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Chair

Mr. Dave MacKenzie

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): Seeing that the time is 3:30, we will begin the meeting.

This is meeting 51 of the Standing Committee on Justice and Human Rights. Pursuant to the order of reference of Wednesday, June 6, 2012, we are studying Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression).

Just so that everybody understands, we have had a switch in the witnesses. We will have Hershel Russell and Sara Davis on the two panels. I had the clerk add committee business to the bottom of the agenda. We will move that over until Thursday.

The proposer of the bill is here today.

If you have an opening address, please go ahead with it.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you very much, Mr. Chair, and thanks to the committee.

I'm very pleased to be here today to launch the discussion on Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression).

I'm very happy that two of the witnesses we'll have today—Sara Davis Buechner and Hershel Russell—are transgendered Canadians, and you will be able to hear testimony from them based on their lived experience and not on what others such as I have to say about it. I'm disappointed that the vagaries of committee workload and scheduling did not allow time for all those who wanted to do so to appear before the committee.

I am very happy today, because it's an important day symbolically for these committee sessions to begin. Today is the Trans Day of Remembrance, and as you may have recognized, in the House I made a statement today calling attention to the fact that around the world over the last year, 265 trans people were murdered. In some countries, such as Brazil and Mexico, the murder of trans people has reached epidemic proportions. In the last year, 126 trans people were killed in Brazil and 48 in Mexico.

Extreme violence against trans people unfortunately also occurs in countries with otherwise progressive reputations, including Argentina and Canada. The list of those murdered last year includes Perla Maron, a 52-year-old transgendered police officer in San Juan, Argentina; and January Marie Lapuz, a young South Asian transgendered woman, very active in the LGBT community in British Columbia, including through conducting anti-homophobia

workshops in the schools. So Canada is not immune to the violence that is often directed at transgendered people.

As you know, Bill C-279 would do two things. It would amend the Canadian Human Rights Act to include gender identity—and, as it was originally drafted, gender expression—as prohibited grounds for discrimination. It would also amend the Criminal Code to include these two factors as distinguishing characteristics protected under section 318 as aggravating circumstances to be taken into consideration at the time of sentencing. It's a fairly simple bill in the changes that it proposes to make.

Several people have asked me about whether this is revolutionary or evolutionary change. The way I have always viewed this question is that we have a gap in our human rights legislation whereby transgendered Canadians do not enjoy the same protection of their rights as other Canadians. By explicitly adding these to the Canadian Human Rights Act and the hate crimes section of the Criminal Code, we fill that gap, so that when people need to use the legal system to protect their rights, they don't have to argue that their situation is similar to someone else's in order to receive that protection.

It also does another important thing. I think it makes a statement, if we pass this, from the House of Commons saying that, as is the case with other forms of discrimination, Canada does not tolerate discrimination against transgendered Canadians.

I want to take this opportunity to reiterate that the rights and protections that transgendered, transsexual, and gender-variant people are asking for are not special rights. They are simply the same human rights as those enshrined in the Canadian Human Rights Act for all other Canadians. These rights and protections are needed to ensure that trans Canadians can live out their lives as anyone else would do and with the full sense of safety that other Canadians have.

These same types of protections are being implemented in other places in Canada and around the world. Probably the first that I know of in Canada was in 2002 in the Northwest Territories, where these protections were entrenched in the human rights act and so have been in place for more than 10 years. The City of Vancouver has a harassment-free workplace policy that includes gender identity and gender expression. The City of Ottawa and the City of Toronto have similar policies, which protect people from discrimination based on gender identity and gender expression. More recently, both Ontario and Manitoba have amended their human rights codes to add this protection explicitly, and just this morning legislation to amend the Nova Scotia human rights code was introduced in the legislature of Nova Scotia to add gender identity and gender expression to the Nova Scotia human rights code.

These are rights and protections that the Canadian Human Rights Act review panel recommended in its review of the Canadian Human Rights Act. So for those who say, "Why is this necessary, aren't things already covered?", when the experts reviewed the human rights act, they felt it was necessary to fill this gap by adding these protections specifically to the Canadian Human Rights Act.

A final point I'll make in terms of legal obligations and documents is that Canada is a signatory to the UN Statement on Human Rights, Sexual Orientation and Gender Identity. That declaration recognizes the need for explicit protections for transgendered people all around the world.

• (1535)

The UN High Commission report recommends that a whole number of actions be taken by member states. I won't run through all of those, but two things are important out of that list. One is that there be comprehensive anti-discrimination legislation that includes discrimination on the grounds of sexual orientation and gender identity. The other is that governments who are signatories facilitate legal recognition of the preferred gender of transgendered persons and establish simple arrangements to permit relevant identity documents to be reissued reflecting that gender and name, in order not to infringe the rights of transgendered individuals.

Let me turn to what I have heard from MPs who have concerns about my bill. I had a number of discussions before second reading with people in all parties. The concerns fell roughly into three categories.

The first was that these protections are not needed. I want to deal with that in the general sense of the way transgendered Canadians experience their lives on a daily basis. It is clear that there is a great deal of discrimination against trans individuals. They are more likely to be victims of hate crimes. Those hate crimes are twice as likely to be violent hate crimes as those directed against other groups.

The second argument I heard from others was that these rights are already protected. I addressed that briefly in reference to the Canadian Human Rights Act review panel, which said they were not. Other minority groups have protections that are listed specifically in the Canadian Human Rights Act; therefore, they have visibility as identifiable groups to the public. When you go through that list of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or conviction for an offence for which a pardon has been granted, it makes a

declaration to Canadians about the protections that are afforded to these groups. Transgendered people are clearly missing from this list.

I should take a moment to clarify that sexual orientation is not a blanket term that offers protection to transgendered people. In fact many, some would argue most, transgendered people do not identify on the basis of sexual orientation. When specifically asked, somewhere between 30% to 40% of trans individuals identify themselves as straight, when given the choice; they do not see themselves as gay, but simply as people who were born in a body that does not match their gender identity.

The third objection or concern that was raised was that the bill as drafted was too broad and lacked definition and that it was thus difficult for people to know what was included in the bill. We will be discussing amendments in detail on Thursday to deal with these concerns. I have asked that they be forwarded to the committee. I believe you will be receiving them today through Madame Boivin's office, as I am not a member of the committee. On the basis of promising to have a discussion of those amendments, I received sufficient support for the bill at second reading to get the bill here today.

The simplest amendment will be to remove the term "gender expression". That answers the concerns of many, in particular on the Conservative side, who said that while gender identity is easier to define, gender expression is a more difficult term to define and for many in the public to understand.

A second amendment will deal with adding a definition of gender identity. We will deal with that very specific proposal on Thursday.

The third has to do with French-language use of terms. As the bill was drafted by the House of Commons drafters, we use the term *identité sexuelle*. We have heard very strongly from the transgendered community, and also from the legal community in Montreal, that internationally and in Quebec the use has shifted to *identité de genre*, and that there is a different scope of those two terms in French. Now the preferred term is *identité de genre*.

It's important to note that gender identity is something that everyone has, not just gay or transgendered people, so it's a broad protection that we're adding here. The difference for transgendered people is that they have a gender identity that is not congruent with their physiological anatomy at birth and that a great deal of discrimination and violence results from that mismatch, because of other people's attitudes. So what we're trying to do here, as well as provide the legal protection, is to change attitudes, to accept that transgendered Canadians are fully part of the community and have every right to be.

In the interests of time I'm going to skip through some of the things I was going to say and maybe just go to some concluding remarks, because I would rather have the committee hear from the transgendered individuals.

I would in conclusion reiterate that, in my view, the rights we're talking about here are basic human rights, not special human rights, and that all we're asking here is to fill a gap. We're not trying to cause a revolution in Canadian human rights law, but simply to fix something that is missing.

I would say that while working on this bill I've learned a great deal myself about the life experience of transgendered people. You will find them everywhere in our society, as you would expect. They are our brothers, our sisters, our children, our parents, our friends, our colleagues, and our neighbours, and they deserve the same rights and protections as all other Canadians.

I look forward to answering any questions you may have. I'll conclude there. Thank you very much.

• (1540)

The Chair: Thank you, Mr. Garrison.

Ordinarily, as the sponsor of the bill, you would be the only one at the table, but you have requested to have another witness with you.

If Sara wishes to make an opening address, we will accept that.

Mr. Randall Garrison: Thank you.

Dr. Sara Davis Buechner (Professor of Music, University of British Columbia, As an Individual): Thank you, ladies and gentlemen. I am quite honoured and humbled to speak to you today. I thank you all for your time and your kind consideration.

My name is Sara Davis Buechner. I am a classical concert pianist. Since 2003 I have been a professor of music at the University of British Columbia in Vancouver. I travel a lot, especially around North America and Asia, performing concerts when I am not in Vancouver teaching a class of about 15 aspiring pianists of world-class calibre.

After graduating from the Juilliard School in 1984, I gave a very successful debut in New York. In 1986 I was the top American prize winner of the international Tchaikovsky competition in Moscow. I received a lovely letter from President Ronald Reagan at that time. Some years later, I also played at the White House for President and Mrs. Clinton. I have a very nice photo of the two of them congratulating me on that.

At the age of 37, after a lifetime of questioning and fear, I was diagnosed with gender dysphoria, and I transitioned to my correct gender, which is female. My pianistic skills did not change one bit, but suddenly my concert schedule went from about 50 appearances per year to two or three, and the conservatory in New York where I was a popular teacher decided my skills were no longer needed.

With limited means of supporting myself, I took a job teaching small children at an upstate private school for about \$600 a month. I counted myself lucky, as most of the transgender friends I knew were completely unemployed. Some of them were homeless.

I learned to endure frequent verbal and occasional physical harassment as part of the price of that integrity, even in a city of such a cosmopolitan nature. One evening I was the victim of an attempted date rape at the hands of a man who assumed, since I was transgendered, I must be a sex worker. I didn't bother to report that to the police, because I didn't want to be harassed by them either. I

believe they would have assumed I was a trans sex worker and deserved everything I got.

In an effort to find meaningful employment, I applied to about 30 American colleges and universities with music openings. I received no answer from most of them, and rejections from the others. One professor from Rutgers university asked a colleague of mine if it was safe to leave me alone in a room with undergraduates.

But when I was called for an interview for the open piano position at UBC in Vancouver, I was pleasantly astonished to find that their music department was interested about two things only: one, my musical ability; and two, my teaching ability.

When I did get the job in a competitive audition, I was overcome by emotion on two levels. One, I would be able to pay my bills for the first time in many years. And two, I realized that Canada was far ahead in terms of its understanding and support of basic human rights.

I've lived in Vancouver since 2003 with my Japanese spouse, Kyoko, whom I could not legally marry in the United States. We are reminded of our second-tier status there every time we travel, because when we cross the border, the American agents force us to stand in separate lines for processing. They say we are not married.

Bill C-279 assures protection for people like me, with gender identity or gender expression needs. These needs are not wilful, they are not chosen, they are not ignorable. For trans folks and cisgendered folks, these are matters of life and death—of living openly, honestly, and freely without fear of extra prejudice, malice, or worse, violence. We do not need extra rights and we do not ask for them. We need the same rights as our Canadian brothers and sisters of all races, creeds, denominations, and identity.

In the past, I have lived in a country where those rights are not protected, where I was turned down for housing with no explanation whatsoever and no legal means of recourse; where I was fired from a job with no possibility of compensation; where I was called names on the street and scared to ride buses and subways; where I was laughed at by American government officials when I applied for a name change.

As a child of eight years old, my favourite composer was Mozart. When I was that age, my grandmother, an accomplished seamstress, made for me my very own purple Mozart coat with a frilly blouse. I was very proud of that coat and blouse, and it felt natural to me when I wore it, which I did to elementary school one day, where I was beaten savagely by my male classmates. The coat was ripped, there was blood on the blouse, and my glasses were broken right in the middle as well.

The teachers did nothing to protect me or my fledgling gender expression. My parents, however, were sent a note from the school principal advising them that their son was never to wear girls clothing to school ever again.

•(1545)

I know that some of you harbour legitimate concerns, or I think you feel righteous concerns, about transgender people in public bathrooms, fearful of cross-dressed attackers in the stalls. To my own knowledge, this has actually never happened anywhere in North America. However, you can see on YouTube many examples of stomach-churning violence against transgender people, being beaten in those bathrooms by bigots who don't like the way they look.

During the five years I lived as a woman, before being able to afford surgery—because of American health insurance not covering it—I was one of those people who risked a beating every time I went to relieve my bladder. If I had walked into a men's room, I would at best have been redirected, or at worst seriously injured. Trans folk go to the washroom to relieve their bladders behind closed doors in privacy, just like anyone else.

In terms of gender appearance and expression, I can talk for a long time about friends of mine who are intergendered, bigendered, people of one gender, who nevertheless look and sound like they are another. There's a wide, wide spectrum.

My dear friend Hsia-Jung, who had her breasts removed from cancer, cries every time she gets called “sir”. I have a female friend, Sheila, whose voice is two octaves lower than mine. I get called “sir” on the telephone. It's not a big deal. I'm happy to explain my own story to help people understand who trans people are. We are just, as they say in music, the variations on the theme—the human theme.

I will let other more statistically and politically informed witnesses here speak to the numbers of trans people who experience harassment, discrimination, violence, or death, either as murder or at their own hands. Suicide is a very, very common experience for trans people. There's a desperation when you don't know, don't have the facts, and don't understand. I know it all firsthand.

In my own uneducated fear as a young adult, how many times did I overdose and try to die because I did not understand why I felt as I did or know what to do about it? Thankfully, I found people who assisted me. Now I thank God every day of my life that I have lived 15 years, since becoming female, in internal peace, happy to be real to myself and real to the world.

I am fortunate to be married to a wonderful spouse; fortunate to see my brother's two young daughters grow up—they love their Aunt Sara and I love them; fortunate to be alive and to help my aging parents; fortunate to be teaching wonderful Canadian students; fortunate to be playing the piano again, talking to audiences frequently and playing the piano for them in Vancouver, Victoria, Winnipeg, Kelowna, Red Deer, Edmonton, Montreal, Timmins, Toronto, Guelph, etc.; and fortunate to be living in the most progressive, humane, and beautiful country that I know, Canada.

I am beyond grateful to be able to make my home here with dignity and integrity. I'm confident, too, that my fellow Canadians will see the importance and necessity of passing Bill C-279 to help all of us live in safety and equality.

Thank you.

•(1550)

The Chair: Thank you.

Mr. Côté.

[*Translation*]

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you very much, Mr. Chair.

Thank you, Mr. Garrison. Thank you for being here, Ms. Davis Buechner.

Furthermore, I'd like to take this opportunity to tell you that your presentation... Is everything all right?

Dr. Sara Davis Buechner: Just a moment please. I wish I could speak French fluently.

Mr. Raymond Côté: Can you hear the English interpretation now?

Dr. Sara Davis Buechner: Yes, thank you. Pardon me.

Mr. Raymond Côté: Not a problem.

Ms. Davis Buechner, you spoke about cruelty and various incidents. Unfortunately, I've heard these stories all too often from friends and people I know, whether they be homosexual, transgender or transsexual.

You know, I've been an advocate within the NDP for eight years out of thirst for justice. It was first and foremost a thirst for economic justice. However, the traditional heterosexual, white man who was more entitled to some opportunities than others, and that's not necessarily a positive thing, was quickly confronted with these injustices that certain people were unfortunately experiencing.

In the context of my advocacy activities, I was able to meet a very active group of bright activists who had experienced poverty and violence. So I'm not surprised by what you told us. I think it's very important and very courageous on your part.

I've come to a conclusion. This is not about a choice, but rather about a way of being. Guided by this idea, it is up to our society and our legal system to reflect this reality.

Of course, my colleague Randall's bill will not immediately resolve all of these unfortunate cases. However, we are finally bridging a gap. Could you tell the committee how you feel about the amendments to these sections of the Criminal Code and the Canadian Human Rights Act? Do they give you hope?

[*English*]

Dr. Sara Davis Buechner: It's impossible for me to speak to the specifics of everything that they would do, but I think that, in terms of my own experience of the past, to be able to procure legal representation and to have such rights guaranteed in the Constitution, in the Human Rights Act, means that there is some sort of legal recourse if one experiences harassment and discrimination problems, particularly in the hospital from doctors or nurses who do not understand transgender issues.

If one is indeed harassed on the street, hearing “Hey, buddy, you look like a girl”, these kinds of statements and harassment issues are very specific to the trans community, being that people decide there's one way to look at a person's gender, and anything outside of that is not okay. Such experiences are really not about whether one is gay, or straight, or bi, but really very much about the outward appearance.

It seems to me that it would be a great, great advantage...or not just “advantage”. That's the wrong word. I think really it is definitely a right to have the same rights as anyone else in protecting one's ability to earn a living, receive health care, make a family, and so on, just the daily things that most people really do take for granted, particularly for trans people in terms of daily safety and going about their business in their lives.

• (1555)

[Translation]

Mr. Raymond Côté: You spoke about a crime that you were a victim of. You decided to not file a complaint because you did not think that you would get support from the police. One could also be talking about assistance from a lawyer or from the health system. One could almost draw the conclusion that without this bill, you are a second class citizen because you do not necessarily benefit from the protection and assistance of, for example, police or medical services unless those individuals are already open-minded.

[English]

Dr. Sara Davis Buechner: Yes, this is absolutely true. In fact, I cited specific instances. When I was asked to leave a job, I consulted a lawyer—a rather high-priced one, I might add—who advised me simply to quit, that it would not be worth my time and money to fight the case, and that it would make me look bad. It would be a better course of action to simply quit and look for employment elsewhere.

In terms of the other experience, yes; when you live in New York City, you realize that sometimes the police are.... Well, they're a little bit different than you are, and they have their experiences.

So no, I did not feel that I would be taken very seriously, particularly as I'd had the other experience of going to change my name legally, a perfectly basic right that every American citizen has, and having three people actually point at me and laugh. I didn't really trust many government agencies at that time.

The Chair: Thank you.

Mr. Rathgeber, go ahead, please.

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

Mr. Garrison, as you probably know, I was one of the individuals who voted against your bill at second reading. I had some of the concerns you outlined at the beginning, and still do, although I eagerly await your amendments in hope that they might alleviate some of my concerns.

Let's talk about those. With respect to the whole issue of redundancy, if I can call it that, you are no doubt aware that gender identity disorder is a formal diagnosis used by psychologists and physicians to describe persons who experience significant gender dysphoria. It appears to me that if an individual is suffering from gender identity disorder—perhaps suffering is the wrong word—but if they are experiencing gender identity disorder, they are subject to the disability provisions of the Canadian Human Rights Act. Would you agree with that?

Mr. Randall Garrison: I guess I would back up a step and say that, again, speaking a bit for transgendered people, most do not feel

that they have a medical disability. They do not feel there's anything wrong with them. So the very listing of gender dysphoria as a medical disorder is very controversial in the transgendered community. It has some perverse advantages, I would say, in the Canadian medical system in that sometimes, in some provinces, it qualifies people for medical assistance with surgery.

Mr. Brent Rathgeber: I would suggest to you that another one of those perverse advantages—to use your verbiage, not mine—is that it affords one human rights protection.

Mr. Randall Garrison: I am not a human rights lawyer, although I have some background in working with international human rights. What I have been told is that for people to launch a case, such as you're suggesting, they have to spend the first part of their time in court establishing that their problem is like a disability or that it fits under a disability, whereas, if protection were listed in the Canadian Human Rights Act, they wouldn't have to go through that stage of demonstrating that it's like some other protected right—it would be more direct.

I still think that the more important aspect is the declarative aspect, so that there's no confusion in Canada about whether something is or is not protected. If it's listed, it is protected.

Mr. Brent Rathgeber: Okay. So you know that in 2009 the Canadian Human Rights Tribunal said, in *Montreuil v. Canadian Forces*, that there's no longer any doubt that discrimination based on transsexualism is discrimination based on sex or gender, as well as discrimination based on disability.

Mr. Randall Garrison: Yes, I'm aware of that.

Mr. Brent Rathgeber: Right. And that in *Kavanagh v. the Correctional Services of Canada*, the same tribunal states that discrimination on the basis of transsexualism constitutes sex discrimination as well as disability discrimination.

• (1600)

Mr. Randall Garrison: I'm aware of that.

Mr. Brent Rathgeber: And that your own court, the B.C. Court of Appeal, affirmed in *Vancouver Rape Relief Society v. Nixon*, that although they found that there was no discrimination, they agreed with the tribunal that there was discrimination on the basis of sex when an individual claimed that they were discriminated against because they weren't able to work at a rape crisis centre.

Mr. Randall Garrison: But in all those cases, my understanding is that first you had to make the arguments that the situation of the person was “like” the protected grounds. So it makes a two-step legal process out of it.

Again, I would still say it's the—

Mr. Brent Rathgeber: Except now that the Canada tribunal has emphatically stated that there is no longer any doubt, I would suggest to you that your first hurdle has been cleared by precedent, by stare decisis. There is now case law that supports the proposition that individuals who have a genuine gender identity disorder are entitled to human rights protection.

So I think you're agreeing with me, then, that the purpose of your bill—I don't want to put words in your mouth—is largely symbolic. You want to state it. You want to state that this class of individuals has protection, even though you're close to agreeing with me, if not agreeing with me, that they already have protection.

Mr. Randall Garrison: I'm still arguing that there is an ambiguity for most people in the public and for most people who are seeking legal protection, because they cannot find themselves listed but have to squeeze their case into another protection. And I still think that's true.

The Canadian Human Rights Tribunal and the Canadian Human Rights Commission will be here on Thursday as witnesses. When the review was done of that legislation by experts, it was recommended that the term "gender identity" be added to the legislation. So when it was reviewed, the recommendation was made, despite the case law

Mr. Brent Rathgeber: I'm going to need to ask them why on Thursday.

Mr. Randall Garrison: Okay.

Mr. Brent Rathgeber: Thank you.

The Chair: Thank you.

Mr. Cotler.

Hon. Irwin Cotler (Mount Royal, Lib.): Thank you, Mr. Chairman.

I have a question for both Mr. Garrison and Sara Davis Buechner.

Mr. Garrison, I wonder if you could share with us the experiences of jurisdictions that have explicitly identified gender identity as a prohibited ground of discrimination—Ontario, Manitoba, the Northwest Territories. Have they reported an increase in accessibility to services for these individuals, on the one hand, or a decrease in criminal offences against them on the other?

My question somewhat follows that of Brent Rathgeber's, but it's not.... While recognition is important from the symbolic point of view, I'm talking about the consequential effects of having this type of inclusion in the law.

Mr. Randall Garrison: In Manitoba and Ontario there has been less than a year's experience—just a few months' experience, in fact—so we don't have any reporting or time for this to have taken effect so as to give you that information.

In the Northwest Territories, we have had 10 years' experience, but I'm not aware that anyone has done a specific report looking at the situation. I know anecdotally of transgendered people who live in the Northwest Territories who feel that it has made a difference, but I'm not seeing any formal study.

Hon. Irwin Cotler: Okay. Thank you.

To Ms. Buechner, one of the issues that were raised during debate at second reading was the problem that some transgendered Canadians have had in securing equal access to health care.

I'm raising this because, as you both have said, this is not seeking special rights; it's basically seeking the same rights—equal rights.

So my question is whether you yourself have experienced—and if you did, whether you'd be willing to share with us—problems with regard to equal access to health care and whether this bill would address that issue.

• (1605)

Dr. Sara Davis Buechner: In Canada, I myself have had no problems with that.

I think the best anecdote I can tell is a rather humorous one, of going to an emergency room in New York City and sitting down because I had a raging flu. The nurse asked me various questions about my age and weight and so forth. Then she asked me, "When was your last period?" I said to her, "Well, I haven't really had the first one yet."

Voices: Oh, oh!

Dr. Sara Davis Buechner: That's a bit of.... I'll be here all week. Thank you. Don't forget to tip the server.

Voices: Oh, oh!

Dr. Sara Davis Buechner: But what's pertinent to the story particularly is going into a hospital emergency room, when one might be in great distress and maybe not in one's most communicative state, being able to say "I am a transgendered woman", and having the nurses and doctors know, okay, that means A, B, C, D, E. You don't have to be a real expert on your own medical issues in order to tell the doctor what he or she should be prescribing for you. That is something that I think is of great concern to all transgendered people.

Mr. Randall Garrison: Mr. Chair, not all of the provinces provide equal access to medical services for the transition and for those who might require surgery. So there is a problem with equal access to those services in Canada.

The issue I have heard most often from transgendered people is on the question of identity documents and the difficult procedures that are often required for getting identity documents. Putting gender identity into the human rights code would give a basis for clarifying the rights to those identity documents and the right of access to them without some of the hurdles that are placed before transgendered people.

Dr. Sara Davis Buechner: I should add in a more serious vein that because I was rather butchered by a doctor in Bangkok, where I originally went for surgery, it was after I moved to Canada that I sought corrective surgery. There were no doctors who performed this kind of surgery anywhere west of Montreal. There's an excellent clinic in Montreal, where I went, but someone without the access to buy plane tickets and get there would not have access to this medical care.

Hon. Irwin Cotler: Given your own experience, now that you're here before us as a witness today, are there any measures beyond this bill, beyond this particular piece of legislation, that you would recommend from your own understanding and experience that Parliament might consider in order to better safeguard the rights of transgendered Canadians?

Dr. Sara Davis Buechner: I've just been watching about an hour of Parliament, and I don't ever want to go in that room again.

Voices: Oh, oh!

Dr. Sara Davis Buechner: No, I'm going to let my colleague speak to that. I wouldn't put myself in the position to say what the Canadian Parliament should do.

The Chair: Thank you.

Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you very much for being here today, both of you.

This is probably more for you, Mr. Garrison. During debate of this bill and its predecessors, you will recall that concerns were raised regarding the term “gender expression” and the fact that it was undefined and therefore, for some, potentially vague, and could be widely interpreted.

I really have two questions in one. Do you think adding the term “gender expression” as a prohibited ground in the Canadian human rights code and in the Criminal Code could create vagueness and legal uncertainty? Conversely, do you think the removal of that term would assist the broader public in understanding the intent of this bill?

Mr. Randall Garrison: I would say that within the transgender community, as Sara pointed out, there's a great variety and a great flowering of different approaches to gender, particularly among young people. I find that when talking to people in the transgender community, the concern for the inclusion of the term “gender expression” is sometimes age-related. Younger people feel that “gender variant”, which is a term they like to use, not conforming to either stereotype, is something important to be protected.

But in my discussions with members, I do acknowledge that this is not as clear a legal concept in Canadian jurisprudence, and it's not as clearly understood by the public. That's why I have said that I think we will still make the basic progress we need without including the term gender expression. That's why the amendments to remove it from the two sections will come forward on Thursday.

Ms. Kerry-Lynne D. Findlay: I recall that you stood in the House and indicated that you were willing to look at removal of “gender expression” as an amendment and also a definition of “gender identity”. Are we to take it that those will be the substance of the amendments you're going to propose?

Mr. Randall Garrison: Yes, they will. I had the same experience in talking to members of Parliament who had concerns. I don't believe it detracts from the bill to add a clear and simple definition for “gender identity” and one that is consistent with Canadian law and international law.

That's what you'll see coming in the amendment—a very simple, very clear definition, very consistent with the existing jurisprudence. I don't believe it detracts from the bill, and if it helps others be more comfortable with it, I think that's a good thing.

• (1610)

Ms. Kerry-Lynne D. Findlay: You mentioned international law. Is there somewhere members could look for some international law definitions?

Mr. Randall Garrison: The basic international law compendium was included in what's called the Yogyakarta principles, where

international jurists got together in Indonesia and tried to clarify international law by in a sense codifying it, although it's not been adopted by any legislature. The Yogyakarta principles are easily available online, if someone wants to have a look at that.

The definition used there is for gender identity. It uses the word “including” and adds many other things to it, but the definition I'll be proposing to you is the first part of that definition and the part that is consistent with Canadian jurisprudence, I believe.

Ms. Kerry-Lynne D. Findlay: In other words, I gather what you're saying is that this is a good reference, but the definition you'll be putting forward is one that is—

Mr. Randall Garrison: Condensed or shortened?

Ms. Kerry-Lynne D. Findlay: Condensed: yes. I was thinking of a tighter definition, a more “succinct” definition, I suppose one would say.

It looks like we're going to be able to take a look at that soon.

That's it. Thank you.

The Chair: Thank you.

Mr. Scott.

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you, Mr. Chair.

Thank you both for your testimony.

In particular, Professor Buechner, thank you so much for coming and sharing with us a very acute analysis of the issues tied into your own experience.

I wanted to ask you about the whole question of symbolic or declarative value. Even if we assumed that one way or the other, human rights commissions or courts, because of their own pushing the boundaries in seeking a more equal society, might find ways to interpret existing discrimination in order to, as much as they can, help folks who are suffering discrimination on the basis of being transgendered.

My own experience as a gay man is that adding the words “sexual orientation” to human rights documents does what Mr. Garrison says: it just cuts through the noise and makes it very clear that on the basis of a particular difference that can be used for discriminatory purposes, I'm as human as anybody else.

I personally have never had to use this in a legal context, yet I know others have. At the same time, its presence has great symbolic value for me.

I'm just wondering if that resonates at all with you.

Dr. Sara Davis Buechner: Oh, greatly, I think, simply because I think it's a very fundamental human need to belong. We all want to know where we belong, with whom, and who our peers are.

Certainly when I was an adolescent I knew I had gender issues and questions, but when I first went to college and I met gay men and lesbians, I wasn't them, either. Something was wrong here. I didn't feel straight. I didn't feel gay. Where did I belong? I needed information badly, and it wasn't really there to be had.

Similarly, I would say that when I was able to emigrate to Canada and have a marriage be recognized, I felt I was in a home that understood me as a person and valued that commitment that I made.

I think there is incredible importance to adding gender identity to the human code, simply because here we are, and this is how we define ourselves to the best of our abilities. I'm a member of one of the smaller minority groups around, for sure. Yes, that symbolic value is very important, but the real value of it is even more important.

Mr. Craig Scott: Thank you.

While I'm on this—it's a similar thing—I'd like to thank you for a turn of phrase that I scrambled to scribble down, even as my colleague Ms. Boivin did. You said that trans people are “just variations on the theme—the human theme”. I thought that was very important for us to think about, because I think of this bill as being essentially about recognition of humanity through recognition of difference, distinct identity, as part of how we understand equality. Your presentation here today I hope has reached a lot of us, to make us understand that even more.

We received a letter from an organization called Gender Mosaic, based in Ottawa. They have been around for about 25 years as a transgender social and support group—

•(1615)

The Chair: They're here.

Mr. Craig Scott: Oh, they are here. Fantastic.

I'm not sure if they'll have a chance to testify, so I want to simply ask about something that appears here in their brief:

Both gender identity and gender expression work hand in hand....And it is gender expression...that is usually the cause of discrimination, violence or ridicule in our community....it is the expression of gender that may cause a landlord to refuse accommodation. The fact is that it is usually the expression of gender that can trigger acts of discrimination, ridicule or violence.

I'm wondering if you would take a few moments to comment on that interlinkage.

Dr. Sara Davis Buechner: Well, without question, it was when I was transitioning that I would be accosted on the street by people, or things said to me constantly on the New York subways—over and above the way that people talk to you on the New York subway anyway—with various opinions about how I looked or what I really was.

Even, I have to say, to this day, when I get into a taxi, especially when I'm tired, and say “Take me down to UBC”, I'll hear, “Sure, sir”, as if they've really figured me out. I get “figured out” from time to time, but you know, I don't need figuring out. I'm just who I am.

Two things that come to mind in response to your statement, though, are from doctors—very prominent doctors whom I was fortunate to be able to see. I went to a quite famous endocrinologist in New York when I was transitioning. To that man, there was no

question that there were lots of medical issues involving transgendered people that were not really even fully understood and still needed plenty of research.

Another moment of hilarity came from my therapist, who had a heavy Austrian accent, telling me at one of my first sessions, “Well, you know, this gender—we think there are about 17 of them. However, we've only got two boxes. You want the M or the F?”

Voices: Oh, oh!

Dr. Sara Davis Buechner: It's a humorous story, but it certainly tells of one of the perils that we face as transgendered people. We're made up of so many things. We're born in the way that we're born, and yet society is the part that gives us the sheet of paper and says, okay, here's your box. Well, what if that box doesn't feel right?

I have one tale of experience; we have another witness who has a different tale of experience. But so many trans people I've met—male to female, female to male, inter-gendered, as I said.... I've known people who could pass for whatever gender they wanted, depending on what they were going to wear that day.

The human condition is a wide one, and what you say about the expression is really, to me, at the heart of it. I don't want people harassing me for how I look or who they think I am, or “figuring me out”, or figuring anybody out, and then feeling that this is okay because you don't fit into those two boxes.

The Chair: Thank you.

Mr. Albas.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Mr. Chair.

I would like to thank both witnesses for appearing here today.

I know from my previous private member's bill that certainly it is a lengthy process, so I commend Mr. Garrison for his work. It's never easy to put together a bill and then to go through the whole process. I know that for a fact.

Because some of the questions regarding human rights commissions and tribunals have already been asked, I'm going to take the same approach as Mr. Cotler and not approach it from a symbolic basis but more on the consequential aspects of it.

Subparagraph 718.2(a)(i) of the Criminal Code currently contains a list of numerous aggravating factors to be considered when a crime is motivated by hate, bias, or prejudice based on “race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor”.

Do you think this section, which currently contains a non-exhaustive list of factors, can be interpreted to include crimes motivated by hate, bias, or prejudice based on gender identity?

It is my understanding that the gender expression aspect will be amended down the road; is that not correct?

So if we could focus, then, on gender identity, I'd appreciate it.

In other words, is this amendment to subparagraph 718.2(a)(i) necessary?

Mr. Randall Garrison: I guess it's the same argument that was made earlier, in that there is a value in the Criminal Code's establishing standards of behaviour and telling people what behaviour we do and do not accept in Canada. By listing gender identity in that list, we are making a declaration, just as we made for the other groups.

Now, I understand that there are some people who don't like the hate crime section of the Criminal Code, and that's a debate for a different day. But if we are going to list groups, then I believe that gender identity is equally worthy of listing as any of the other groups that are already listed. You could make the same arguments, in essence, about several of the other things in the list: "Oh, we don't really need them there, because they'll be included."

My argument is simply that equality for transgendered Canadians means listing and declaring in the same way we have for other factors in that list.

• (1620)

Mr. Dan Albas: Again, in the criminal law context, could you provide examples of offences that have been committed in relation to gender identity?

Mr. Randall Garrison: Well, I started today by talking about the murder of a transgendered woman in New Westminster, British Columbia, who was very active in the community in promotion of equality for transgendered people. She was from the South Asian community and actively conducted workshops in public schools so that people could come to know a transgendered person and understand her life situation as she spoke from her experience.

While that was a murder case and a more extreme case, there's obviously no "aggravating" factor—in murder, we're at the top—but there are many other legal cases in which the motivating factor appears to have been hatred against transgendered people. I didn't bring specific examples with me today to discuss, but it's certainly not difficult to find them.

Mr. Dan Albas: Do you think the offences would have been prevented had this bill been in place?

Mr. Randall Garrison: Does the Criminal Code prevent crime? That's a large topic that we could talk about.

I think, yes, it does help for us to say in our Criminal Code what behaviour we think is unacceptable. It does, in general, help people adhere to a standard of behaviour that we find acceptable in our society. I don't think this is any different from any of the other things that we list in the Criminal Code.

Mr. Dan Albas: Were prosecutors unable to proceed, or courts unable to convict, because the grounds were not listed? And also, in your opinion, would the impact of this bill be at the sentencing stage?

Mr. Randall Garrison: Again, not being an expert in criminal law.... I'm not a criminal lawyer, but having worked in the field of criminal justice for a long time and having talked with prosecutors about this, the problem is that often, as was the case with Ms.

Buechner, people are reluctant to even file the original complaint because they feel they will not get equal treatment under the law.

One of the things that would help...and that did help when we listed other things, was that by saying that gender identity is included here, it will encourage people to report those crimes, and will encourage people to expect and be able to demand equal treatment under the law.

The Chair: Thank you.

Madame Boivin.

[*Translation*]

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

Thank you to both witnesses for coming today.

Mr. Garrison, I'd like to thank you for the work you have done in this area. Like any issue of this nature, education, I believe, has a large part to play. The same concerns, reflecting different values perhaps or different degrees, were raised when we were considering same-sex marriage. This is never an easy thing to do because it can run up against the beliefs of certain individuals, but I think that this ultimately is an issue of respect.

I would like to reassure the committee members. We will be tabling four amendments on Thursday. They may dissipate certain concerns. I am not an expert in this area but here is what I understand.

I was listening to Mr. Rathgeber's questions, that are logical up to a point. The argument that one often hears with respect to issues or amendments of this nature, is that what is being sought already exists, just not explicitly. Jurisprudence makes up for this by guaranteeing a certain openness because rights are acknowledged. However, those rights are not always written down. In writing them, in my opinion, two very important issues are resolved. First, there is clarification and therefore no more ambiguity. One would no longer need to prove that these are protected rights simply based on a liberal interpretation. I am not referring to my colleague, Mr. Cotler's, party; I am using the word in its better sense. It's a joke.

Second, in my opinion, when you write something down and you're not afraid to state it clearly, that constitutes a form of education. It also fosters respect for a real situation. I don't think that anyone around this table wants to see people hit, beaten, verbally, physically or otherwise abused, simply because of what they look like or what they represent. I don't think anyone supports that. The message we are sending out with Bill C-279 is that this is written down, and it will certainly help improve the situation.

Have I understood?

•(1625)

[English]

Mr. Randall Garrison: Yes, I believe so. I think writing down clarifies, and also entrenches in the law. It wouldn't be subject to future judicial decisions that might narrow the grounds somehow. I'm not saying that would happen, but it does entrench those rights. It does provide that sense of inclusion and encourages people to use the law to protect the same rights that others have.

On the question of redundancy, without being flippant, I think it is true that if we went to the Criminal Code, we could shorten it a lot. There's already a lot of redundancy in the Criminal Code. So I don't think that.... If that argument is true, and I don't believe it is true, I don't think that's something that should bar us from including this, at any rate.

I guess a third thing I would say is that when I brought this bill forward, I did it in the spirit that—you mentioned it—I believe there are Canadian values of inclusion that are very, very important to all of us in Parliament. I don't believe they are exclusive to one side or the other. That is why I have spent a lot of my time on this bill, talking to people in other parties and trying to understand where the common ground is.

Regarding the amendments, in my best world, I wouldn't be amending the bill, because I have confidence in the way it was written. But what I have tried to do is find the common ground we have in Parliament, as Canadians, to move forward on this question. That is why I am bringing the amendments forward, hoping—

Ms. Françoise Boivin: With the amendments, though, are you satisfied that it does reach the protection you are seeking?

Mr. Randall Garrison: I believe it does, and I've talked to some legal specialists who believe it does.

As I said earlier, the main place that I do find some concern is in the transgendered community, where people who don't fit either box, as intersexed, or people who do not want to fit any box of gender, worry that leaving out gender expression gives scope for their rights not to be included.

Now, I believe that legally we'll be on strong ground there, but we will be missing the educative purpose of gender expression. On the side of that are the fears and misunderstanding created around that.

So in trying to find that common ground, I am prepared—I'll be substituting at committee—to bring forward those amendments.

The Chair: Mr. Jean.

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

Thank you for coming before us today.

I admire your courage. I would suggest it's very commendable. It's no easy thing to come to a place like this and testify. I speak to you in particular.

I'm asking you to convince me, first of all, that your rights are not protected. I was one of those who also voted against it. I was a criminal lawyer for many years, and I have to tell you that I have seen a lot of violence against a lot of groups of individuals. I grew up

in northern Alberta, and there was actually violence against redheads there.

Voices: Oh, oh!

Mr. Brian Jean: It may seem funny at this stage, but when I was a young boy it did not seem funny, running from high school every day.

I do understand that yours is a bit more severe, but I can't change the colour of my hair very easily either.

I am interested in a couple of things. The first is your position relating to not being protected. Reading, for instance, section 15 of the Constitution, it states particular things that are protected. As Mr. Rathgeber says, and I want to reiterate, the case law, especially regarding Ontario and B.C. and the human rights commissions there, identified that in terms of gender identity, transgenderists, intersexed, and cross-dressers all deserve that protection and do receive that protection.

First, how do you convince me that it's not already covered? Because I don't, quite frankly, buy your argument now. I think Mr. Rathgeber is right, that it seems to be more of a situation where it's identifying yourself as a group apart from other groups, even though, to my mind, you're already protected.

Like you, Mr. Garrison, I believe the Criminal Code is too long. Many of our acts, including the Income Tax Act, are the same way.

So that's the first question. The second question is the issue of disability. I myself am not transgendered, or of that community, but I don't look at this as a disability issue. I think it's a choice, from my reading and what I've seen. Most people make the choice based upon what they believe their personal position is, and I understand that.

So that would be the second thing. It appears to me that some people want to have it identified as a disability so that they can receive, to my understanding, medical care under certain conditions.

I would like you to address both of those issues, if you could, and why you didn't bring forward a bill to identify it not as a disability, in particular.

•(1630)

Dr. Sara Davis Buechner: I want to answer your questions with a question: why did you choose to have red hair?

Mr. Brian Jean: I didn't. And I agree with you; I agree with your position on that.

Dr. Sara Davis Buechner: However, I would say to you that I'm surprised your parents didn't just dye your hair black when you were a child so that you wouldn't get beaten up when you went to school.

Mr. Brian Jean: I was the youngest of eleven, so that probably answers that question. Most of it came from home.

Voices: Oh, oh!

Dr. Sara Davis Buechner: I'm just trying to—

Mr. Brian Jean: I only have five minutes, and I would really like my questions answered. I don't disagree with your position in relation to your point on that.

Mr. Randall Garrison: I think we've gone through the already-covered ground several times. I guess I would say that in some respects the proof is in the pudding. The lived experience of transgender people is that they find that when they go to do certain things in their daily lives, things that others do, they have trouble doing them. One of those things is identity documents.

Mr. Brian Jean: But they are protected. In my mind, they are protected, and in fact the laws protect them. It might be a matter of enforcement, or people's understanding of it, but it's not a matter of them not being protected.

My first point is that you haven't convinced me that it needs protection, that it isn't already there, but my second point—which I would like you to deal with, because I think I have only a minute left—is the issue of disability. I didn't realize there was a difference of opinion in the community itself, so I would like you to deal with that.

Mr. Randall Garrison: Well, why I didn't bring forward a bill that...I guess I won't deal with.

The question of listing things as a disorder, and then providing health services on the basis of that disorder definition, is what's controversial in the transgendered community. What is not controversial is that transgender people feel they have the right to medical care.

If your arm is broken, you have the right to go and have it fixed. If you're in the wrong body and you need to have things adjusted for your mental health and your physical health, then that same right should exist—not on the basis of a disability but on the basis of the same rights that other Canadians have.

Dr. Sara Davis Buechner: I guess I would also add that the *DSM*, which is the medical journal that lists gender dysphoria as a disability, for most of the 20th century listed homosexuality as a curable disorder. They finally changed that.

There's the same kind of controversy going on about that, not only by politicians, but certainly by medical professionals. The people who I saw, who dealt with me on the basis of my being—quote—disordered, certainly did not think that I had a disorder.

Mr. Brian Jean: And I would suggest that would be the best thing to change for your community, is whether or not it's a disability—which I don't believe it should be listed as.

Dr. Sara Davis Buechner: Yes. It's beyond my hands. I'll stick to Mozart, myself. That's a big, big job, which is outside the realm of... I think it's a different issue that we're discussing here.

The Chair: Thank you.

We've come to the end of the first session.

I want to thank both witnesses for your testimony today. It's been very enlightening and beneficial to the committee.

We'll just take a minute and switch panels.

• (1630) _____ (Pause) _____

• (1640)

The Chair: I'll call the meeting back to order.

As I know the clerk has indicated, if you have an opening address, please make it now. I would ask you to keep it to about the seven-minute length or less. We are going to run out of time here, I'm sure.

So amongst yourselves, decide who will go first. That's fine with us.

Go ahead, Mr. Russell.

Mr. Hershel Russell (Psychotherapist, Trans Activist and Educator, As an Individual): *Bonjour.* I'm very honoured to be here today. It has so much meaning to be here on the Trans Day of Remembrance, which is a worldwide occasion, as you know.

My name is Hershel Russell. I'm a psychotherapist in private practice in Toronto. I also do specializing in work with transgender people and their families. I also do a lot of education work around trans issues across the province and in other parts of Canada. I'm a clinical member of the World Professional Association for Transgender Health, and I'm the co-chair of the education committee for the Canadian branch of that organization.

One of the things I wanted to mention is that we have had two really excellent pieces of research recently, one from the United States, a very large piece of research, the National Transgender Discrimination Survey, and another from Ontario, the Trans PULSE Survey, which has given us a tremendous amount of information about trans lives.

Some of the information I would really like you to grasp in terms of this bill is that both studies show very clearly that we are an exceptionally highly educated community. We have more education than almost any other community, and we are a community that suffers from extraordinary poverty. I would like to argue that this combination of things can only be explained by discrimination. There really isn't another way to explain it. Both of these documents also really show the terrifying, heartbreaking levels of suicidality in our community, and certainly, as a mental health professional, I have to work with these painful, painful issues over and over and over.

Speaking a little about myself, because I know that personal stories are important, I look fairly convincingly like a man these days, especially when I don't speak. Once upon a time, I looked pretty convincingly like a woman. However, there was a period in between—of about three years—when I looked very gender ambiguous and, on a daily basis, we punish people who look gender ambiguous in this current society.

I remember walking down the street and people gazing like this... quite frequently. I remember walking down the street in Toronto in the late 1990s, and as I walked by, people were spitting on the sidewalk in front of me. I remember going to the drugstore to buy a tube of toothpaste. I'm getting my change, and the clerk says: "Thank you, sir. Oh—madam. Oh—sir. Oh—madam". Suddenly I'm this spectacle and everyone is looking at me.

This kind of gaze also, as my colleague Sara was saying, really impacts on our experiences of public bathrooms. In that ambiguous period, I remember situations where in the first year I at first would go to the women's bathroom. Towards the end of that year, sometimes I would have a woman open the door, go "oh!", and leave. A little further on I had a woman point at me and say: "You get out of here. You don't belong." Then I began to go to the men's washroom, at least some of the time, where I faced a small but very real threat of physical and/or sexual assault.

I wonder if you would be willing to imagine the impact on anxiety and the impact on self-esteem for someone who, every time they need to use a bathroom in a public space, has to choose between the high likelihood of harassment and the low but real likelihood of sexual assault. You can understand that kind of level of stress, perhaps.

I was very fortunate and I feel enormously blessed to have not been physically assaulted, but I will never forget the time when I was coming home after a concert. I was standing on the corner of Queen and University opposite the concert hall in downtown Toronto. Not very far in front of me, a white van pulled up, and the door opened. Inside the van were half a dozen young men. They shouted, "You epithet, epithet, get in here." I was terrified that they would seize me, because they were very close, and also terrified that, because I looked very gender ambiguous, the people standing around me would make no attempt to protect me. Thank goodness the light changed. But I still, many years later, when I walk past that corner, feel my heartbeat speed up.

• (1645)

Much more recently, I was struggling with issues around identity documents. I'm very glad the issue is being raised. I have a medical condition that means it would be quite dangerous for me to undergo transgender-related surgeries. So far I have succeeded in holding off from having them anyway, but because I have not had any of those surgeries, I am not permitted to change my passport.

Looking like this, I walk through the security system at an airport with a passport that says I am female. For this reason, there are a number of countries I simply don't go to because I'm afraid to.

Recently, however, I went down to a very important conference in Atlanta, in the United States, put on by WPATH, the World Professional Association for Transgender Health. I came home a little early because I had work the next day. I was in the airport in the afternoon, when it was slow. There were not many people around, and the security guards were perhaps a little bored.

As I handed over my passport, I saw a nudge. A security officer came up to me. He was large and he was red in the face—and he was red in the neck—and he said to me, "Go into the scanner". Of course, trans people are particularly anxious about the scanner, because it creates an outline of the genitals. I was a little shaken, but I came out of the scanner and I waited. He said, "Into the scanner again". And then a third time he made me go into the scanner. By this time, I could hear titters.

He then looked me in the eye and said, "I have to examine you manually, because there seems to be something—here": he put his

hand on my chest and squeezed, looking me in the eye. You can perhaps imagine my humiliation and my anger.

I am still a little disappointed in myself that I didn't make a complaint. I was alone in the airport, I was afraid, I was humiliated. It was Atlanta, and as a Canadian I have some assumptions about what goes on in Atlanta, Georgia.

So one of the things I really do want to urge in terms of next steps is that it becomes possible—as several countries have now made it possible—for it to be much easier to change our identity documents, all of them.

How am I doing on time?

The Chair: You're pretty close to the edge.

Mr. Hershel Russell: I'm close to the edge? Okay. I'll just say one more little piece, then.

I hope you ask me questions about health issues, because I'm very up to date on the disputes around the *DSM*, around the upcoming ICD, the international compendium of diseases, and on those discussions at both a medical level and within the trans community.

So I welcome those questions, but I'm not much use around legal questions, I'm sorry.

Finally, one thing for marginalized groups is that when we are growing up, we don't have models for what it might be like to grow up to be a person like me. I had this very touching experience a couple of years ago, at a book launch. A very young person, maybe 16 or 17, came up to me very shyly—and brashly, the way teenagers do—and he looked vaguely familiar. He said to me, "I hope it's okay to say this, but we live in the same neighbourhood, and I saw you going through your changes. I'd see you in the grocery store, and I'd see you waiting for the streetcar, and I'd think, well, that's okay then; when I grow up, I can just be me."

I can't speak to the legal importance, but I can speak to the symbolic importance of the Government of Canada saying that transgender people have human rights like everyone else. I can speak to the power that might have for a community that struggles with discrimination.

Thank you.

The Chair: Thank you.

Ryan and Erin, you both represent the same organization. We will allow one opening address, because you are one group.

Mr. D. Ryan Dyck (Director, Policy and Public Education, Egale Canada): Is it possible for us to split the time?

The Chair: Yes, sure.

Mr. D. Ryan Dyck: Okay. That was our intention.

• (1650)

The Chair: Great. That's fine.

Go ahead.

Ms. Erin Apsit (Member, Egale Canada Trans Committee, Egale Canada): Hi. My name is Erin Apsit, and I'm here as a representative of Egale Canada's trans committee. I'm very honoured and pleased to be here and have this opportunity to address this committee on what I think is a very vital and urgent bill.

I should also point out that there aren't two transgender witnesses here today, there are three. I am the third one. I'm a transgender woman.

To start, from my perspective this bill is about essential Canadian values of fairness and respect for all human beings. It's an opportunity for Parliament to play a leadership role in protecting human rights rather than leaving it to the courts.

Some remark was made earlier about the Declaration of Human Rights, but I'd like to point out that in 2008 the General Assembly of the United Nations issued a statement that human rights applied equally to every human being, regardless of sexual orientation or gender identity. I'm pleased to note that Canada signed off on that statement, and again I think that's an issue of fairness and respect for all human beings.

I think this bill also very much concerns the ability of trans and gender-diverse Canadians to be able to fully participate and contribute as members of society. I'd like to point out that unfortunately Canada has fallen behind many jurisdictions around the world in terms of providing legal protections for people, based on gender identity. For example, such legal protections exist in the United Kingdom, Israel, Sweden, Germany, Argentina, Australia, New Zealand, and many other nations. It might be interesting to note also that, just a week ago, the Pakistani Supreme Court ruled that trans persons are entitled to equal protection under the law.

We've mentioned that in Canada, Ontario, Manitoba, and the Northwest Territories provide legal protections. I'd also like to point out that in the United States, 16 of the states and the District of Columbia also provide legal protections based on gender identity.

I think Canada has always valued being a world leader in human rights, and I think this bill gives us an opportunity to restore Canada's leadership position.

Once again, I'd like to thank everyone for the opportunity to appear here.

The Chair: Thank you.

Mr. Dyck.

Mr. D. Ryan Dyck: Thank you.

I'd like to round out our opening statements from Egale Canada to directly yet briefly address a number of suggestions that have been made here today, as well as earlier on, those being the suggestions that this bill is unnecessary or that it is in fact redundant. I'd like to suggest to you today that this is largely a theoretical argument and not an argument of practical reality.

I would begin by noting that a most recent study in Ontario of 433 trans people noted that 20% had been physically or sexually assaulted and a further 34% had been verbally harassed or had been the subject of threats, in each case because they are trans. We'd also note on that issue that, to my knowledge, there has never been a case

where section 718, the hate motivation sentencing provisions of the Criminal Code, have been applied to a crime against a trans person.

I have long suspected this to be the case, but in preparation for today's meeting I had three of our legal aides spend last week looking for a case. It's difficult to prove a negative, but we have been entirely unable to find a single case where the hate motivation sentencing provisions have been applied to a trans person. I find that alarming, given the horrifically high rates of violence and crimes against trans people because of their gender identity and expression. I find it unreasonable to think that no case has ever been taken forward or that trans people have simply been unsuccessful in taking those cases forward.

I would also note that in our schools, 74% of trans youth have been verbally harassed about their gender expression and 37% have been physically harassed or assaulted because of their gender identity or expression. Again, that is to note the ridiculously high rates of discrimination and harassment against trans people, particularly our youth. I'd like to very briefly suggest two reasons why this might be the case.

In regard to the first reason, we run a program at Egale Canada where we deliver hate crime prevention and awareness training to police officers across this country. As much as I have the utmost respect for our law enforcement, I believe from my experience—and in the last two years, I delivered training to approximately 2,000 police officers—that police in this country simply don't understand or know if trans people are included under the phrase “or any other similar factor”. In fact, as I stand in front of police officers, I'm not comfortable saying that trans people are, because, as I noted, I cannot find a single precedent where this has been the case.

Secondly, I would note that recently we—Dr. Barbara Perry, an international expert on hate crimes, and I—travelled across the country interviewing lesbian, gay, bisexual, and trans people on their experiences with hate crime discrimination. We did at least hour-long, if not three-hour-long, interviews as well as focus groups with people across the country.

My observation, from speaking with many of the trans people, is that in spite of the fact that they have quite often been the victim of what they perceived to have been a hate crime, many if not most trans people are not prepared to report to police, because they are either afraid of secondary victimization—that they will not be taken seriously—or because they simply do not believe that they are covered. They simply do not believe it. They have never seen a reason to believe that the phrase —“or any other similar factor” or “sex”—in the Canadian Human Rights Act includes them.

Do I have another minute?

• (1655)

The Chair: Really short....

Mr. D. Ryan Dyck: Really short? Okay. I'd like to speak to this later on, perhaps if there's a question that relates to it.

But I would argue that this bill is not symbolic. It will in fact fill a gap. It will fill in a problem with the law as it currently stands. I would argue that the current law is actually the law that is ambiguous and vague, because it is not in practice providing protection or recourse to our trans Canadians. More than being symbolic, this will make a real difference in the lives of our trans people and our trans communities across this country.

Thank you.

The Chair: Thank you.

Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you, Mr. Chairman.

I'd like to thank our guests for coming to meet us this afternoon and sharing their thoughts.

My first question is for Mr. Russell.

You mentioned health, but you did not have enough time to finish. If transgendered individuals want to have equal access to health care, what are the kinds of problems they face and how will Bill C-279 help them?

[*English*]

Mr. Hershel Russell: Thank you.

One of my jobs is to go across Ontario. I'm the lead mental health trainer for a program called Trans Health Connection, ministry funded through Rainbow Health Ontario. We go across the province speaking to doctors, nurse practitioners, nurses, social workers, mental health workers—front-line people.

The shortage of doctors for all Ontarians is bad; the shortage of doctors who have any idea how to work with our community is horrifying. There are very few weeks in which I don't have a client for whom I am desperately seeking medical care.

We're working very hard to expand the numbers of doctors who have the knowledge and the connections, in terms of protocols and so on, to undertake that care—we are not very complicated, we are much easier to care for than folks with diabetes—but that is proceeding slowly. It is very, very hard for us to access the most basic health care.

It is also true, as my colleague Sara was saying, that a trip to the emergency room can be pretty alarming. There is no reason to assume even that you're going to be treated respectfully. We still have far too many stories of people going in for a flu shot and somehow it's necessary to have their genitals examined.

I could go on and on, but that's probably enough for now.

[*Translation*]

Mr. Pierre Jacob: Thank you, Mr. Russell.

My second question is for Mr. Dyck.

You referred to second degree victimization. I'd like you to expand on this problem that you have often encountered.

[*English*]

Mr. D. Ryan Dyck: There are a number of areas we could discuss. The one that I briefly mentioned is the fear of victimization when reporting an incident to the police.

As I said, we have some wonderful police officers in this country, but there are instances where some law enforcement officers may not take trans people seriously. They may simply not understand what it means to be trans and so, in some cases, they're unprepared to interact respectfully with trans people. That may result in situations that are very humiliating for some trans people who have been victimized, or it may result in what is called secondary victimization, being discriminated against a second time.

Where we often see this is, unfortunately, in our schools. As I mentioned earlier, rates of victimization and harassment among trans people is perhaps highest among our youth and in our schools. We know that bullying is a problem everywhere, but it is even that much more severe for our trans youth. Somewhere in here I have stats, perhaps, but I can't find them right now.

Unfortunately, in most cases our education professionals are not intervening when victimization and harassment occurs against our trans youth. In most cases, trans youth do not know of a single person in their schools to whom they can turn when they have been victimized. They do not know of a single person who is supportive or who will speak with them competently about what has happened to them. Whether it's an intentional form of victimization or not, simply the lack of knowledge or lack of support amounts to a secondary form of victimization, and not having anyone to turn to or anyone to speak to very often creates isolation.

• (1700)

The Chair: Thank you.

Mr. Rathgeber.

Mr. Brent Rathgeber: Thank you, Chair.

Thank you to the witnesses for your attendance here today.

Mr. Russell, I understand you are a clinical psychotherapist?

Mr. Hershel Russell: Correct.

Mr. Brent Rathgeber: But not a medical doctor.

Mr. Hershel Russell: Not a medical doctor, correct.

Mr. Brent Rathgeber: But you are a member of the Ontario Society of Psychotherapists.

Mr. Hershel Russell: I am indeed.

Mr. Brent Rathgeber: As such, I'm assuming that you subscribe to the *Diagnostic and Statistical Manual of Mental Disorders*.

Mr. Hershel Russell: That's a little more complicated...

I'm not sure whether I should call you "sir" or "honourable member".

Mr. Brent Rathgeber: Brent will be fine.

Voices: Oh, oh!

Mr. Hershel Russell: Okay: you don't care.

That's a little more complicated, in that in Ontario, unlike a number of other provinces, there's been a kind of territory war. The psychologists have declared that they are the only people permitted to use the *Diagnostic and Statistical Manual of Mental Disorders*. Although I certainly know it, I am not permitted to make any kind of diagnosis. But I certainly have been part of the discussions about the upcoming *DSM-5*, if you would like me to speak about that.

Mr. Brent Rathgeber: No, I want to talk about *DSM-IV*. *DSM-IV*, as you know, because I know you were here for the first hour, categorizes a gender identity disorder as a mental illness—

Mr. Hershel Russell: Correct.

Mr. Brent Rathgeber: —and I want to know if you agree or disagree with that characterization.

Mr. Hershel Russell: Not only I disagree with that characterization; the conversations have been happening of course for the last two years around what will be in the *DSM-5*, which will be published in 2013.

In 2013 there will not be “gender identity disorder”. That will be replaced.

Mr. Brent Rathgeber: It will be renamed “gender dysphoria”.

Mr. Hershel Russell: That's correct. There will be substantially different diagnostic factors, and, as a matter of fact, as we talk about gender-variant people, it will spell out that there is a broad spectrum of gender rather than just two genders.

WPATH, which is the most authoritative organization internationally, was invited to give a deposition to the *DSM-5*. In fact, the *DSM-5* will recommend that the WPATH standards of care published in September 2011 should be taken as authoritative.

Mr. Brent Rathgeber: Does the fact that you disagree with the characterization in the *DSM-IV* of gender identity disorder as being mental illness disqualify some of your patients from health coverage for what I'm assuming is good treatment and good counselling?

Mr. Hershel Russell: It's a terrific question. It's a lovely question.

• (1705)

Mr. Brent Rathgeber: Thank you.

Mr. Hershel Russell: Because the medical system works like this, in order to get treatment you must have a diagnosis. If you don't have a diagnosis, you can't get treatment. That's just how the system works.

For example, the ICD is the international compendium of diseases, published by the World Health Organization. Discussions about the new version of that are under way now. That will come out in 2015. Certainly for most diseases, those are the codes that are used. When a doctor wants to bill OHIP in Ontario, he uses codes from the ICD for pretty much everything.

It's not written in stone yet, but the new ICD will probably categorize transgender or transsexual experience as being a physical disorder.

Mr. Brent Rathgeber: Thank you.

I want to move to Mr. Dyck, if I have about a minute left.

The Chair: You do. You have two minutes.

Mr. Brent Rathgeber: Fantastic.

You indicated, I think in your opening statement, that if this bill becomes law, it is going to have more than a moral consequence for the community. I want to challenge that notion. You made some references about disproportionate numbers of members of the trans community being subject to assault and you made reference to law enforcement. I think it was Mr. Russell who talked about a flu shot.

I'm curious...and I hate to be the bearer of bad news, but the Canada human rights code is very specific in its application. It deals with institutions that are subject to federal regulation, subject to the laws of the Parliament of Canada. That excludes the school system. It excludes most aspects of the health care system. It excludes most aspects of law enforcement, certainly municipal law enforcement.

So I challenge your notion that this bill will provide anything more than moral statements with respect to those situations that you described or those venues you described. It would, admittedly, be a remedy if somebody were discriminated against in the banking system or in the transportation system or in the federal civil service.

I'm curious as to whether you understand the narrow scope of the actual wording of this bill as opposed to what I think is really what's happening here, and that's a grand moral statement—not that there's anything necessarily wrong with a grand moral statement, but that's what I'm suggesting is what we're talking about here.

Mr. Dyck, if you have.... I have 30 seconds left.

The Chair: That's really short, but go ahead.

Mr. D. Ryan Dyck: First, my reference to the education system was with regard to the question of secondary victimization. I understand it's not covered by this bill.

In my opening statement, I was addressing my statements largely towards the Criminal Code.

If I could make a very quick reference there, if I have time to explain....

Mr. Brent Rathgeber: It's not up to me. It's up to the chair.

Mr. D. Ryan Dyck: Okay.

The direct impact there, even though much of law enforcement is not directly under federal jurisdiction, is that if gender identity and expression are explicit within the Criminal Code, there will be a direct impact on the training that police services receive and on their knowledge regarding looking for and reporting something as hate-motivated against a trans person.

Mr. Brent Rathgeber: Thank you.

The Chair: Thank you.

Mr. Cotler.

Hon. Irwin Cotler: Thank you, Mr. Chair.

Thank you to the witnesses.

I'll begin with questions to Mr. Russell. Here you can also draw upon your own experience as a clinical psychotherapist.

What are the most common circumstances in which transgendered Canadians would find themselves the objects of discrimination? What are the most common patterns of discrimination?

Mr. Hershel Russell: Housing is an enormous issue. In both of the research studies, we have extraordinarily high numbers of people who have difficulty accessing housing simply because they are visibly trans.

For employment, ditto. Something like 78% of trans people experience discrimination specifically about being trans at work. It's almost 80% in terms of promotion and in terms of looks and appalling jokes and those kinds of things.

Then there's the issue that we've already been talking about: we are much more subject to violence—to physical assault, to sexual assault—than any other group. Like every group, that comes primarily from our families, but we are also subject to physical and sexual assault from complete strangers on the street, at rates far above any other group.

We can't access health care.

We know that harassment begins in kindergarten and takes place on the school playground, so it begins when we're very, very young. It continues throughout elementary school and it continues through higher education. The U.S. study is called “Injustice at Every Turn”, and it's very, very soberly demonstrated that that's the case.

Hon. Irwin Cotler: Thank you.

I'll just put a question, if I may, to Mr. Dyck.

With regard to this bill, would you have any concerns if the term “gender expression” were to be removed from the bill? Also, should the bill pass, do you see any lingering threats to the rights of transgendered Canadians?

• (1710)

Mr. D. Ryan Dyck: First of all, I think that's a very complex question that is perhaps better addressed by a lawyer. I'm a public policy professional, not a lawyer; however, I'm happy to speak briefly to it.

My understanding, from speaking with our lawyers and given the way the Canadian system works, is that the phrase “gender identity” would be interpreted by the courts to include the expression of that identity. That would be in line with the Supreme Court's repeated statement that “a broad, liberal and purposive approach is appropriate” when interpreting human rights legislation. From that perspective, I suspect that we would be on good legal grounds with just “gender identity”.

However, I would be concerned that it does create some ambiguity, given that this leaves it up to the courts and we cannot guarantee that such would be the case. I would also be concerned as to what signal it would send if the committee were to remove it. In future cases, if the courts were to look at that as a signal that gender identity shouldn't be included, or if were not Parliament's intent, that would create a large concern for me.

Hon. Irwin Cotler: Just at the close of your testimony you said that this legislation would have more than a symbolic value and that it would make a difference in the lives of people. You said that if you had more time you would elaborate on that, so I'm putting the question to you now.

Mr. D. Ryan Dyck: Sure. The best way I can explain that is with a very brief story.

During my tour across Canada interviewing LGB and trans people, I spoke with one young trans guy who was assaulted by three men in a bathroom at his university for using the men's bathroom. It was a quite horrifying story.

But after the interview I was speaking to him in the lobby, and he said, “There was one moment that changed my life.” I thought that perhaps the moment of being assaulted would be that moment, or that perhaps coming to an understanding of who he was and what his gender identity was might have been that moment. He said: “No, the most important moment in my life was in high school. I went to school one day, just like any other day, but something had changed.” When he walked into the school that day, he walked past the guidance counsellor's office, and where there had been nothing the day before, there was a little rainbow sticker at the bottom of the window.

It was the first moment in his life where he realized that somebody else in the world was thinking about him, that he was not alone, and that he could give up or let go of some that feeling of isolation. When we look at the horrifying rates of suicidality among our trans communities, that's not symbolic. To have that moment of having that isolation taken away from you, to have that moment of realizing that there are other people out there who care about you and who recognize you, that is not symbolic. That has a real impact on the lives of people.

The Chair: Thank you.

Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

Thank you to all the witnesses for testifying and sharing your anecdotes with us. Certainly for the most part they are pretty horrific and certainly unpleasant, to say the least.

I'll share my point of view with you. This is an attempt to amend the Human Rights Act and also the Criminal Code. In my view, in the cases I've reviewed—there are ten of them, one of them from the court of appeal—they all indicate that basically the protection is already afforded to transgender people under both the human rights code and the Criminal Code.

I know Mr. Dyck said that he did some research and found no cases where section 718 of the code was invoked.

Of course, you conceded that it is difficult to prove a negative.

Having in mind that the protection, I believe, is already afforded under these two pieces of legislation, in my mind there is nothing, in changing and enacting this, that will stop transgender people from actually being abused. Wouldn't it be preferable to put efforts toward I guess educating the public? Or is there too much stigma attached to the situation of transgender to perhaps prevent such a type of promotional...or enlightening the public to the needs of your group?

I'd open that to the panel.

Mr. Hershel Russell: That's what I do for a living. Off time, that's what I do for a living, mostly to health care professionals but also in educational institutions, government bureaucracies, etc.

So no, the process of education is under way. There's lots more to do. Thank you: it's very important.

Mr. Robert Goguen: Ms. Apsit.

Ms. Erin Apsit: Actually, I believe it's very important to have explicit protections for trans people under the heading of gender identity. For example, in the Criminal Code, I do believe it does have some deterrent effect; right now it would be a far cry to find anyone who actually thought that committing hate crimes against trans people would fall under hate crimes provisions.

We heard earlier, I believe from Brent, the suggestion that we're covered under the heading of disability because of gender identity disorder. One of the problems with that is probably the overwhelming majority of people who have gender identities that vary from the norm.... The trans and gender-diverse people do not have such a diagnosis, so could not claim any kind of protection under the heading of disability.

So I don't believe they're covered without such explicit protection as gender identity being included in the bill.

•(1715)

Mr. D. Ryan Dyck: I would certainly agree with both Hershel and Erin.

What I would add is that, in my opinion, hate crime in particular is in part a result of us as a society believing, or not challenging, the notion that some people are less human than others, or less worthy of protection than others. It becomes very difficult for us, who are the public educators, to counter that notion, or to stop it from growing. If we cannot point to legislation, if we cannot point to our government and say that our government has stated clearly that trans people are equal....

So including these terms explicitly in the Canadian Human Rights Act and within the Criminal Code enables us to do that. Yes, education is important, but without the backing from legislation, there's only so much potency to that.

Mr. Robert Goguen: But surely you'd agree that it's not a few words that will stop the abuse. Wouldn't the training of the prosecutors, wouldn't the training of the enforcement people, to sensitize these people to your group's predicament, be helpful? I mean, all the words in any act are not going to stop the abuse you're being subjected to.

Is there a more effective way? I guess that is what I'm asking.

Mr. D. Ryan Dyck: Absolutely more training, along with all of those things that you just said, are important. Absolutely they would be effective. However, it's not a one-size-fits-all solution.

As I stated earlier, I think it's very difficult to make that argument, or to make it convincingly, if we cannot point to explicit reference in law. I would not underestimate the effect that explicit reference has in training of prosecutors and educators and law enforcement.

Mr. Hershel Russell: Could I just put in a word here?

I'm thinking of a number of clients recently who have come out at work and been very anxious about what was going to happen. They've taken the piece of paper from Ontario law around gender identity and gender expression and they've taken it in to human resources. Human resources has read it, and it has made a difference.

So we're not talking about taking it to court. We're talking about this piece of paper from the government that says you are not permitted to discriminate against me. It's very, very powerful in our hands.

Mr. Robert Goguen: Thank you.

The Chair: Thank you.

Mr. Côté.

[*Translation*]

Mr. Raymond Côté: Thank you very much, Mr. Chairman.

Thank you to the witnesses for coming today.

As I was listening to your opening remarks, I was thinking of you, especially, Mr. Russell. I studied physics up to university and the most interesting anecdote I remember is that Heisenberg's uncertainty principle, with respect to quantum physics, was the subject of a vote in the Solvay Congress of 1927. The great Albert Einstein was on the losing side.

When we're talking about how we represent and how we understand the world, it may not always be easy to decide from a physics perspective, and no doubt that is even truer for medicine and psychology, as you stated. One should expect certain interpretations, and certain established diagnoses, to evolve, would you agree?

[*English*]

Mr. Hershel Russell: Certainly diagnoses have changed a great deal over the years. I think it was Sara who pointed out that you were in the *DSM* with a disorder as someone gay, lesbian, or bisexual until 1973. Certainly every time the *DSM* has gone through a new version, there have been very intense debates, and very "political" debates, I will call them, about what the new *DSM* should and should not say. Certainly this time around, the hottest debates have been around transgender issues.

I would also like to point out that one of the reasons these debates are so intense in that environment, and perhaps also here, is because of the extraordinary growth in the numbers of transgender, transsexual people worldwide. We have a longitudinal study from Europe on trans people. I don't have the date of publication in my head right now, but the study went back to the 1990s and found that the number of people who are ready to identify as trans has doubled every five years since 1990. It has doubled every five years.

All the clinics that work with trans children, trans teens, and trans adults are reporting not just a doubling in the number of people coming to their clinics, but either a quadrupling or even a sextupling of the number of people coming in. The number that you will most often find, if you look at scholarly documents, is that we are one in 30,000. It's very easy to disprove that number. It's not hard to do; just look at StatsCan. You can disprove that number very easily.

A more recent study in Massachusetts suggests the number is more like one in 200. This is a lot of people. Another recent study in England suggests it's about 1.6% of the population.

The rights of even the smallest minority matter—we all deserve to be treated as human beings—but I do want you to understand that we are a much larger population than most people understand, and a very rapidly growing population.

● (1720)

[*Translation*]

Mr. Raymond Côté: I would like to talk about something else. There have been many women in my life and there will probably be more. That's how things are; I find it irresistible. Several years ago, when I was working in a service station, I had some fun with one of my former partners. In fact, one Halloween, I borrowed clothing from her closet to dress up, with her agreement...

[*English*]

The Chair: Too much information.

Voices: Oh, oh!

[*Translation*]

Mr. Raymond Côté: My worst memory, Mr. Chairman, is that of wearing nylons, which is torture. I never want to experience that again.

However, you spoke about perception. You told us how difficult it is to experience people's looks at times. Several years later, I learned a lesson. I would like to speak about my experience as a politician and what I have noticed when I speak with female colleagues in my caucus. Despite the progress that women have experienced, I would say that in general it is not as easy for them as it is for me, a heterosexual man. This is a fact, this is reality, even though there is legislation and a whole system to make sure that women are provided with the protection they need in order to be treated fairly. That is one of the reasons why I want this bill to be passed.

One could say that a majority of the population experiences problems in getting fair treatment. In the case of homosexuals — and even more so in the case of transsexual or transgendered individuals — it is even more difficult. They simply want to be full-fledged citizens. We're not talking about favoritism or anything like that.

I can tell you that I will do my job as a legislator and do my best to have provisions written into our legislation that guarantee that an important part of the population has access to the same services as the rest of the population. I think that this is what you have experienced. You have experienced the denial of certain services that everyone should have a right to, whether that be police services, health services or other services.

[*English*]

The Chair: Mr. Seeback, go ahead.

Mr. Kyle Seeback (Brampton West, CPC): I want to thank all the witnesses today. It's been very educational for me to listen to the issues you've brought forward. This is something that I'm giving a great deal of thought to, and you've given me a lot of information today that's very helpful.

I want to talk about a couple of points raised.

Mr. Russell, it was you who raised a number of them. You told us some very personal stories, personally painful stories, and I want to thank you for sharing that. It's helpful for us when we hear those kinds of stories to try to understand what you've gone through.

You talked about when you were transitioning, the sense of fear you had whenever you would go to a bathroom. I can certainly understand that. Do you see this legislation having an effect or helping in those circumstances? I don't see how it can, but perhaps you can tell me how it might.

● (1725)

Mr. Hershel Russell: Again, I'm not much use on legal issues, but I can tell you a little bit.

While I was in the process of transitioning, I was taking an extra professional degree, and the bathroom issue was a big issue. Classes were three hours long. I can't last that long; I'm old. There weren't any non-gender-specific bathrooms anywhere, without walking outside the building and going around the corner to a restaurant.

This was a building with five floors. On every floor there was a men's bathroom and a women's bathroom. A group of us went to the university—this was the University of Toronto—and asked if we could have one floor where you could have, instead of a men's washroom and a women's washroom, two pieces of plastic that said “all-gender washroom”, one on each washroom. All of the other bathrooms on the other floors could stay exactly the same.

After enormous debate that went on and on, they decided that it was absolutely impossible.

If we'd had this kind of legislation where we could say, “Look, the Government of Canada says you're not allowed to discriminate, and the way these bathrooms work now discriminates against us in this really powerful way; look at this document”, I believe it would have made a difference. I do.

Mr. Kyle Seeback: So you think this legislation would help with the development of...my colleagues are saying federal jurisdiction, so I guess that would be that within federal jurisdiction buildings, you think this legislation would lead to the creation of...gender-neutral bathrooms? Is that kind of what you're saying?

Mr. Hershel Russell: That's a great term.

Mr. Kyle Seeback: Okay.

Mr. Hershel Russell: Yes. It's more....

I can't speak to the legal stuff. I just don't know it.

Mr. Kyle Seeback: All right.

And would you say that's the same...? I don't think this legislation could help with the story that you talked about, with the people who came up in the van. Education, I think, might help with people like that.

With respect to the passport, how do you see this legislation helping with that issue you face?

Mr. Hershel Russell: I'm certainly hoping that this legislation will lead rather directly to a complete change in the regulations for how people like me can have a passport that accurately represents their gender identity.

Mr. Kyle Seeback: Excuse my ignorance, but why is it difficult? Is it because it's...?

Mr. Hershel Russell: The current regulations state that you can change the gender on your health card: done. You can change the gender on your driver's licence with a doctor's letter: done. Those are both provincial.

At the federal level, you are not permitted to change your gender identity on any federal documents unless you have had some trans-related surgeries. I have a medical condition that makes those very dangerous for me.

Mr. Brian Jean: [*Inaudible—Editor*]...a letter that...[*Inaudible—Editor*].

Mr. Hershel Russell: Correct.

Mr. Kyle Seeback: So for people who aren't going to go through and have a surgery, they're sort of caught in this.

Mr. Hershel Russell: We are caught in this no-man's land—no-person's land.

Mr. Kyle Seeback: Right.

Do you view identity documents, passports, and any other sort of federally regulated identity documents as the same?

Mr. Hershel Russell: To have identity documents that don't match is a real problem for us. It means we can go through the kind of experiences I went through. We can have all kinds of difficulties with the police. It's a constant source of anxiety and difficulty for us. It's really big.

Mr. Kyle Seeback: Do I have more time? Very little.

Mr. Dyck, you seem to think that this legislation will help people actually come forward and go and report crime to police if they have

been assaulted based on being transgendered. Is that your belief, that this legislation would give people the courage to come forward that they wouldn't have otherwise to go to the police?

Mr. D. Ryan Dyck: I don't know that legislation can give people courage. What I do know is that making it explicit will, in itself, help to educate people that they do have rights.

To give you an example—I'm afraid I don't have the statistics on me right now—we conducted a survey of schools across the country. What we saw in schools was that in schools or school boards that had explicit policies that included gender identity, gender expression, and sexual orientation, rates of victimization went down. LGBT students—and teachers and parents—were more comfortable and more willing to report because they believed support would be there for them when they did.

I'm sorry I don't have those exact statistics on me—

• (1730)

Mr. Kyle Seeback: That's okay.

Mr. D. Ryan Dyck: —but those rates increased.

Mr. Kyle Seeback: Thank you.

The Chair: Thank you.

We've come to the end of today's meeting. The bells will ring in a few seconds, and all the members will disperse. This doesn't mean they aren't interested. When the bells ring, we go back to the House.

I really want to thank the panel. You've brought a great deal of information again to the committee on this study. We appreciate your being here.

I would ask committee members to be prepared to discuss future business on Thursday. We anticipate getting through clause-by-clause on the bill on Thursday, so we need to be prepared.

The meeting is adjourned.

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