until you got to the end, when you said there are no services for these victims. So I have to admit to being confused. I don't think you're telling us that we don't need to do anything for people who are victims of trafficking, but you did say it's being done by volunteers. You have police training being done by Ms. Smith. We've got volunteers engaged in this. It seems to me that there needs to be something in the way of government support, financial and otherwise, to enable victims of human trafficking to meet the kinds of needs that are expressed in this protocol.

Would you agree with that?

Ms. Timea E. Nagy: I'm going to answer half of it, and then I'm going to pass it on to Mr. Hooper.

Yes, it is confusing, because in some departments we do receive help and in some departments there is absolutely nothing. We would get a grant from the government for one year. That will pay for the rent for our safe house for one year and one year only.

Mr. Jack Harris: One safe house?

Ms. Timea E. Nagy: One safe house for three nights only.

Mr. Jack Harris: All of Canada?

Ms. Timea E. Nagy: For all of Canada—but they won't pay a salary for people to staff the safe house. So yes and no. That's why it's just as confusing to me as it is to you.

I'm going to pass it on to Mr. Hooper.

Mr. Robert Hooper: Thank you, Mr. Harris, for the question.

In fact, when you spoke originally, I wrote down, "Write to Mr. Harris".

About article 6, sub 3 of the protocol, as the chairperson of Walk With Me Canada, I can say there are no funds. It would probably behoove me to tell you the financial statements of that organization, which serves slaves across Canada and works on a budget of less than \$100,000 a year. And I mean for everything. We've had gracious volunteers. Ms. Nagy was nice enough to acknowledge that there are volunteers helping, but quite candidly, there is no money, no funding. The present funding for the safe house will expire on March 31—provincial funding. It's in Ontario. I'm obviously not going to tell you where, but it's in Ontario. It's based on 72 hours and a kit that's—I'll get the number wrong—about \$100 of goods and services that will allow these men or women to be able to move forward in their life.

Once they leave there, they are at the whim of not having all the things in the protocol: housing, medical service, translation services. Ms. Nagy is not going to tell you this, but for Project OPAPA, all the translation from Hungarian to English was done by her for free. That was not supported by any government agency, provincially, federally, or municipally.

I could go on another five minutes about what happened with the male victims of labour slavery from Hungary and Project OPAPA. There is no safe house for them, so some of them were put up in hotels with privately funded money.

Mr. Jack Harris: Thank you.

I appreciate Mr. Woodworth, in front of the committee witnesses, advising that all of the measures that we're talking about and that we're supportive of were actually passed unanimously in the House. It's something we're trying to work on together to make things better.

The Chair: Mr. Jean.

Mr. Brian Jean: Thank you again, Mr. Chair, for the opportunity.

First of all, in relation to the MacIntosh case, a public inquiry was suggested. If I'm correct on that particular factual basis, the gentleman was in India and the court actually looked at the time away from Canada as an unreasonable delay in prosecution, and it included that time, notwithstanding that there was a warrant issued. From my perspective, instead of an inquiry, I might suggest maybe some legislative changes to make sure judges take judicial notice that

they cannot include time away in part of the unreasonable trial. Would that be fair to say?

Ms. Rosalind Prober: You can read a legal analysis of this case by Jonathan Rosenthal on our website. Beyond Borders' view is that the Court of Appeal of Nova Scotia absolutely mangled the law on delay. We had an individual in flight from—

Mr. Brian Jean: I do understand, and that may go to the Supreme Court.

• (1230)

Ms. Rosalind Prober: I think the Supreme Court will clean it up.

Mr. Brian Jean: Exactly.

Ms. Rosalind Prober: And after that, we have to figure out whether Canada is up to speed in handling a case like that.

Mr. Brian Jean: Okay, but would you not agree that a change in the legislation to codify "unreasonable delay" and what can and cannot be included—and I see your lawyer nodding his head in agreement—would not be sufficient to make sure that the Supreme Court took notice of that, and that future judicial decisions also include that?

Dr. Mark Erik Hecht: I think it would definitely be very helpful. If I have to speculate, which is always dangerous—

Mr. Brian Jean: You're a lawyer. You have to speculate.

Dr. Mark Erik Hecht: Should this be successfully heard by the Supreme Court, I suspect they're going to read language into it, which may ultimately end up in the code anyway.

Mr. Brian Jean: And they may even be listening to you right now and listening to us, as legislators, saying something needs to be done there.

Dr. Mark Erik Hecht: Yes. I think what happened in that situation was an abomination.

Mr. Brian Jean: Absolutely.

Ms. Smith, just before you start, I want to say what a pleasure it is to see you here today and to work with you on all these issues you have and how you have such a personal passion for it. So congratulations to you today, and please continue with your work.

Any comments?

Mrs. Joy Smith: I want to say that our government has put \$5 million into the human trafficking initiative. It's the first time that's ever happened.

I think all parliamentarians, as Mr. Woodworth said, have been a good part of why that happened because everyone is working together to try to make this happen. The national strategy is something we're working on now. The Prime Minister did announce that during the last election, and I'm delighted about that.

I have to thank all parliamentarians for allowing Bill C-268 to go through. It's being used today, on the ground in Canada.

This is a heinous crime. I would invite everyone to read a book. I get nothing out of this book, but it's Canada's story, *Invisible Chains*. Read that book. It talks about what's happening here in Canada.

It's going to take a nation working very hard to get this done.

Mr. Brian Jean: You've done a great thing, and there's an advertisement right next to you now, holding up a book. So thank you for that, and thanks to our government that, of course, did put in that significant amount of money.

Mrs. Joy Smith: He's not my witness, you know.

Mr. Brian Jean: I think he's going to be looking for a signature later.

I do want to say as well, in relation to jurisdiction and international law, that I did compete on the Jessup Moot Team for Australia, in the international mooted competition.

Prof. Amir Attaran: For Australia?

Mr. Brian Jean: For Australia—law school in three countries. It was an amazing law school opportunity, and I will say the foreign element was something I enjoyed very much.

Of course, the solution test for international law deals with this, as well as the Statute of the International Court of Justice and other treaties from 1946 onward, and the codification of those laws.

Why not expand the jurisdiction to non-residents and non-citizens who commit these crimes abroad in places that don't have the same laws as we do and come to Canada for vacations? They're well known to the police. That does happen. Why not just do that? We have international treaties and we do have some ability after they are arrested to sort those things out diplomatically. But why not just do that?

My question is to the professor who wouldn't give me an A-plus earlier.

Prof. Amir Attaran: You can have one, that's fine.

But first of all I have to say that the University of Ottawa's Jessup Moot Team just won the national championship.

Mr. Brian Jean: Watch out, here we come.

Prof. Amir Attaran: I can't explain your choices in Australia, but we're trying to do the same quality of work here.

You could do what you are suggesting, go to the purest form of universal jurisdiction.

Mr. Brian Jean: We could squeeze the middle.

Prof. Amir Attaran: Yes.

This bill does not have 24-carat universal jurisdiction. It has 18-carat universal jurisdiction.

I regard it as good. I regard it as comparable to what has been done. As I mentioned earlier, I think the list was hijacking, torture, and so forth.

If you want to go to 24-carat gold-plated universal jurisdiction, that also allows Canada to prosecute foreigners with no citizenship or residence connection to Canada who are here on vacation. This can be done, but it would certainly stand out in the Criminal Code.

Mr. Brian Jean: Do I get an A-plus for that idea?

Mrs. Joy Smith: Yes, give him an A-plus.

Prof. Amir Attaran: He can have an A-plus.

Is he prepared to come and teach at the University of Ottawa?

Mr. Stephen Woodworth: It sounds as if he really needs one. Did you get any in law school?

The Chair: Go ahead, Mr. Sandhu.

Mr. Brian Jean: I got lots, actually, and I just got another one today.

Voices: Oh, oh!

Mr. Jasbir Sandhu (Surrey North, NDP): Thank you.

Actually, I want to thank Ms. Smith for bringing this forward. I know that you have the full support of all the House for taking this into the third and final reading.

It did disturb me today, when I heard from the other witnesses in regard to what is in the bill, or what could be in the bill, that would help the victims. So I'm just going to throw it out to you. Did you think about the victims, how we can improve their...? What can be done, and what would you recommend in addition to what's in the bill?

• (1235)

Mrs. Joy Smith: First of all, that's a very good question, Mr. Sandhu. A private member's bill cannot put anything that involves money. I just can't do that. That's one of the reasons it wasn't in the bill.

The other thing that is there is a national action plan that was announced. The national action plan is being formulated right now, and it's addressing things like victims' needs. I wrote a prototype called "Connecting the Dots". The Prime Minister received it, and he's given it to other ministers. I don't know if they're going to use that or not.

You know, we need to do much, much more in terms of support for victims, but as far as this bill is concerned, I couldn't do that.

Mr. Jasbir Sandhu: We've heard from victims groups like Walk With Me that there's no funding at all available anywhere from the government. You can't include the funding, or expect any part of that in here, but what would you recommend to the government? You have some expertise in this area now. What would you recommend to government so that it takes steps in order to address some of the concerns raised by Mr. Attaran and Ms. Nagy?

Mrs. Joy Smith: That conversation began a number of years ago, and that is why money was put in the budget last year—the last budget and the budget before—in terms of the human trafficking initiative. It's never enough. We all have to work together to think outside the dots. We have many partners. As you know, this is a huge priority because it is a crime that is growing. We want to stop it.

Mr. Jasbir Sandhu: So you have no—

Mrs. Joy Smith: I won't give you a number because I think that's not realistic. I haven't done a business analysis of how much you need.

Mr. Jasbir Sandhu: Would you like to reply, Mr. Attaran?

Prof. Amir Attaran: It's impossible for me to say what will come of the steps being taken towards a national action plan because it's a work in progress. When the work is completed, I hope that all parties in the House will take a look at legislating aspects of that plan. A non-legislative plan that lives only in policy is one that is much more easily ignored by the bureaucracy, not maliciously ignored but just neglected.

If you were to, hypothetically, a year from now, have that plan in hand, and have worked on it, asked the House to debate it to perhaps improve on it, I would hope you would then go to the next step of trying to legislate its elements.

Ms. Rosalind Prober: I was just going to add—and I know Joy will agree—we really shouldn't leave here without acknowledging the Salvation Army for their work against human trafficking in the streets.

Mr. Jasbir Sandhu: Am I out of time?

The Chair: You have one minute.

Mr. Jasbir Sandhu: Oh, great.

Ms. Smith, why wasn't this included in Bill C-10?

Mrs. Joy Smith: I really can't answer that. I know there have been a lot of different aspects to Bill C-10 that include child exploitation and pornographers over the Internet. I know that when my son was in the ICE Unit, they concentrated on Internet crimes.

Human trafficking is not isolated from those crimes. That can happen. For instance, a predator can use the Internet and lure children over the Internet. Even though it's not called human trafficking, there are aspects in Bill C-10 that definitely do address this.

The Chair: Thank you.

I believe the committee is prepared to go to clause-by-clause. We want to thank the witnesses for being here. You're welcome to stay as we go through this bill. Hopefully, we'll finish in this committee right now. I think it's an opportunity, if you wish to stay, but you're welcome to do whatever you will.

We'll begin. As you know, it's a very short bill. We will be done very shortly.

•(1240)

Mrs. Joy Smith: Thank you very much.

A voice: Thank you.

(On clause 1)

The Chair: I understand there is a government amendment.

Do you wish to move it, Ms. Findlay?

Ms. Kerry-Lynne D. Findlay: Yes.

The Chair: Okay. Go ahead.

Ms. Kerry-Lynne D. Findlay: Bill C-310 proposes Criminal Code amendments in two areas. This private member's bill would provide extraterritorial jurisdiction to prosecute, in Canada, Canadians or permanent residents who commit abroad either the main human trafficking offence, which prohibits all forms of human trafficking, in section 279.01, or the child-specific trafficking in

persons offence, in section 279.011, which is punishable by mandatory minimum penalties where the victim is under the age of 18.

It would include a non-exhaustive list of examples of conduct that a court may take into consideration when determining whether exploitation has occurred for the purpose of the trafficking in persons offences.

I support this, and I applaud the member for her dedication to this issue, as we've heard the testimony unfold here today, and for the openness she has shown during second reading debate to amending this legislation in order to further our shared purpose of providing police and prosecutors with the tools they need to bring traffickers to justice.

In this vein, I'd like to propose two amendments.

The first one is to clause 1. The first proposed amendment would be to provide that the two other Criminal Code offences that specifically target human trafficking—that is, section 279.02, which prohibits receiving a financial or material benefit from human trafficking, and section 279.03, which prohibits the withholding of identity documents to facilitate human trafficking—are amongst those offences that Canada can assume extraterritorial jurisdiction over.

As has been said before, these amendments would enhance implementation of our international obligations and would ensure that our laws treat all human trafficking offences consistently.

In other words, no matter what trafficking offence was committed, we would be able to prosecute, in Canada, in appropriate circumstances, conduct that was committed abroad.

Mr. Jack Harris: On a point of order, Mr. Chairman, I don't have a problem with the amendments, but I do have some questions.

Are we leading with clause 2, did you say?

The Chair: We're just doing clause 1.

Ms. Kerry-Lynne D. Findlay: This has to do with clause 1.

Mr. Jack Harris: The clause 1 amendment actually adds two other sections. Is this all we're dealing with in clause 1?

As well, I thought we were going to have officials here today.

Ms. Kerry-Lynne D. Findlay: There is an official present.

Mr. Jack Harris: Maybe there is someone who can come forward and help us out a bit.

The Chair: Sure.

Can you tell us who you are?

Mr. Matthew Taylor (Counsel, Criminal Law Policy Section, Department of Justice): Good morning. I'm not Amir Attaran.

Voices: Oh, oh!

Mr. Matthew Taylor: I'm Matthew Taylor, Department of Justice, criminal law policy.

The Chair: Thank you.

Mr. Jack Harris: Thank you, Mr. Taylor.

I understand why the additional two sections would be added to the extraterritoriality, and we certainly agree with them. My concern here, and one of the consequences, obviously, of this kind of offence of engaging in trafficking...

I've seen examples of it. I've seen very disturbing films about the sexual exploitation trade, documentaries on how they work. This notion of destroying or doing away with documents is obviously, or ought to be, from an offender's point of view, something that you would want to attract in the extraterritoriality.

My concern, and this goes back to some of the testimony, is who do the handcuffs get clamped on? It seems to me, from what little I know about this kind of offence, that it does engage the victims themselves in the offence in various ways, whether aiding and abetting, in some sense, or the destruction of documents that in fact could be done by one of the victims themselves.

So I'm a little leery of getting into the kind of detail here that could potentially ensnare the victims themselves into the web of this law.

Would you comment on that, and advise on whether that is avoided in practice, or can be avoided in practice? Do we need to have some sort of exception here? That section disturbs me a little bit, because I do know that ensnaring the victims themselves, whether it be threats of deportation, threats of them getting charged themselves, threats of them being considered, or making themselves feel considered, part of the crime themselves...because someone could then point to them and say, "Hey, you'd better behave, because you're going to get prosecuted too."

• (1245)

Mr. Matthew Taylor: It is a good question. I would respond in two ways. The first way is to have regard to the wording of the offence itself, 279.03.

As you said, these are practices that are used by traffickers to compel their victims to provide labour services, to exploit them. It's a control tactic, and the offence as drafted links that conduct to the exploitative purpose. So the withholding of the documents, the destroying of the documents, has to be done for the purpose of facilitating the trafficking of persons. I think that, on a first principle, would likely exclude most cases you've described, as I've understood it, because if the victim was told, you must destroy this passport, I think it's fair to say that they're not doing it for the purpose of trafficking in persons; they're doing it because they're fearful for their safety.

To the extent that there would be another situation where theoretically that offence might apply, and we are dealing with a victim, we would look to discretion not to lay a charge, either by a police officer or a prosecutor, and you've heard testimony already today about how the RCMP and Ms. Nagy and others are training police officers to better respond to those situations.

Does that help?

Mr. Jack Harris: Okay.

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

(Clause 1 as amended agreed to)

(On clause 2)

The Chair: The government has another amendment.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay: Yes. Thank you.

Bill C-310 proposes to add an interpretive aid to section 279.04. This aid would provide a non-exhaustive list, which we discussed here this morning, of conduct that a court could take into consideration in determining whether an accused had exploited another person. The purpose of my proposed amendment would be to simplify this paragraph and to make it more consistent with the way other similar clauses in the Criminal Code are drafted. It would do this by modifying proposed subsection 279.04(2) to make clear that the conduct listed in the subsection is relevant to determining whether an accused exploited another person, and simplifying the proposed list of conduct to make it easier for police, prosecutors, and courts to rely upon.

So really what we're trying to do is just make this a little clearer and make sure that it fits the purpose it's drafted for.

The Chair: Thank you.

Ms. Françoise Boivin: I have a question.

[*Translation*]

I am in favour of the amendment, there is no problem. On the other hand, I have some questions. You are adding the proposed subsection 279.04(2)(a), which says "used or threatened to used violence" to introduce the concept of "force", or of "another form of coercion". Violence and force are two different concepts.

Do you use the word "force" in a very general sense? I refer to some comments from one of my colleagues here: it is not necessarily a violent act. Is it just to prevent differing interpretations and start playing with words? Is the goal really to extend as much as possible the meaning of that word? I am only trying to understand the idea behind the amendment.

[*English*]

Mr. Matthew Taylor: If I understood the question correctly, in terms of the existing language, when I look at it—and obviously this is something Mrs. Smith has developed—I get the sense that what she is trying to capture is exactly as you have described, the different types of practices that traffickers employ, whether it be the explicit violence, threats of bodily harm, physical assaults, sexual assaults, or the conduct that perhaps falls lower on the scale, so psychological violence.

• (1250)

Ms. Françoise Boivin: It was probably too restrictive by using just the term "violence", but we did have the *force* after, except now we replace

[*Translation*]

"force" by "deception".

[*English*]

Mr. Matthew Taylor: I think the other piece to recognize too is that from a criminal law perspective, these concepts as they appear in Bill C-310, violence, force, and coercion, are roughly talking about the same thing in a criminal law context.

I don't have the amendment in front of me, but my sense from hearing the remarks is that the idea is to try to avoid potential confusion in the courts by police officers, by prosecutors. If we're talking about violence, how is that different from force? How is that different from coercion? And I think the ultimate objective, if I understand it correctly, is to provide a simplified approach that's broad enough to capture all of that conduct, not just the physical violence but the psychological tactics as well.

Ms. Françoise Boivin: That's excellent. Thank you.

Ms. Kerry-Lynne D. Findlay: I just want to comment that sometimes the threat of coercion or force, as opposed to an overt act of violence, means that you're stopping someone from doing something. You're stopping someone from leaving, for instance, through a threat of coercion.

Mr. Jack Harris: I think it needs to be extremely broad, because sometimes it's a case of letting someone know what he or she did to somebody else. It's not exactly subtle. It is an implied threat of violence, force, or coercion. Maybe you should have a look there. We're taking out, actually, the word "violence", and "force or another form of coercion" is used to replace.... I guess proposed paragraphs 279.04(2)(a), (b), and (c) are rolled into one, Mr. Taylor. Is that what we have now?

Mr. Matthew Taylor: That's what it looks like. Thank you for the draft amendment.

Certainly I think that "force" and "coercion" would capture your concerns, Mr. Harris, in terms of the threats of violence, overt threats, not necessarily to you—"you know what we did in this situation". They are essentially implying that if you're not careful, it will happen to you as well.

I think that provides enough latitude for police officers and prosecutors to capture the conduct you're concerned about.

Mr. Jack Harris: Sometimes it's not even letting them know. It's doing it to one person and then putting her in with all of the others, who tell the story of what happened.

Mr. Matthew Taylor: Absolutely. My understanding of the intent behind the bill is to really expand on and codify what the law is already.

When the trafficking offences were developed and enacted in 2005 and this test of exploitation was developed, it was meant to capture all of the conduct you've discussed, not just the physical violence but also the psychological violence—the threats of deportation, the threats of arrest. They're not familiar with the laws in Canada. They tell them, "Well, you don't have any travel documents, so if you don't do this for us, the police are going to come and arrest and deport you." All of that conduct was meant to be included in the existing test for exploitation. It was a test designed to

look at the totality of the behaviour and the effect the behaviour would have on a victim.

With regard to this fear for safety aspect, there have been some suggestions that victims have to have said that they were afraid and that this is why it's been difficult to prosecute these cases. In actual fact, the test isn't whether they were afraid but whether it would be reasonable for them to be afraid. That encompasses all of that psychological harm you're concerned about.

Mr. Jack Harris: I take it that the use of deception is easier to prove than fraudulent misrepresentation.

Mr. Matthew Taylor: They're slightly different concepts.

Mr. Jack Harris: It's a very particular type of thing.

Mr. Matthew Taylor: Absolutely. When you think about fraud in a criminal law sense, it's a deliberate attempt to mislead for a particular purpose. It has a legal meaning. Deception is slightly different from that. I think it provides a bit more latitude as well.

The Chair: All right. Thank you very much.

(Amendment agreed to)

(Clause 2 as amended agreed to)

The Chair: Thank you. Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: The intention will be to present the report to the House on the Monday after we return from this next break.

Again, I'd like to thank the witnesses who appeared before us and also the committee for dealing with this in an appropriate amount of time. I think we've earned an A-plus.

I would just remind you that when we come back we have Mr. Tilson's Bill C-217 before the committee. The following Thursday is budget day.

The meeting is adjourned.

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