HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 032 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, April 26, 2012

Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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● (1105)

[*English*]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call this meeting to order, this being the 32nd meeting of the Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of Wednesday, February 15, 2012, we are here to consider Bill C-304, An Act to amend the Canadian Human Rights Act (protecting freedom).

This morning we have three witnesses, all from the same organization, from B'nai Brith.

I think in the correspondence you received from the clerk it was indicated that you have five to seven minutes for an opening address. Whichever member wishes to make that address, or share it, you can start now.

Mr. Frank Dimant (Executive Vice-President, B'nai Brith Canada): At the outset, we want to thank the committee for extending an invitation to B'nai Brith Canada and its League for Human Rights to appear before you.

I'll begin with a word about B'nai Brith Canada, introduce some of the members of the delegation, and give our position on the issue.

B'nai Brith Canada is the Jewish community's most senior organization. We have been operating in Canada since 1875. Our mandate is both to provide social services and advocate on behalf of the community. Through our League for Human Rights, we deal with domestic human rights issues. Through our Institute for International Affairs, we deal with the global issues of human rights and protection of human rights.

Today we have an interesting representation of our organization.

First of all, my name, just for the record, is Frank Dimant. I am the CEO of B'nai Brith Canada and its League for Human Rights and Institute for International Affairs.

We have brought along several key international and domestic experts on human rights, who are senior officers within our organization, to help enunciate the position of our organization after much deliberation. It was not an easy decision that we came to. We spoke for approximately one year in order to reach a consensus among all our various human rights activists across the country.

Our delegation, some of whom will speak and some of whom will be in the audience, consists of Eric Bissell, our national president, who has come from Montreal; Dr. Max Glassman, a national vice-president from Toronto; and Michael Mostyn, our chair for government relations. The two individuals here with me certainly do not, for some of you, need any kind of introduction. Dr. David Matas is our honorary senior legal counsel and is one of the world's greatest international human rights advocates. He represents B'nai Brith Canada and B'nai Brith International at numerous conventions and forums around the world. Finally, Marvin Kurz is senior legal counsel for the League for Human Rights of B'nai Brith Canada. He has been involved in virtually all of our major human rights issues and appearances before the courts, including the Supreme Court, for the last quarter of a century, if I am correct on that.

As I indicated to you, section 13 of the Canadian Human Rights Act has been a tool for B'nai Brith Canada throughout its years in fighting hate speech. We have appreciated that arrow in our quiver. We've needed that arrow. It's served an important role in fighting the hate-mongers in this country.

I just want to tell you that next week, B'nai Brith Canada will be releasing its audit of anti-Semitic incidents. Just to foreshadow it, I will tell you that the climate is not a good climate in the field. It is not. Therefore, we need all the kind of weaponry we can have in order to battle the hate-mongers.

However—however—as a progressive human rights organization, we recognize the misuse of this section and the hardships it has brought to individuals. Therefore, at this moment, we support the repeal of the section.

We want to make it clear that we come with a heavy heart. We do not come to the decision lightly. But based on our expertise and the expertise of numerous human rights activists across the country, the time is right for change.

However—as you will hear in a moment from my colleagues—that repeal by itself, without putting into place other safeguards, will be a disservice to the Canadian population in fighting the kind of hate-mongers who exist here.

We are exceptionally cognizant of what is happening in Europe and elsewhere. We try very hard to stop the tsunami of hate from Europe from coming to the shores of Canada. We need your support in ensuring that there are the legal protections to enable us to fight this kind of hatred that is certainly in the country now and, I must tell you, continues to grow.

● (1110)

I'm now going to ask David Matas to present for us.

Mr. David Matas (Senior Legal Counsel, B'nai Brith Canada): Thanks.

I'll be equally brief, if not briefer.

One of the lessons of the Holocaust is the need for an effective effort to combat hate speech. The Weimar Republic had laws against hate speech. They did not work.

If eliminationist anti-Semitism had been effectively combatted in the years before 1933, the Holocaust would never have happened.

Canada, both federally and provincially, has engaged in a plethora of efforts to combat hate speech. The laws, though, suffer from two extremes. Some laws, the criminal laws, are almost dead letters, rarely invoked. Other laws, the civil human rights laws, are too easily used, indeed abused, harassing innocents and threatening freedom of speech.

The solution that Bill C-304 presents to Parliament is abolishing the jurisdiction to deal with the abuse.

In our view, there is room for a civil remedy, and the civil remedies exist provincially, as well as, at least now, federally. Those civil remedies, though, have been abused, and provincially, if they are going to survive, they are going to need reforms to keep them working.

Some of the abuses we've seen, which lead to the reforms we've recommended and still recommend, are ensuring full disclosure to the target of the complaint, not allowing for the making of anonymous complaints, giving the power toward cost to the target of a complaint, requiring the complainant to choose only one form or venue, and screening cases even where commissions do not conduct cases.

We would hope that the coming abolition of the federal law does not serve as a model for the provinces, but it should be a warning for the provinces that they amend their jurisdictions to prevent them from the sort of abuse that we have seen and that my colleague Marvin will talk about.

It is unsatisfactory, though, to abolish a civil remedy open to abuse and leave standing only a criminal remedy, which is almost never invoked. Obstacles to use of the criminal law need to be removed. Crimes that reform the criminal law should include banning racist groups; giving courts the authority to allow impact statements from victim groups targeted by hate speech, including hate motivation as a constituent element of aggravated offences rather than just an aggravated factor in sentencing; and setting out guidelines for courts and for attorneys general, so that attorneys general, when they're exercising their discretion to consent, have these guidelines. Also, legislating a specific offence of Holocaust denial....

Combatting anti-Semitism means dealing with anti-Semitism as it is today in its modern forms. Ultimately, the subject matter of this committee and our concern is combatting hatred effectively, whether through the criminal law or the civil law. We do have a problem and we do need a legal remedy for it.

Marvin, why don't you add to that?

The Chair: Please keep it really short. You're quite a way over time now, but there's only one of you.

Mr. Marvin Kurz (National Legal Counsel, League for Human Rights, B'nai Brith Canada): Hate speech is a pervasive problem in our society. Whatever remedy we as Canadians use to combat it, it's something we have to recognize hasn't gone away.

Between David and I, we've probably been involved in almost every major hate speech case in the last quarter of a century, going all the way back to John Ross Taylor, an original Nazi—not a neo-Nazi but a Nazi Nazi—who was interred in Canada during World War II because of his vicious, seditious, pro-Nazi sentiments. We thought it would end with the demise of the neo-Nazi movement.

There are a few very brief lessons we've learned from Canada's legislative history of dealing with hate speech. First of all, legislation can work. Between section 319 of the Criminal Code, the prohibition on hate propaganda, and section 13 of the Canadian Human Rights Act, a great many inroads have been made so that the neo-Nazi movement, if not completely destroyed, has been effectively minimized within Canada. That's a great success. And what it shows is that legislation can work and that legislation can balance the interest of freedom of speech on the one hand with the need for equality for all Canadian citizens in an increasingly multicultural country.

At the same time, as we've gone along, B'nai Brith, as a human rights organization, has recognized that even though it's been very effective, there have been problems with it.

Frank has talked about us really agonizing about it over the last year, but we've really been involved in that consideration for more than the last year. It's kind of come to a head in the last year. Even before the Moon report, we met with Professor Richard Moon. I remember that I drove him home after our meeting. We have strong memories of that. We spoke to him.

Some things that are important to recognize in moving forward are that section 13 has been effective, and it has dealt with only the worst of the worst. Even Professor Moon says that. However, we have recognized, and Professor Moon has recognized it as well, that there have been abuses. There have been procedural abuses. When you see a case like Elmasry v. Rogers, where Mark Steyn and *Maclean's* magazine were brought before three different human rights authorities and three different jurisdictions at the same time until they finally found a human rights authority that would allow them to bring a hearing without any screening, nothing could be more vexatious than that. Because that's what happened in the British Columbia Human Rights Tribunal. David has talked about the provincial authorities.

B'nai Brith itself has been the victim of an abusive complaint before another provincial authority over a similar matter, which was a matter of great procedural abuse. So we're coming to this position understanding those problems. What we're saying to the committee, and hopefully to Parliament, is that if the inevitability of eliminating section 13 is clear, then we need to strengthen our other laws, and I'll leave it at that.

Thank you, Mr. Chair.

● (1115)

The Chair: Thank you very much.

We'll go to Madam Boivin.

[*Translation*]

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

I also wish to thank our witnesses for taking the time to come to the committee today. I thought what you said was very interesting, all the more so since the three of you, or at least two of you, have been involved in almost all major cases of hate speech.

I want to make sure I understood your position. You would be in favour of amending Bill C-304 and finding ways to reduce procedural abuse. This is your priority. However, if this is not possible, you want us to make changes. But this is not being considered by this committee since we have no such bill in front of us. So you are somehow making an act of faith, hoping that the government will move an amendment to the Criminal Code in order to deal with the shortcomings of section 319 of the Code. I want to be sure I did understand your testimony.

Mr. David Matas: Excuse me, but I will answer you in English.

[*English*]

Yes, I think basically you've understood it. Obviously, we don't draft legislation. We don't get it through Parliament. Our ideal world wouldn't either support Bill C-304 or defeat Bill C-304, but faced with the choice, which is the choice we have, our choice is support. In our ideal world, we would build a sandcastle that wouldn't look like Bill C-304 or its defeat.

[*Translation*]

Ms. Françoise Boivin: I know enough about law to make a distinction between a civil procedure before a human rights tribunal and a criminal procedure. The burden of proof is not the same, and the content is not necessarily similar. I always thought that in a procedure before a human rights tribunal, there is an education component that has no equivalent in the Criminal Code because the Code's object is simply to accuse and penalize.

Considering where you come from and what you represent, it makes me shiver to think that, in order to protect freedom of expression, which we all value, we should put up with hate speech, as some witnesses told us. This is not a matter of

● (1120)

[*English*]

freedom of expression here. It's heinous expression that is at the core, or should be at the core, of that whole disposition.

Mr. David Matas: I don't know if I'd put quite the same emphasis.... I don't think we should underestimate the problem of abuse. We're very familiar with the jurisprudence. The decisions on the whole I don't have a problem with, and my colleagues don't. The problem is invoking the process in such a way that it becomes a victimization of the targets.

Ms. Françoise Boivin: Then should we amend to make sure that section 13...?

[*Translation*]

For example, we could say the following: "A proceeding in relation to a discriminatory practice referred to in this section may be dismissed, in whole or in part and with or without a hearing, if the Commission determines that the complaint, or one substantially similar to it, is the subject of another proceeding, including a proceeding before a human rights tribunal established under the laws of a province."

Would it be satisfactory if we go as far as to say that some things can be done if people think that a complaint is obviously abusive and if measures are taken to overcome the abuse factor? As I said to other witnesses, I feel as if we are throwing out the baby with the bathwater by eliminating a remedy that is extremely important even though we need to discourage procedural abuse. Ultimately, the abusers would be the winners.

[*English*]

Mr. David Matas: My colleague, Marvin Kurz, will say something.

Before he does, I wanted to add that I'm very involved with the international human rights system. I have seen the international human rights commission and then the council totally corrupted by people with an anti-Zionist agenda, to the point where it's become an Israel-bashing organization rather than a human rights organization. I come to the Canadian experience with that international experience, and I see the start of that happening here. Unless we lay in our defences, we are going to see our system internally corrupted in the same way the international systems were. I don't think we should minimize that danger.

Mr. Marvin Kurz: I have a few more points, Madame Boivin.

I've been to the Supreme Court of Canada a number of times defending section 13 and defending this kind of legislation, and David and others among us have as well. For us to come here like this, having been in the forefront of organizations that have appeared before courts at every level—I spent six years on the case dealing with Ernst Zundel, which at one time was at the Canadian Human Rights Tribunal, the Federal Court, the Federal Court of Appeal, and the Supreme Court of Canada at the same time. When Frank Dimant says we come to this with a heavy heart, it's true.

What you're talking about and the kind of amendment you've described is something we've talked about for years, but it hasn't happened. We have no reason to expect that it will.

One of the key things about section 13—and I think you're right about the section 13 that we would like and that we would have liked to have seen, and it's the section 13 that was considered by Chief Justice Dickson and the four-judge majority in Taylor. It wouldn't be seen as having penalties; it wouldn't be seen as draconian. It would be seen as mediative, that there would be mediation available; there would be an attempt to persuade people out of the errors of their ways in a way that the Criminal Code is not set up to do.

You're 100% correct, although it's not as stark a difference as that because we know that, for example, part of the role of a modern police force is almost a mediative role. You call the police to some kind of a dispute and the first thing they're going to try to do is make like Henry Kissinger, going back and forth trying to be the mediator, the diplomat. It's not quite as stark as that.

I think what we have to recognize as well—and this is where B'nai Brith has come in this—and as I've said, in many ways I've led the attempt to reconsider it.... I've tried to speak to my colleagues and other Jewish organizations who have been equally interested in the past, to try to reason through the problems with section 13 and where we go.

I think we have to recognize one thing. There's an expression, “You jump the shark”, and that appears to have happened with section 13, whether for better or worse. For section 13 to work, for the mediation to work, for the idea of section 13 to be a principle that we all can look to—the principles of section 13 are equality, tolerance, not trying to punish somebody for saying the wrong thing, but trying to work together to find a way to have a safe zone for every Canadian. People have lost respect for it.

I'm the last person who needs to tell parliamentarians about the importance of public respect for the law. I've written articles. I've been skewered in the press for things I've said defending that kind of legislation. I have to recognize as well that we're at the point now where the feeling is that because of the abuse of concerns, and there have been real abuses thus far, really at every level, not because the people who are trying to administer the law are trying to be abusive—most of the time they're not. I've spoken to these people—commissioners, provincial and federal human rights commissioners, the lawyers, and the people who are trying to administer the law—and they want to do the right thing.

● (1125)

The Chair: I'm sorry, I'll have to cut you off because we're way over time, but I'm sure we can explore that more.

Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Thank you to the witnesses from B'nai Brith for the very cogent and measured approach that you're taking with respect to this issue. I understand that it's a divisive issue within the Jewish community. Quite frankly, I was caught a little off guard when you opened your comments by saying you support this legislation. That advocacy and support is going to change the basis of my questioning.

I guess you will agree with me that the current section 13 of the human rights code captures speech that is not truly hateful, that is if one accepts the Criminal Code definition of true hateful speech in section 319, that which advocates actual harm to persons or persons' properties of an identifiable group. Would you agree with me that the current section 13 captures speech that is offensive but not hateful? Would you agree with that characterization?

Mr. David Matas: The actual terminology in the law is “likely to incite hatred”. The issue that has arisen here is that there is no intent requirement; there's an impact requirement.

As I said in answer to your previous colleague, our concern is not actually with the substantive content of the text, nor with the decisions of the tribunal. We do agree there's room for a civil remedy.

The problem we have with this provision, as with the provincial ones as well, is procedure. There is a lower threshold. There is no attorney general's consent. There's no requirement of intent. Anybody can complain. There are no costs to the complainant. The commission investigates on its own. The complainant doesn't have to appear. It becomes very easy to abuse.

What we have seen is substantive abuse in various jurisdictions, including the federal one, and that's the problem.

Mr. Marvin Kurz: One thing I've got to add is that the definition of the term “hatred” in both pieces of legislation is the same. It's the definition the Supreme Court used in its trilogy of 1990 cases.

As well, if you look at the Moon report, its first recommendation is to call for the abolition of section 13. He says that the actual cases decided under section 13 are all the worst of the worst.

I remember having a conversation with Professor Moon and going through every case, and he admitted that each one of them was the worst of the worst. Almost every one of them could probably be prosecuted criminally.

The intent under section 13 was to avoid the criminal prosecution, to try to deal with it in a different way and to tell people to stop.

● (1130)

Mr. Brent Rathgeber: I'm very short on time.

Mr. Matas, thank you for your answer, and also Mr. Kurz.

If I could expand on some of the procedural problems, you'd also agree that on a strict interpretation of section 13 there doesn't need to be actual victims. It says it's “likely to expose a person”.

If in the view of some administrator at the Human Rights Commission it's “likely to expose”, without having any people actually complaining, that could also attract the attention of the Human Rights Commission. Would you agree?

Mr. David Matas: In theory, the Human Rights Commission does have a power to initiate complaints on its own when there is no complainant. That hasn't been, I must say—

Mr. Brent Rathgeber: Sure. But you're familiar with Mr. Warman. Mr. Warman filed complaints on behalf of identifiable groups that he was not a member of.

Mr. David Matas: Do you want to say something?

Mr. Marvin Kurz: The thing at the end of the day is that you're asking us now to defend section 13, even though we—

Mr. Brent Rathgeber: I'm asking you to agree with me that it's a problem.

Mr. Marvin Kurz: Actually, I don't think that's the biggest problem. For us, that's not the problem. There are many, even criminal offences, in which the public as a whole is the victim. If somebody goes around saying that Jews are all thieves, they're attacking....

First of all, whether it's Richard Warman who goes to the Human Rights Commission, or it's Marvin Kurz who's a Jew who goes to the Human Rights Commission, that doesn't change who the victim is. When Richard Warman did what he did, he didn't say he was the victim.

What was important is that it had to be picked up by the commission. And don't forget, a decision had to be made by a tribunal.

Mr. Brent Rathgeber: I have one final question, if I have time, Mr. Chair.

Would you agree with me that true hate speech is so odious that it ought to be captured by the Criminal Code and not by the Human Rights Code?

Mr. David Matas: I think there is room for a civil remedy. As I say, structurally what was.... I mean, if it weren't for the procedural problems, I think the law would make sense. The civil law doesn't send anybody to jail. It doesn't penalize anyone. All it does is say don't do that again, and what they're not supposed to do again is very clear. If they do it again, then it becomes contempt of court.

My view is that in order to combat hate speech effectively, you need a range of remedies. The first is simply education and advocacy and information. The notion that it has to be either the Criminal Code or nothing I think gets us to a situation where nothing ends up being done, because the Criminal Code is too draconian.

Mr. Brent Rathgeber: Mr. Kurz.

Mr. Marvin Kurz: I agree with what David said. Again, I think we do need a range of remedies. But part of what we need—and I was just thinking about David's comment about the Weimar laws and what have you—is respect for the law. We've come to a point where the public at large, for better or worse, has such an adverse view of the law that it's very difficult for it to continue.

Part of the problem with section 13 has not only.... I mean, David talked about section 13 as saying “stop doing that”. But part of section 13 was to have a conversation without even making that order. I'm hoping that will be available anyway.

Mr. Brent Rathgeber: Thank you very much.

The Chair: Thank you.

Mr. Casey.

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

Mr. Kurz, three and a half years ago, in November 2008, your organization issued a press release. You were quoted in it as saying that doing away with section 13 of the Canadian Human Rights Act governing hate speech “would be a step in the wrong direction”.

We've heard today that your position has changed. I guess my question for you is, what has happened in the last three and a half years to cause a 180-degree turn?

Mr. Marvin Kurz: Let me start, Mr. Casey, by saying.... We've said that from the start. We've been among the most vocal supporters of section 13. We've gone to court a number of times, even since that day, to support it.

But it's not one thing. You're asking where's the...I don't know, the straw that broke the camel's back. I'm not trying to find the perfect cliché for that. But what has happened? It's an accumulation of factors. We're talking about something from almost four years ago, or three and a half years ago, when I made that statement on behalf of the organization. What I've seen is that the statement was made in the context of a hope that the legislation would be fixed. Legislation has not been fixed, Mr. Casey, and I don't see any legislation on the table to fix it.

So we, as a human rights organization, are faced with a situation where we're talking about tools, not results. At the end of the day, we know what we want. We want a Canada where minorities are free from hate speech, where Jews aren't defamed as a group because they're Jews, where blacks can feel comfortable—all of that.

What we've seen, three and a half years later, is that it's working less and less. This, for example, was before the Elmasry and Rogers case, which is a seminal case in the history of human rights commissions and human rights law dealing with hate speech, with the whole notion of *Maclean's* and Rogers, even as a big company, having to go through all of that. There have been a number of them.

There's our own resolution of a frivolous and vexatious human rights complaint. We've been on both sides of them. Again, we've seen some of the procedural problems. We've actually gone to court in the Lemire case, where procedural problems were what caused the Canadian Human Rights Tribunal to set it aside.

The position we took with the court is that this is a question for Parliament, not the court. The legislation isn't unconstitutional, but what's happened, eventually, as the law always evolves, is that now we feel that the circumstances have changed. Also, as I say, part of it is that the public just doesn't have the same level of respect for it that they used to.

We had hoped there would be changes. They haven't happened. What we're pinning our hopes on, to be very honest with you, Mr. Casey, is that some of the hopes that we've been putting on section 13 now will go onto section 319. We're hoping this will be part of a package, and we're hoping this committee will see fit to be involved in that process.

● (1135)

Mr. Frank Dimant: Mr. Casey, just to add to that, for any action we would take now that would invoke section 13 as a cause to move forward, we would be ridiculed, as would every other human rights organization. Every op-ed in the country would be against us. It has outlived its usefulness. That's the conclusion we have drawn. That's why we are sitting here today articulating the position that we are.

Mr. Sean Casey: We're going to be bringing forward a couple of amendments to address problems with section 13. In the course of answering some of the earlier questions, you've actually referenced a couple of them. I guess my question for you is whether we will be in a better position with the void created by the repeal of section 13, or with the amendment, or the tweaking, or the adjustments that we are bringing forward.

Here are a couple of the suggestions that have been brought forward by Mr. Cotler and that will be debated at some point here. One is to allow for or to call for the consent of the attorney general for section 13 prosecution action, along the lines of what's required under the criminal law. The second is to allow for the Human Rights Commission to strike down or strike out cases that are abusive or duplicitous because they've been launched in multiple forums.

I'd be interested in your comments with respect to those two proposals, and also in your comments as to whether it's better to have section 13 in existence with safeguards like that than to have nothing.

Mr. David Matas: I appreciate the intent of those. Those two amendments in the abstract, I think, are part of the solution to the problem we've identified. But I think what we have to look at, and what really caused us pause in all this, is the phenomenon that we're seeing domestically, and have seen in spades internationally, that people will take advantage of a jurisdiction like this to pursue their own agenda that has nothing to do with human rights. It will be systematic, and it will be pervasive, and it will be continuous, and they don't really care about anything except their agenda. They will use this forum to pursue it.

So those amendments, I think, are part of the solution but not the whole solution. I think we need a whole set of safeguards in place to deal with this problem.

What we're seeing with this, which, as I say, we're also seeing internationally, is the creation of a platform to actually work against the very intent. I think one has to think systematically about....

What we're dealing with conceptually is the balancing of two very different human rights: the right to freedom of expression and the right to be free from incitement to hatred. They need to be balanced off against each other. We're seeing this played out practically in this section.

Now, you ask whether we're better off with those amendments. I would say we're better off with a system that works well, devised in such a way that it realizes the intent in preventing abuse.

Will those amendments alone be enough to do it? I'm not sure. I would prefer a whole set of amendments that deal with the problem.

● (1140)

The Chair: Thank you.

Mr. Marvin Kurz: I'll just add—

The Chair: Again, we're quite a way over time.

Mr. Marvin Kurz: Sure.

The Chair: Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair.

Thank you to all for being here today.

It's particularly good to see David Matas again. We've known each other over many years through various organizations we've been involved in.

I know that particularly you, David, as with the other witnesses here today, bring an international lens to this, which I appreciate hearing.

I had the privilege of being an administrative law judge on the Canadian Human Rights Tribunal for five years. I saw these cases in action, as they played out through that process.

I think you, Mr. Kurz, identified a couple of things that troubled me and that led me to support this repeal. You mentioned costs. At one time, we were able to grant costs to a defendant who was wrongfully complained against, for instance, but the Federal Court of Appeal took that away from the tribunal.

So that was a measure where, if it was felt it was being used punitively or inappropriately, we had some way to deal with it. The tribunal doesn't have that anymore.

Mr. Marvin Kurz: One way, really.

Ms. Kerry-Lynne D. Findlay: Yes.

Also of course there's the whole issue of a balance of probability standard over reasonable doubt, the fact that tribunals, appropriately, can hear hearsay evidence. I mean, there are many issues with it here, working its way through a tribunal process. You also identified the multiplicity of venues, which can be very problematic.

I think all of these factors have gone into our thinking on our side of the House in supporting this private member's bill.

Also, I think it is important to mention that the government has already introduced Bill C-30, which does bring amendments to section 319 of the code to expand the list of activities or groups in the Criminal Code.

I was very interested in your comments on improvements that can be made, and also the way it plays out in provincial jurisdictions. We, obviously, cannot tell the provinces how to do this, but I think groups such as yours have a huge role to play in making those suggestions.

Improvements that could be made, or even the addition of other specific offences, as I think you mentioned, David, are things that I would very much want to see us take into consideration. I hope you will continue to give us your advice in that respect.

I also noted the comment that we have to recognize that despite our best efforts, these actions have not gone away. In other words, we have to be ever-vigilant.

My question to you, or maybe it's more of a comment, is this. Do you see yourselves as being able to play an active role in continuing to advise us on ways that, through the Criminal Code process, we may be able to better deal with this kind of attack?

Mr. David Matas: In fact, in my opening statement I proposed a number of suggested reforms to the Criminal Code to try to make them work.

Statistics Canada just came out with a report—it was from 2010, but they just came out with it—about hate crimes. Over the period they were looking at, they identified 1,400 hate crimes that police found were substantiated by the evidence in front of them, and they identified during that period 14 convictions.

Now, there's a mismatch between the two tables, because for the reporting, they looked at hate-motivated crimes as well as hate crimes, but for the convictions, they looked only at hate crimes. Even so, there was a very low conviction rate, and there was quite a high incidence of criminality. Part of the problem, which is one of the reforms we've suggested, is that we put hate motivation into the offence rather than into just part of the sentencing.

Right now we need the consent of the attorney general. I appreciate your suggestion to introduce it. But the consent of the attorney general itself, although I think it's valuable, does present a problem. We get cases where the police, even publicly, have said that there's an offence, but the attorney general has refused to consent, because there are free speech absolutists. We get letters to that effect.

Even though the federal Attorney General only consents for the Northwest Territories and Yukon and Nunavut, I think if we had guidelines from the federal Attorney General about the use of the consent, or maybe in concert with the provincial attorneys general, that might help to get these consents working.

As I said in my opening statement, we can't just abolish the civil jurisdiction and say that it's criminal and leave it as it is, because the criminal law is almost entirely a dead letter right now.

● (1145)

Mr. Frank Dimant: If I may add just one comment on the use of consent, I think my colleague is very kind when he attributes their motivation to ideology. I'm going to say that they're politically motivated. They make an assessment in terms of what's going to fly. They test the winds of the community, and they figure that it's best not to get involved. Therefore, they move away from giving consent on those issues.

I vividly recall the many years we had on the issue of Zundel. Every government promised, right before they were elected—right before—that they would move on it, and then they opted not to because there just wasn't enough political capital in it.

So I agree with my colleague here that perhaps there should be better guidelines for the attorneys general.

The Chair: Thank you.

Mr. Scott.

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you very much, Mr. Chair, and thank you all for coming.

I appreciate the testimony that has made really clear that it's not the content or the particular tribunal decisions that have been arrived at that are the worry. I think that's important for colleagues on this committee to hear, because sometimes the justifications for this bill seem to shade into a concern that only so-called offensive speech is being attacked by section 13, which isn't the case at all in the actual jurisprudence.

You are more concerned with all kinds of dimensions of abuse of the system. And I think that's important, because to me, it leaves open the possibility that we can fix the system without, as my colleague has said a couple of times, throwing the baby out with the bathwater.

That said, it was with a heavy heart that I heard Mr. Kurz say that his hope was that the legislation could be fixed, but he doesn't see any legislation on the table to fix it. There were a few times in your comments when you said that you feel as if this is a *fait accompli*.

I'm just wondering whether you've made efforts, or if you know others who have made efforts, with the government itself—this is a private member's bill—to actually fix section 13 in the ways you've been suggesting.

Mr. David Matas: We have, very much so. You can look at our website. We've advocated for years for many of the procedural reforms we're mentioning to you now. We've had something posted on our website for years on this issue. We have shopped it around, so to speak. Unfortunately, this is the situation we're faced with. In fact, as your colleague across the floor mentioned, things to a certain extent have deteriorated, because at one time there was a view among these tribunals that they could award costs, and the Supreme Court of Canada said no, they can't.

I'm not quarrelling with the legal correctness of this decision, but it has made matters worse. What we see is that we advocate reforms, but in the meantime, all the abuses are accumulating and the reforms don't happen.

● (1150)

Mr. Marvin Kurz: We need to see as well that it has gotten worse. I was asked by Mr. Casey about what's happened in the last few years. Don't forget, and one thing that's never mentioned, there's a penalty clause in the Canadian Human Rights Act, which is a terrible mistake. I remember being at the Zundel hearing, and a number of counsel were standing together and we found out that Parliament passed the penalty clause. We said to ourselves, what were they thinking? If there was a sure way to get rid of the legislation from a constitutional point of view, it would be to add a penalty clause to make punitive a piece of legislation that wasn't meant to be punitive.

Let me just say one other thing—

Mr. Craig Scott: I do have another question, Mr. Kurz.

Mr. Marvin Kurz: Sure. I'm sorry.

Mr. Craig Scott: I appreciate that.

We heard quite a bit about the penalty clause on Tuesday, especially the Canadian Bar Association actively advocating that it be removed, central to the Lemire decision but with some of the problems.

Mr. Marvin Kurz: That was our position on Lemire before the court.

Mr. Craig Scott: That's great.

Here's what I would ask for your feedback on. It is a shame the way our parliamentary process seems to be working in general here. As soon as you folks leave, it looks as if we're going to be going to a clause-by-clause consideration. It would be so much better, after having heard witnesses on Tuesday, and now you here, that we have time to reflect, debate, and then go to clause-by-clause. That doesn't look to be the case in terms of the procedure we've inherited. It's no fault of the chair or anybody else.

If I were to say that the amendments proposed by Mr. Cotler were to be adopted as a halfway house to fix parts of section 13—consent of the attorney general, non-abuse in terms of no multiple proceedings, and elimination of the penalty clause—and then there would be the expectation that we would continue to work on fixing sections 13 and 54 together, would you be open to that, if this committee could work on those terms?

Mr. Marvin Kurz: Sorry, I've tried to jump in, and perhaps rudely so.

We've talked about the consent a number of times as if it's a saving. I'm a lawyer, so like other lawyers I figure like a carpenter I can fix every problem with a hammer and nails.

The consent is a red herring, in my respectful view. If you were to read Chief Justice Dickson's majority decision in Keegstra, there isn't a word about what they call the attorney general's fiat that's used to save the legislation. The attorney general's consent, whether in section 13 or section 319, is irrelevant. We had advocated for years getting rid of the attorney general's consent because there seemed to be no constitutional dimension to it. That won't save it.

Mr. Craig Scott: I'm not saying save it. My question was about whether we can start the process.

Mr. Marvin Kurz: It won't make it better. What I'm saying is it's not enough.

Mr. David Matas: You present a hypothetical and ask if we're open to it. Sure, we're open to everything. We can only react to what we see in front of us right now. We have no views on parliamentary process. That's not the ambit of our organization.

Obviously, Mr. Cotler sees the same problem we do and is attempting to address it. I appreciate where he's coming from, and indeed we're coming from the same direction. I wish all the wisdom of parliamentarians together to solve this problem.

The Chair: Thank you.

Mr. Jean.

Mr. Frank Dimant: If I may, I understand the mood of the Canadian public and the perceptions out there that any kind of band-aids that will be applied right now may be very good band-aids. We would probably be very enthusiastic, but they will not be seen as healthy by the Canadian people. We should remember that as a human rights organization.

The Chair: Mr. Jean.

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

Thank you, witnesses. Shalom.

It's good for you to come here today. Clearly, it seems to me, after listening to your evidence today, that you support the government's position and Mr. Storseth's position to eliminate section 13. I can tell you put a lot of thought into it. Obviously, you do this full time, or at least a lot of your time.

I'm a lawyer as well by trade. I've been here almost eight years now, and I've enjoyed my time here in Parliament quite a bit. It appears, from my perspective, that even if the opposition is suggesting we amend section 13, your position is clearly that there's a bad taste left in the mouths of Canadians over section 13 and the issues that have surrounded it over the past years, and no matter what, we can't fix it at this stage.

Is that fair?

● (1155)

Mr. Marvin Kurz: Yes, I think it's very fair. We wanted it fixed to see if it works. But it hasn't been fixed, it's not working, and it's worse. So the question is whether doing now what should have been done five, eight, or ten years ago is enough. We're saying we've agonized over it, but now we think it's too late.

Mr. Brian Jean: I would agree with you. Bluntly, the smell that permeates from section 13 and the surrounding decisions made from it is too strong to deal with on a continuous basis for Canadians generally.

Mr. Marvin Kurz: The decisions that have been made by the Canadian Human Rights Tribunal are unassailable. One of the great legal clichés is that justice not only has to be done—which I believe it has been in every section 13 case, and I'd be willing to take any case to appeal—but it has to be seen to be done. I don't want to repeat all of it, but the problem is there have been so many problems getting there. It's really important for human rights legislation to be in a position where the public supports it. It has to represent a central Canadian value.

When we talk about Weimar laws, there were all sorts of great laws in the Weimar Republic that weren't honoured. It's better to have laws that are honoured. We're hoping the government will see fit, when looking at section 319, to make it much stronger and by far the more effective remedy, recognizing that there has to be a balance now. If the government has decided, in light of the procedural concerns, to make this change, there has to be something on the other side of that scale.

Mr. David Matas: This jurisdiction is a very particular one. It's basically telephone and Internet, because it deals with the federal jurisdiction on the issue. There are other problems with section 13. The hate jurisdiction federally is split up: the CRTC deals with broadcasting, the post office deals with hate by the post, and so on.

One of the recommendations we've made through the years is on consolidation of all these various federal jurisdictions, with one tribunal dealing with all of them. In fact, the Human Rights Commission has supported that. I agree with my colleagues that section 13 hasn't worked and has become tainted by its failure. But I don't think we should abandon all of these proposals for reform simply because or if Bill C-304 passes. There is room for civil jurisdiction. The federal parliamentarians should be looking at making an effective, coordinated, unified, procedurally sensible jurisdiction to deal with hate speech, whether section 13 survives or not.

Mr. Brian Jean: I would agree with you. I think that's a fair comment.

I want to get back to what was said by Mr. Kurz in relation to justice and Canadians wanting to know that justice is being done.

I have to tell you it was shocking to me to become a lawyer and see this system in place. The perception of justice has to be seen to be done as well, and I think you're going to comment that Canadians want to believe there's justice. With our criminal system as it is, with full disclosure, being able to hire a lawyer, being able to go to a preliminary inquiry, a trial, a Court of Queen's Bench for appeal, a Court of Appeal for appeal, and then to the Supreme Court of Canada, there are a lot of options to make sure we get it right. Most Canadians understand the criminal system, as far as that goes, and that they will receive justice at that point. But I'm not sure Canadians really understand that with section 13 there they would receive justice, or at least a fair hearing.

Mr. Marvin Kurz: It's yes and no, Mr. Jean. Yes, there are problems and we've acknowledged them. But I think there is also some misunderstanding that the Canadian Human Rights Tribunal is a kangaroo court, which it isn't, actually.

Mr. Brian Jean: I'm not saying that at all, but the perception of justice is more important sometimes than justice itself.

Mr. Marvin Kurz: I agree with that. There are all those appeal rights you've talked about from human rights law. Don't forget that even with section 319 gone, the Canadian Human Rights Act will still be there, and it's a very important piece of legislation. The tribunal will still be there.

It's important to understand that we at B'nai Brith are still defending the Canadian Human Rights Act and the tribunals that administer it. The problems in many ways are specific to section 13 and the problems it tries to address, and whether the Canadian Human Rights Act, a very good piece of legislation, is the proper place to deal with hate speech. That's really what it is.

● (1200)

Mr. Brian Jean: It's an even better case now that section 13 will be gone.

The Chair: Thank you, Mr. Jean.

I would just say to the committee that I haven't kept strictly to the five minutes. We'll have to do that in the future, but we had only one group before us, and I didn't think anybody would be offended.

Just with the prerogative of the chair, to Mr. Scott, if you look at the bill you'll see this doesn't come into effect for one year, so you may wish to do the same thing as the sponsor of this bill did.

Mr. Craig Scott: Thank you so much for the suggestion.

The Chair: I'd like to thank the members who were here today. I think it's been most informative and instructive to the committee. We'll just suspend for a few minutes so that we can change from the panel and have our legislative clerk come to us.

Thank you very much.

● _____ (Pause) _____ ●

● (1210)

The Chair: We'll reconvene and get to the clause-by-clause portion of the bill.

I seem to be missing a....

An hon. member: Mr. Chair, bang that gavel.

The Chair: Do I have to hit it harder?

We're at clause 1.

(Clause 1 agreed to)

(On clause 2)

The Chair: We have a Liberal amendment, LIB-1.

Mr. Casey, would you like to introduce that?

Mr. Sean Casey: Yes.

I believe the amendment has been circulated, Mr. Chairman. This amendment would of course restore section 54, but without the monetary penalties.

Although I wasn't here, I understand that you did hear from the Canadian Bar Association, and the Supreme Court of Canada has also pronounced on the appropriateness of the monetary penalties in section 54, so—

The Chair: Mr. Casey, are you on LIB-1?

Mr. Sean Casey: I thought I was.

A voice: No. LIB-1 is on—

Mr. Sean Casey: Oh, okay. I have to reprogram.

Thank you, Mr. Chairman.

This amendment was actually under discussion with the last set of witnesses. This is one of the principled reforms that has been advanced by Mr. Cotler. It is to require the consent of the Attorney General in order for there to be an investigation launched under this section, along the lines of what's required under the Criminal Code. This amendment is to address the concern with respect to frivolous and vexatious claims being advanced.

Again, I think this is a case where we would urge that what we don't need to do is throw out the baby with the bathwater or employ a sledgehammer where a scalpel is more appropriate. That would fall into this category. The basis of the amendment is to call for the approval of the Attorney General for investigations under section 13, Mr. Chair.

The Chair: Thank you, Mr. Casey.

The ruling of the chair is that, as *House of Commons Procedure and Practice*, second edition, states on page 766, "An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill", in the opinion of the chair, the keeping of section 13 and the addition of a subsection to section 13 is contrary to the principle of Bill C-304 and is therefore inadmissible.

Ms. Françoise Boivin: Is that—

The Chair: It's not debatable.

● (1215)

Ms. Françoise Boivin: It's not debatable?

The Chair: No.

You can challenge the chair if you wish. No? Okay.

Mr. Casey, I believe you have another amendment—LIB-2.

Mr. Sean Casey: I want to make sure I have the numbering right, Mr. Chair. Based on your previous ruling, it appears that I might be in a bit of trouble on this one too.

Mr. Chair, this specifically relates to the commencement of proceedings in multiple jurisdictions. It affords to the Human Rights Commission the ability to prevent the same basic complaint under multiple jurisdictions. It also proposes to bring back section 13, although with this governor on it. Again, the feeling of Mr. Cotler, and the feeling of the Liberal Party, is that while there are problems with section 13, the answer isn't to completely repeal it. Measures such as these would address the problems with it.

While the current process is flawed, civil remedies for hate speech must exist, in our submission, and principled amendments such as these are the more sensible and fairer way to deal with this, rather than scrapping section 13 in its entirety.

The Chair: Thank you, Mr. Casey. You were correct that *House of Commons Procedure and Practice*, second edition, states on page 766 the following: "An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill."

In the opinion of the chair, the keeping of section 13 and the addition of a subsection to section 13 is contrary to the principle of Bill C-304 and is therefore inadmissible.

My understanding is that Ms. Boivin would like to speak to clause 2.

[*Translation*]

Ms. Françoise Boivin: Yes, please. This is about clause 2. Before we get to a vote, I want to reflect on a few points.

Considering that this bill simply proposes to repeal section 13 of the Canadian Human Rights Act, we were obviously very aware that any amendment attempt would be problematic without an opening on the government side. It was essentially the position of the sponsor of the bill to simply repeal section 13, unless there was an opening on the government side.

However, I would like to repeat to the government and to the Conservative members of this committee that we heard witnesses invariably saying that they were aware of the problems related to section 13. They recognized the procedural abuse problems. They were also aware of the problem of the punitive provisions. I will get back to these later on.

However, I have said and I will say it again that throwing out the baby with the bathwater is not the right answer. We have to stop thinking that the solution has to be strictly limited to the Criminal Code. I simply want to remind committee members of the burden of proof. We all have enough knowledge of the rule of law to realize that the burden of proof is not at all the same under the Criminal Code. Moreover, in the case of an offense under section 319 of the Criminal Code, the context is not the same either. And the targeted groups are not necessarily the same.

I am concerned about the fact that, unlike the Canadian Human Rights Act, the Criminal Code does not include sex as a distinguishing factor of the protected groups. So women can be targeted by hate speech as this aspect is not at all dealt with in section 319 of the Criminal Code. On the other hand, section 13 of the Canadian Human Rights Act undoubtedly protects women against hate speech.

What is being done here will cause serious problems. We are all in favor of freedom of expression. One of the witnesses we heard on Tuesday—I am not sure of her name, but I think it was Ms. Mahoney—told us that it is not a matter of freedom of expression but of hate speech. Hate speech is not at all the same as freedom of expression. I do not believe anyone around this table is in favor of freedom of hate speech. We are all against this. I do not doubt that for a second.

However, there is room for a civil remedy or a remedy based on a chart or code provided it is well conceived and is not abusive. Nothing was more convincing to me than to hear our last witnesses say that they blindly support the process chosen by the government in consenting to this private member bill but that they feel anyway this is a *fait accompli*. They are hoping the Criminal Code will be amended. This is a remarkable act of faith on their part.

In fact, if the government does not act, we will probably get down to it and try to find a way to strengthen section 319 of the Criminal Code. We have to do it first to deal with the problem I just mentioned that women are absolutely not protected by section 319. However, the remedy provided by section 13 will never be replaced. The fact that some people abused this remedy or engaged in multiple proceedings is not reason enough to simply abolish some extremely important human rights safeguards.

Our committee did not hear these people because, unfortunately, time and the number of witnesses were limited.

Let me say, incidentally, that it would have been nice to do with Bill C-304 what was done with Bill C-26. We are all aware of the problems and we could have taken a little more time to try to find some smart answers with the participation of the sponsor of the bill, Mr. Storseth. We will see him later on.

● (1220)

When the opposition moves amendments to repeal some provisions, they are usually considered to be beyond the scope of the bill. However, when a government member moves an amendment that would repeal some provisions beyond the scope of the bill, being from the same party as the sponsor, he or she can expect the amendment to be easily passed. This is unfortunate. Indeed an amendment is not automatically bad simply because it comes from the opposition.

I think this kind of work could have been done serenely and in good faith. We could have tried to avoid repealing a provision that is perhaps simply not drafted or used the way it should have been. We could have attempted to simply remove the irritants from this section. We still believe that hate speech should not be tolerated in Canada and that we should have remedies other than the Criminal Code. Indeed, in criminal law the burden of proof is quite high and the proof submitted has to be beyond a reasonable doubt, which is not easy to establish.

The Quebec Bar, of which I am a member, sent us a document that you have probably all received. I would like to quote a few excerpts of this document before concluding my comments on section 13 of the Canadian Human Rights Act. The last paragraph of the first page says this:

> The Quebec Bar would like to reaffirm the reasonable and balanced nature of prohibiting hate messages and show its support for the civil penalty outlined in section 13 of the Act. While we are staunch supporters of the freedom of expression provided for in section 2*(b)* of the *Canadian Charter of Rights and Freedoms*, we believe that limits established by legislation and case law are needed to oversee the exercising of this right. Yet the scope of this freedom cannot be determined in isolation. This is why section 319 of the Criminal Code formally prohibits hate propaganda.
>
> Furthermore, the Quebec Bar would like to draw your attention to Canada's international obligations, which must be respected and promoted. A key example is the *International Covenant on Civil and Political Rights*, which Canada ratified in 1976: it addresses freedom of expression in Article 19 and outlines the limits of this freedom in Article 20, condemning the advocacy of hatred and incitement to violence.

Canada is party to many other treaties. A bit further, the document says:

> While, in theory, section 13 of the Act could be considered a considerable constraint upon the freedom of expression, in practice, this concern was addressed in Canada (Human Rights Commission) v. Taylor, [1990] 3 S.C.R. 892. The Supreme Court confirmed that section 13 is subject to a strict interpretation.

I believe it would have been possible to amend this bill. Without completely repealing section 13, we could have prevented ill-intentioned people from abusing it in order to restrict freedom of expression and launch innumerable proceedings against others. This bill will likely be passed, and this is regrettable. It is also unfortunate that the only remedy left will be the Criminal Code.

I hope the government and the parliamentary secretary to the Minister of Justice will take good note of all the recommendations submitted by the witnesses who appeared before the committee. They stated that if the chosen avenue is the Criminal Code, significant amendments would be required to ensure that reasonable standards are being met. I do not think our society wants the definition of freedom of expression to include hate speech, particularly if we consider the electronic tools at our disposal and most importantly, the World Wide Web where this kind of speech can be found.

As our last witnesses said, what is happening in Europe is coming to the shores of Canada. After passage of Bill C-304, our country will be considerably more vulnerable to hate speech.

● (1225)

[*English*]

The Chair: Thank you, Madam Boivin.

Mr. Scott.

Mr. Craig Scott: Thank you, Mr. Chair.

I don't want to go over the same territory that my colleague, the justice critic, has gone over, so I'll try to keep my own remarks fairly brief.

I think it's really important that whatever happens with the upcoming vote on this, we do keep the record of witnesses firmly in mind for purposes of going forward. If the bill passes, I think it should still be open to some kind of revisiting of this issue, to build back up the appropriate protections within the Canadian Human Rights Act.

Thank you, Mr. Chair, for having mentioned the fact that there is a one-year delay on this, which obviously gives some space for that kind of approach.

Obviously, if the bill doesn't pass, then I personally would be happy to commit to working in a multi-party way, treating seriously the kinds of suggestions we've heard, and the other suggestions that we know are out there, to make section 13 work procedurally, to get rid of the abuses in the system.

I think it's really important to note that no witness before us—no witness—referred to the content of section 13 or decisions made by tribunals under section 13 with respect to section 13 as being the problem. All were supportive of that. Everybody focused on different versions of problems of abuse.

I accept the question of where we've gotten at the point of perceptions of the process is perhaps equally as important, which Mr. Jean has brought up. I think that's a very valid point. But it's not about the content, and I think we are in a situation of being about to possibly repeal something without anything adequate to replace it. Frankly, the Criminal Code provision, we've heard—we know—is not doing the job. So we are doing it in the context of diminishing protection, at the moment. That's basically what the result will be.

I think whatever happens with respect to the vote on Bill C-304, we would do well as a committee to think about whether or not something can be salvaged from the process that's been streamlined in the way it's had to be streamlined—because it's a private member's bill, because we're getting to it on second reading, and so on.

I think it's important just to reiterate the point made by Mr. Kurz, who in today's session was probably most convinced that apart from it being a *fait accompli*, it's so problematic procedurally that he almost sees no choice. But he did say, and this is a cobbled-together quote using his words but with two sections put together, that every section 13 decision has been "unassailable", and that the Canadians Human Rights Act is "a very good piece of legislation".

I think that's really important, because some of the questions have attempted to get the witnesses to say that the content and the decisions with respect to section 13 are part of the problem, and no witness has acknowledged that.

Then there was Mr. Matas's plea, frankly, to not abandon the effort to reform even if section 13 is repealed.

I think we owe it to Canadians, and we owe it to those who take seriously what section 13 has been trying to accomplish, to take that plea very, very seriously.

I'll leave it at that. I think we all know where this is going, but it would be nice if it's not the end.

● (1230)

The Chair: Thank you.

Mr. Rathgeber.

Mr. Brent Rathgeber: Thank you, Mr. Chair.

I'll be brief. I take a different perspective from that of Mr. Scott. I think we owe it to those who believe in the Constitution and believe in freedom of speech, freedom of thought, and freedom of expression that section 13 is unsalvageable and it ought to be repealed.

I do want to address Ms. Boivin's comment, because she incorrectly cited section 319 of the Criminal Code. She stated that it did not include potential hatred against women.

I would read for her subsection 319(1):

> Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

Subsection 319(2) uses the same language: “wilfully promotes hatred against any identifiable group”.

There are no limiting definitions of what an identifiable group is in section 319.

In section 318, the genocide provisions, she would be correct that identifiable groups are limited to groups that are distinguished by colour, race, religion, or ethnic origin, but there is no such limitation with respect to section 319.

So when she fears that section 319 could not be used, potentially, against an individual who incited hatred against women, she's incorrect.

Thank you.

The Chair: Thank you.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay: Thank you, Mr. Chair.

I want to reiterate that our government is very concerned about human rights, and the protection of human rights. This is something for which I think Canada has an enviable reputation in the way we have stood up for them.

Mr. Scott is quite correct that the Canadian Human Rights Act, taken in its totality, is a good piece of legislation and it's one we have come to rely on.

However, amending section 13 does not deal with many of the issues raised by the witnesses today, such as multiplicity of venues, the inability to order costs where it has been brought frivolously. There are many problems with the way that particular section has wound its way through the tribunal and commission processes.

If it was missed before, I have a comment on this. I want to point out that Bill C-30, which has already been introduced in the House, as part of the non-exhaustive list, puts “sex” in again for both sections 318 and 319. That is specifically where the protection for women will come, which is something I know we share a concern about.

We are taking measures already to improve the Criminal Code provisions. There was a lot of thoughtful comment today, which I suspect we will all be giving a lot of thought to moving forward in terms of what we can do legislatively to protect Canadians.

I think we are headed in the right direction.

The Chair: Thank you.

Madam Boivin.

[*Translation*]

Mme Françoise Boivin: In answer to Mr. Rathgeber, I have to say that I read this provision in its entirety. So I want to draw his attention to the definitions in section 319(7), which specifically states that "identifiable group" has the same meaning as in section 318. Sometimes, you have to read the whole thing. So do not worry, I did my homework before expressing my views on this issue.

I appreciate my colleague's comments but I am still as concerned. In order to make sure that Mr. Rathgeber understands, I will add that in the definitions given in the last subsection of section 319, it is specified that "identifiable group" has the same meaning as in section 318. This is why I said that women are excluded. This is indeed the case.

That being said, you have to realize that Bill C-30 is just that, a bill. We know there are several problems with this legislation. I do not think our committee will deal with it. So we hope this point will be corrected because it is obviously an oversight.

This is all I have to say. We can get back to this issue if the day comes when I start to make mistakes about definitions in legislation. This does not happen very often.

● (1235)

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): I am not trying to influence anyone's vote but this should not be considered as the end of section 13. It should rather be a renewal of the protection provided for in section 319. Obviously there is a difference in the protection afforded by the two legislations. However, this bill will not come into force before a year from now. So we have a lot of work to do.

[*English*]

The Chair: Thank you.

(Clause 2 agreed to: yeas 6; nays 5)

(Clause 3 agreed to)

(On clause 4)

The Chair: The government has an amendment. Do you wish to introduce it?

Mr. Robert Goguen: I will withdraw that amendment.

An hon. member: What is that amendment?

The Chair: That is amendment G-1.

Ms. Françoise Boivin: Just for clarification, I saw amendment G-1 in conjunction with amendment G-2, so are you still moving amendment G-2?

An hon. member: Yes.

Ms. Françoise Boivin: So you don't have to adapt—

Mr. Robert Goguen: Yes. We had a premonition that it might have been ruled out of order.

[*Translation*]

Ms. Françoise Boivin: It is your turn now.

[*English*]

Back to the drawing board.

The Chair: I would just say, Madame Boivin, maybe you shouldn't have been foreseeing the future.

(Clause 4 negatived)

(On clause 5)

The Chair: We have Liberal-3. Mr. Casey.

Mr. Sean Casey: You've already heard my remarks on this. It's a long section. This is designed to reinstate or restore section 54, except for the monetary penalty provisions. You've heard from the Canadian Bar Association. The Supreme Court of Canada has also pronounced on the monetary penalty provisions. We believe they should be taken out but that in all other respects section 54 should remain.

The rest of section 54 allows offenders to make amends to those affected by hate speech. The Liberal Party supports the Canadian Bar Association's approach in this regard and would hope that the other committee members would see it the same way.

Thank you, Mr. Chair.

● (1240)

The Chair: Thank you, Mr. Casey.

This amendment proposes to keep section 54 and repeal certain subsections. As the *House of Commons Procedure and Practice*, second edition, states on page 766: "An amendment to a bill that was referred to committee *after* second reading is out of order if it is beyond the scope and principle of the bill."

In the opinion of the chair, the keeping of section 54 and the repealing of certain subsections is contrary to the principle of Bill C-304 and is therefore inadmissible. What is more, as the committee has already voted in favour of eliminating section 13, it would be inconsistent to allow the reference to section 13 in section 54 to be kept in the bill.

We're at G-2. I understand the government has an amendment.

Mr. Robert Goguen: By repealing section 13, and this is the intent of Bill C-304, section 54 becomes somewhat redundant because it deals with the penalties, which some of the witnesses have found somewhat offensive, and the damages that can be assessed. However, section 54 also contains subsection 54(2), which is the provision that ensures that no one who obtains employment or accommodation in good faith can be ordered, dismissed, or evicted in order to remedy a discrimination. In fact, the repealing of section 54 in its complete state is inadvertent, because subsection 54(2) has no link whatsoever to the hate messages in section 13.

I'd like to defer to the expert to give the explanation on that, Mr. Chair.

The Chair: Mr. Nielsen.

Mr. Eric Nielsen (Counsel, Human Rights Law Section, Department of Justice): I'll begin with clause 5. Clause 5 would repeal section 54 in whole. Section 54 of the act contains three subsections. Section 54.1 and subsection 54.1(1) directly relate to section 13. Section 54.2 does not relate to section 13. My understanding of the amendment to the bill is that it would preserve the effect of section 54.2 by simply making it the new section 54.

One benefit of that, as I understand it, is that this will allow the subheadings to be accurate. If section 54.2 were maintained as is, in its current number, its subheading would be "Item", which relates back to orders relating to hate messages in 54.1, which is an inaccurate subheading. Rewriting section 54 simply to contain section 54.2 allows this committee to specify an accurate subheading.

That is my understanding of the intent and the effect of the amendment to the bill.

The Chair: Thank you.

This amendment proposes to keep a portion of section 54. The *House of Commons Procedure and Practice*, second edition, states on page 767: "The committee's decisions concerning a bill must be consistent with earlier decisions made by the committee."

Section 54 of the act deals with orders relating to hate messages and is therefore dependent on the existence of section 13, the offence of hate messages. As the committee has already voted in favour of the elimination of section 13, the chair is of the opinion that it is inconsistent to maintain an order for an offence that no longer exists.

Mr. Robert Goguen: Mr. Chair, we can't phone a friend, but we will challenge the decision. So we'll poll the audience.

Ms. Françoise Boivin: I was about to say that we'll challenge the chair, but I prefer that a Conservative challenge the chair. I'm honest. I would have done it.

The Chair: So the question is, do you sustain the decision of the chair?

Ms. Françoise Boivin: Can we discuss it? Is it non-debatable?

The Chair: It's non-debatable. It's the ruling of the chair.

Ms. Françoise Boivin: So I cannot tell the committee that I feel it's nice to agree amongst ourselves that we want to amend something that doesn't go well. Okay. Thank you. I won't say it.

The Chair: Those opposed to sustaining the decision of the chair?

[Ruling of the chair overturned]

The Chair: The question is on amendment G-2.

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

(Clause 5 as amended agreed to)

(Clauses 6 and 7 agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Ms. Françoise Boivin: Can we have a recorded vote?

(Bill C-304 as amended agreed to: [See *Minutes of Proceedings*])

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

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Thank you.

● (1245)

Mr. Brent Rathgeber: I have a point of order.

I would like to correct the record. After reading section 319 of the Criminal Code all the way to the bottom, I must agree with Madam Boivin's interpretation that the definition in 319 is the same in 318. That seems to indicate that some amendments, as Ms. Findlay has predicted, are forthcoming and would be in order. I criticized her interpretation and I would like to correct the record that she was in fact accurate and I was not.

The Chair: It's such a collegial group.

Before we go in camera, I'd like to thank the legislative officials and the officials from the department for being here to help us today.

[*Proceedings continue in camera*]

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