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# **Standing Committee on Justice and Human Rights**

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**EVIDENCE**

**Monday, May 6, 2013**

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**Chair**

**Mr. Mike Wallace**



## Standing Committee on Justice and Human Rights

Monday, May 6, 2013

• (1530)

[English]

**The Chair (Mr. Mike Wallace (Burlington, CPC)):** Ladies and gentlemen, I'm going to call the meeting to order. We are waiting for two more guests, but we'll get started.

I want to thank everyone for coming to the Standing Committee on Justice and Human Rights, meeting number 72. Pursuant to the order of reference of Wednesday, March 6, 2013, we are dealing with Bill C-452, An Act to amend the Criminal Code (exploitation and trafficking in persons).

We have three witnesses. As you see in the agenda, we have until 4:45 and then we will go to clause by clause from there. We'll see how far we can get with it. Hopefully we can finish this today.

Our first set of witnesses, the group that is here, is from the Quebec Council on the Status of Women. We have Julie Miville-Dechéne and Nathalie Bissonnette here.

Then from the Salvation Army we have Naomi Krueger and Michael Maidment.

We'll start with a presentation of about 10 minutes from the Quebec Council on the Status of Women.

Thank you for coming.

**Ms. Julie Miville-Dechéne (President, Quebec Council on the Status of Women):** Thank you for having me.

I will deliver my presentation in French.

[Translation]

The Quebec Council on the Status of Women is an advisory and review body that has sought to promote and defend the rights and interests of Quebec women since 1973.

As such, we have developed an expertise on prostitution and human trafficking. Last June, we published an in-depth research study in which I took part. I have it here with me. If you are interested, it is available. It is an opinion urging authorities to take action and help human trafficking victims and prostitutes leave the unhealthy environment in which they are exploited.

From a legal standpoint, we maintain that the Criminal Code must apply to pimps and johns because demand for sexual services encourages trafficking and prostitution. However, we believe that it is time to stop criminalizing prostitutes, victims of trafficking and non-victims, because in most cases, they sell their bodies after

having suffered all sorts of abuses in their childhood. We will come back to that.

Given our bias for women, and specifically for exploited and vulnerable women, the council has been publicly supporting Maria Mourani's Bill C-452 since October. We feel that society must have powerful disincentives to try and put a stop to human trafficking. We think human trafficking is a serious crime that affects many parts of the world, as well as young Canadian girls who may be our neighbours or even members of our own families.

The changes set out in Bill C-452 ensure that police officers are better equipped. Other witnesses, like Detective Sergeant Monchamp, presented those arguments to you. In terms of principles, the bill also sends a clear message to those who might be tempted by this seemingly easy way to make money at the expense of naïve and renewable prey, since those people are a renewable resource as far as the pimps are concerned. The message is that crimes of exploitation and human trafficking will be fought and punished in Canada to the full extent of the law. Since these crimes represent a grave violation of fundamental human rights, the changes proposed by the bill would show to the whole world that Canada's criminal system is exemplary in combatting trafficking.

The proposed changes include consecutive sentences for procuring and human trafficking offences. The council supports this tougher punishment, because a number of violent crimes are also often committed in trafficking cases. Let me give you one example from Montreal. Marie—that is not her real name—was a dancer in strip clubs for six years. She told me that she was in the clutches of a violent pimp. Not only was she locked in her home, beaten and raped by her pimp who would take all her earnings from lap dancing, but this same pimp took out his anger on her by burning her hand with his cigar butt and strangling her cat before her eyes. The cat was the only comfort she had left. This level of mental cruelty and control is difficult to imagine in a free country, but it does exist. This young, fragile woman was duped when she was 17 by a violent man who promised to take care of her. She did not dare report him because she was afraid her family would pay the price since he threatened to go after her mother or sister if the victim did not obey him. She only cooperated with the police once her pimp was arrested.

Bill C-452 is a major change in our way of doing things, but we don't believe that the clause on consecutive sentences ties judges' hands and prevents them from assessing cases individually. The bill provides new benchmarks, but nothing prevents judges from exercising their discretion in applying the principle of proportionality and imposing a sentence that is deemed fair for the accused, based on the circumstances.

Another notable change in the bill is the reverse onus. You talked about it here. The accused will have to prove that they do not make a living by exploiting someone else when a trafficking victim is present. This measure is another way to make prosecutors' work easier, given that traumatized victims are often afraid to testify against their aggressors or are actually suffering from the Stockholm Syndrome.

As part of our research, we talked to a number of people involved, police officers and lawyers who explained that prosecutors were often happy to use the section against procuring, and not against trafficking, because it was harder to get evidence against trafficking. Yet, in most cases, trafficking is involved. By reversing the onus, the burden is partly placed on the accused. Given the long police surveillance operations that lead to arrests, we think it is appropriate to require the accused to prove, through financial records or otherwise, that they have their own sources of revenue. Let us not forget that, by definition, revenues from prostitution are not declared and are done in cash. So that complicates the work of the authorities a fair bit.

Finally, the bill states that proceeds of crime can be confiscated in procuring and trafficking offences. That's great. We think it is only fair that those found guilty can no longer enjoy the proceeds of their crimes.

Here are some numbers. In 2012, 56 trafficking cases went to court, involving about 85 accused and 136 victims. Of course, that does not seem like a lot, but that is only the tip of the iceberg, because it is difficult to measure the scope of illegal activities. My colleague Ms. Dionne will give you a bit more information about this later.

We often think that trafficking only happens to women from poorer countries who end up in our strip clubs. That is not true. Domestic trafficking, meaning trafficking between places and provinces within Canada, represents 90% of all cases that end up in court. People in the know told me about victims of domestic trafficking at the Centre jeunesse de la Montérégie in Longueuil. The way they operate is well-known and widespread. Young men belonging to street gangs hang around subway stations in Longueuil and even around schools. Young girls are seduced by gang members who, at first, vow to love and protect them and smother them with attention. Then the climate changes. The guys need money and ask the young girls to help them; they desensitize them with gangbangs, which are group rapes, before forcing them to become strippers and prostitutes.

We are talking about trafficking because those girls are dragged from apartment to apartment and lose their means of escape, because they may be beaten or drugged. Some girls from Quebec end up in Ontario. I am sure you have heard about this problem in the clubs close to the border, particularly in Windsor. Yes, those young girls are often runaways and come from dysfunctional families, but the pimps take advantage of them. In fact, they are not always runaways, because seduction is a weapon that can be used against teenage girls who may simply want to cut loose.

I will briefly take this opportunity to tell you about one of my concerns. It is important that the issue of trafficking does not overshadow the issue of prostitution. The two issues are closely

connected, because, according to the Fondation Scelles, most prostitutes worldwide fall prey to human trafficking rings. I am very aware that it is easier to have a social consensus on an issue such as trafficking because the topic itself takes us back to slavery and the lack of consent. However, across Canada, we also have prostitution without trafficking, which is a more complex issue, less cut and dry, and no doubt more widespread, in terms of the number of victims. So we should not forget about this issue. Prostitution is not always linked to trafficking, whereas human trafficking for the purposes of sexual exploitation always leads to prostitution.

Let me explain. Some prostitutes who do not have a pimp are increasingly selling their services on the Internet. They tell their stories in the media and talk boldly about their life choices. In short, those are not trafficking cases. But does that mean that those voices that claim that women can choose to become prostitutes represent the majority of women who sell their bodies to survive? No, absolutely not. It may be comforting to think so, but it is wrong to believe that this freedom of choice is the norm. Even according to the lawyers representing those who call themselves sex trade workers and who have gone to Ontario courts, only 5% to 20% of prostitutes can make a profit from this lucrative business and do in fact make an informed choice.

The others, the vast silent majority, find themselves being exploited in violent situations that they did not choose and from which they cannot easily escape without outside help. They are vulnerable women who, in 70% to 84% of cases, have experienced abuse in their youth and have drifted into prostitution, often getting into drugs as a way to endure this type of exploitation. I have met with some of those women.

That is why we are against the decriminalization of clients advocated by the sex trade worker lobby. In fact, that would only further trivialize and increase this trade that objectifies women. That is actually what happened in places like the Netherlands.

In addition to the issue you are examining today, I would like to share with you our broader perspective on the matter, since you are in a position to ask for changes to the Criminal Code. One single model around the world has proven successful in protecting women against this fundamental violation of their right to equality. In Sweden, only the pimps and johns are criminalized. The penalties and consequences are harsh. The prostitutes are not prosecuted. They are provided with significant social services so that they can leave that environment and find a job. The Swedish model has worked.

Ladies and gentlemen, I encourage you to think about those issues. Beyond this bill on trafficking, which is important, there is the whole issue of the women who are trapped in prostitution.

Thank you.

• (1540)

**The Chair:** Thank you, Ms. Miville-Dechéne.

[English]

Thank you very much for that presentation.

We'll go now to the Salvation Army.

The floor is yours.

**Mr. Michael Maidment (Area Director, Public Relations and Development, Federal Government Liaison Officer, Salvation Army):** Thank you, Mr. Chair and committee members. My name is Michael Maidment. I'm the federal government liaison officer for the Salvation Army in Canada.

I'd first like to thank you for the opportunity to present to you this afternoon on the issue of human trafficking and, more specifically, on Bill C-452.

I'd like to begin by commending Madame Mourani for her work in this important legislation and for her commitment in presenting complex solutions to the issue of human trafficking in this country. I am delighted today to be joined by Naomi Krueger. Naomi is the manager of one of Canada's first shelters dedicated exclusively to caring for the victims of human trafficking. Deborah's Gate, which opened in 2009, aims to provide confidential, professional, and culturally sensitive community-support networks for survivors of this terrible crime.

The case management team at Deborah's Gate coordinates appointments with law-enforcement officials, immigration officials, legal counsel, trauma counsellors, and other service providers. Additional programs provide residents of the shelter with access to income assistance and/or sustainable income, addiction-treatment programs, health and dental care, and community-integration programs.

I want to frame my comments this afternoon by saying that the Salvation Army appears before you today in our capacity as Canada's largest social-service provider and with our 130 years of service-delivery experience, which includes, of course, programs such as Deborah's Gate. I hope to convey the perspective of our organization, as the leading social-service provider, on this legislation.

First off, I want to say that the Salvation Army wholly supports legislation that strengthens the ability of the criminal justice system to respond to the crime of human trafficking. Just as we supported Bill C-268 and Bill C-310, we, too, support Bill C-452. We believe the bill will provide law-enforcement officials with more tools to prosecute those who commit this heinous crime and that it is essential to preventing future victims.

With specific reference to the proposed amendments in the bill, we believe that allowing consecutive sentencing for offences is positive in two ways. First, a significant sentence is important to victims of human trafficking in so far as it provides a period of safety during which a victim doesn't need to worry about their trafficker being at large. This period is critical to a victim's ability to access restorative resources and engage in a long-term healing process.

The effects of violence and exploitation on a victim do not disappear when the trafficker is arrested. Instead, fear, anxiety, and hopelessness often increase, at least until the victim knows the trafficker will be held in custody for a designated period of time.

Second, we think this proposed amendment would strengthen the deterrent for perpetrators of human trafficking who believe the financial gain of the exploitation outweighs the loss experienced during shorter prison sentences. One such victim and resident of our

shelter estimated that her trafficker earned \$620,000 over a two-year period through her sexual exploitation.

I would like to raise one area of consideration regarding this amendment, that we're seeing more and more situations where victims who were once trafficked themselves have turned to aiding their traffickers with procuring and grooming other victims. This is generally a strategy that victims of human trafficking use to improve their own circumstances in an attempt to escape the exploitation they have undergone. Providing the courts with flexibility in the application of consecutive sentencing may prevent victims of human trafficking from being punished by the criminal justice system for attempting to escape from their exploitation.

With reference to adding the term "domestic" to the charge of human trafficking within the Criminal Code, the Salvation Army feels that this proposed amendment provides important clarity to the code. Human trafficking is a domestic issue. We've already heard that this afternoon. Yet the myth that trafficking is exclusively an international issue persists among many Canadians. Accurately describing human trafficking as a domestic issue will aid in correcting this long-term myth.

Deborah's Gate opened in 2009. Over half its residents have been victims of domestic trafficking, Canadian residents trafficked within Canadian cities, most often for sexual exploitation by Canadian men. Furthermore, our organization has found that women in our shelter systems were targeted as children as young as 12 years old, many from reserves in northern B.C., Alberta, and Manitoba, both by traffickers with gang affiliation and by individuals working alone.

The change this bill offers—the reversal of the burden of proof for the charge of human trafficking—is an important recognition of the devastating impact that sexual exploitation has on its victims. This reversal will not only make it easier to prosecute traffickers but will also protect victims who are struggling with the effects of being exploited.

● (1545)

With reference to extending the human trafficking charges to those who harbour a person who has been exploited, the Salvation Army is pleased that this proposed legislation considers the reality that many different individuals can play a role in the crime of human trafficking without ever meeting the conditions set forth by the legal definition.

While many individuals can share responsibility for holding a victim captive, it is rare that all parties involved are prosecuted. In our experience, traffickers are aided by multiple associates, each of which plays a role in facilitating their exploitation. While none of the associates may profit directly from a victim's exploitation, they supervise the victim's sexual services, assault victims when they fail to comply with their traffickers' orders, and coordinate travel from one abuser to another.

The proposed amendment would better equip law-enforcement officers to respond to the severity and complexity of trafficking operations holding all those involved accountable for the crime in its entirety.

It should be noted, though, that while this amendment in general enables effective enforcement of the offence, unintended consequences of the wording and the absence of evidence to the contrary may arise.

In particular, information that victims communicate to the police, health care practitioners, and other front-line service providers while they are in a state of fear or as a means to survival could be used as evidence to contradict exploitation or facilitation of exploitation at a later date. Victims have repeatedly reported that they were at times coached on what to say when questioned by authority figures.

Many times this coaching has led to the gathering of contradictory statements that could be used as evidence to the contrary if needed. A provision preventing the use of statements made by victims while in a state of trauma or coercion might help to avoid this unintended consequence.

In conclusion, while it is important to strengthen the tools available to prosecute those who commit the terrible crime of human trafficking, it is equally important, if not more so, to consider strengthening our ability to prevent human trafficking from occurring in the first place.

Thank you again for the opportunity to address you this afternoon and for your commitment to eradicating human trafficking in Canada.

**The Chair:** Thank you, sir. Thank you for that presentation.

The other group has now joined us.

[Translation]

Let me welcome the Comité d'action contre la traite humaine interne et internationale.

[English]

Thank you very much for joining us, Madame Dionne and Madame Bastien. The floor is yours for 10 minutes.

[Translation]

**Ms. Claudette Bastien (President, Comité d'action contre la traite humaine interne et internationale):** Thank you very much.

I will do the first part of the presentation describing CATHII, and Ms. Dionne will do the second part.

I would like to thank the members of the committee for giving us an opportunity to testify.

The Comité d'action contre la traite humaine interne et internationale, or CATHII, has worked since 2004 to address the issue of human trafficking, whether for the purposes of sexual exploitation or forced labour. Since its inception by religious communities in Quebec, CATHII has become a major player in the fight against exploitation and the violation of fundamental rights.

CATHII's members are involved in three types of activities: research on the reality of trafficking and on Canadian and international laws on trafficking; training with a view to action; and, finally, giving priority to providing shelter and support to victims of human trafficking.

CATHII also wanted to contribute to an understanding of the issue. One of its activities was the release of a research study carried out in partnership with anthropologist Aurélie Lebrun in order to better understand prostitution from the standpoint of its clients. The organization also published a reflection paper entitled "Acting Against Human Trafficking".

In 2006, CATHII organized a one-day conference. That meeting brought together the main community, government, police and academic players to define the needs of victims. A number of organizations pointed out that there were not enough services for human trafficking victims, an observation reiterated at the consultation meeting with the members of the Sous-comité interministériel sur la traite des femmes migrantes du Québec, which we organized in 2007. Another meeting in April confirmed the need to take concerted action, making sure that victims are the focus of concerns and initiatives.

Recently, CATHII started a Quebec coalition against human trafficking with over 25 organizations working for human trafficking victims.

Human trafficking, especially of women and children, is a violation of fundamental human rights. It has become an increasing issue in Canada and around the world. Canada is a source country, a transit country and a destination country all at once.

In 2005, Canada amended the Criminal Code to include human trafficking. Since then, it has added minimum sentences for traffickers of minor children, followed by human trafficking in the form of offences committed abroad for which Canadian citizens and permanent residents can be prosecuted in Canada. So the Criminal Code has been amended to specify some of the factors that courts can take into consideration when determining what exploitation means.

Bill C-452 is one of the measures intended to provide tools to legal and judicial stakeholders who are fighting against human trafficking.

• (1550)

**Ms. Louise Dionne (Coordinator, Comité d'action contre la traite humaine interne et internationale):** We believe that Bill C-452, An Act to amend the Criminal Code (exploitation and trafficking in persons), introduced by Maria Mourani, will help to counter procuring and human trafficking in Canada. This bill provides solutions to the limits of the justice system while responding to some of our concerns about the needs of victims. It also will also go some way to providing the social and economic measures necessary to support those who have been exploited.

In our opinion, trafficking for the purposes of sexual exploitation and forced labour is a troubling phenomenon that affects Canada both internationally and nationally. In that context, we support the addition of the domestic dimension of the problem, which is often forgotten. Certainly, Canada is a destination and a transit country for victims of trafficking from other countries, but there are also human trafficking situations between Canadian provinces and between rural and urban areas. That is particularly true in the trafficking of aboriginal women.

Nevertheless, we would like to express some concerns. The bill seeks to provide a deterrent to the crime of human trafficking. We are in favour of the desire to deter the traffickers. But our fear is that this may adversely affect some victims, because the provisions may well not take into account a criminal's degree of responsibility. Human trafficking is a complex problem, as is the path of the victims. Sometimes, victims become traffickers themselves in order to avoid exploitation or to make it stop. The desire to put such a deterrent in place leads to a real risk of penalizing some victims. How do we make sure that victims do not become targets of the bill?

We are in favour of the principle of the culpability of those who harbour trafficking victims or who are found with them. That presumption of guilt will make the role of police and prosecutors easier, no doubt. But it seems to us that this section should be applied prudently. In fact, we feel that it must not be applied at the cost of those in vulnerable situations who may simply be living with those being exploited. Access to justice in this country is not equal for all. Unfortunately, it is often the case that the most vulnerable are the most affected. This includes victims of trafficking. They may not be in a position to be able to prove their innocence because they do not have the means to do so.

The bill proposes a definition of sexual exploitation that draws its inspiration in large part from article 3 of the Palermo Protocol. The definition makes it possible to identify two distinct aspects of human trafficking: forced labour and sexual exploitation. Trafficking for the purposes of prostitution is the more widespread in Canada, and this article allows us to clearly include sexual services in the broader context of trafficking for the purposes of sexual exploitation. This addition must not allow us to forget the importance of the fight against forced labour, of which a victim of sexual exploitation may well be a victim as well. Recent international reports attest to a significant increase in this neglected reality of human trafficking.

The inclusion of procuring and human trafficking in the list of crimes that can lead to the confiscation of assets provides a way for exploited persons to be supported. This also corresponds to the recommendations made by the United Nations Office on Drugs and Crime about the use of the United Nations Convention against Transnational Organized Crime, as the first paragraph of article 12 of the Convention states.

However, we must not lose sight of the second paragraph of article 14 of the same convention that suggests that signatories "give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime".

We have one final concern. Once more, it asks that attention be paid to the path taken by the accused, who are generally women, and to the circumstances that led them to become involved in trafficking.

In 2012, the federal government announced the National Action Plan to Combat Human Trafficking. It brought together all Canadian initiatives that were part of the fight against human trafficking. Among its strong points was the consolidation and bringing together of government action into the same department: Public Safety Canada. It also had the merit of focusing on the traffickers' main targets, women and children. Those affected by human trafficking

are generally the most vulnerable: migrant workers, undocumented immigrants, youth in distress, and aboriginal women and girls.

• (1555)

Although prosecuting criminals is an important element of the fight against human trafficking, Canada has done little following its international commitment to victim protection. Among the effective measures established for the protection of victims, one is to focus on a global and coordinated approach on several fronts: prevention, gathering reliable information, intersectoral coordination, victim identification and supporting community initiatives.

In protecting victims and protecting victims' rights, we recommend that Canada be more proactive in addressing the causes of human trafficking, poverty, discrimination, racism, and supply and demand. Among the paths to a solution that will counter trafficking for sexual exploitation, the Swedish approach is often held up as a model because it attacks the demand by penalizing those who purchase sexual services. Penalizing the johns goes hand in hand with public advertising campaigns aimed at men, awareness programs aimed both at youth and at those who are the normal targets of criminals, and assistance programs aimed at women who wish to get out of prostitution.

Part of our approach should be to assist women to get out of violent situations, such as prostitution and to provide them with various services: shelters, legal and social advice, education, and professional training.

We should also mention that one of the concerns about human trafficking often overlook one major element. That is forced labour. We remind you that Canada should ratify the international conventions on migrant workers and review the temporary foreign worker programs, particularly those that target so-called unskilled workers.

Thank you.

• (1600)

[English]

**The Chair:** Thank you very much.

We'll go to rounds of questions now. I would just remind committee members that these rounds are five minutes long and that we have a full list of questioners today, so I'm going to make sure that you stick to as close to five minutes as possible.

Our first questioner is Madame Boivin from the New Democratic Party.

[Translation]

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

My thanks to our six witnesses for appearing before the committee today.

My questions are for you, Ms. Miville-Dechéne.

First of all, I would like to congratulate you for your document “Prostitution: Time to Take Action”. Anyone who is interested in the subject would do well to read it. In a way, we have no choice. Whether because of Ms. Mourani’s bill or because of the decision in the Bedford case, which is going to be upon us soon, we are going to have to deal with it at some stage.

I would really like Bill C-452 to change things but I am not sure that that will be the case in practical terms. I do not think that victims are going to stop being afraid to come forward and that crown prosecutors and defence lawyers are going to stop reaching deals. Even if the intent is for harsher penalties, there is nothing to say that things will work that way.

I am not an expert in this area. After all your work in this area, you are probably a bigger expert than I am. When I read sections 212 and 279 of the Criminal Code, the sections that deal with procuring and human trafficking, I have a little difficulty seeing what makes them different from each other. Perhaps one of you can explain it to me. I find that they look pretty much the same.

In the Bedford case, the Court of Appeal had made its ruling. The Supreme Court is going to render its decision this summer, I think, although it may take another six or seven months, if not more. At that point, all this great work could end up in the recycling and we would be back at square one.

What do you think?

**Ms. Julie Miville-Dechêne:** I would be happy to explain my understanding of the difference between the sections on procuring and those on trafficking.

They are connected, of course, but the big difference is in determining whether the victim is forced, in a number of ways, to engage in prostitution. The difference is whether it is her choice—a word that I do not like very much. Procuring is taking the profits, but not forcing the woman, by various means, to remain confined and to give him all her earnings. So there is a business relationship between the procurer and the victim.

In a case of trafficking, however, all the earnings are generally taken away and the girl or woman is forced to remain in one place, by physical or psychological means. It is not always a case of her being tied up.

That is where the difference lies. Trafficking is one level up. That is why they say that there is never any consent in trafficking situations. Clearly, the case can be made that consent is relative in prostitution cases, but it is all a question of degree.

**Ms. Françoise Boivin:** So someone could be guilty of trafficking for the purposes of prostitution as well as for procuring.

**Ms. Julie Miville-Dechêne:** Yes, because if you are guilty of trafficking, you are guilty of procuring. However, the converse is not necessarily true.

**Ms. Françoise Boivin:** What do you think of the decision in the Bedford case?

**Ms. Julie Miville-Dechêne:** It is really complicated. You are all going to be faced with the Supreme Court decision. In June, the court will rule on the decisions—

**Ms. Françoise Boivin:** I must emphasize that the court may not necessarily rule this summer.

**Ms. Julie Miville-Dechêne:** That is true, it can take up to one or two years. Perhaps you won't still be here.

• (1605)

**Ms. Françoise Boivin:** We will still be here, for sure.

**Ms. Julie Miville-Dechêne:** In June, the arguments will be heard. We feel that it is very difficult. Up until now, the Ontario courts have emphasized the prostitutes' right to safety and so have found that the sections of the Criminal Code dealing with brothels and procuring are unconstitutional, because they jeopardize the safety of the prostitutes.

Our claim is that one little principle has been forgotten, the equality of men and women. That is protected in both charters, the Quebec one and the Canadian one. Our view is that equality does not tie in very well with the sexual exploitation that prostitution really is.

You are going to be faced by something very difficult. The Supreme Court could rule that the lower courts were in error because of a little too much consideration of the will of a few prostitutes instead of looking out for the many. I confess that there is a wide difference of legal opinion on those decisions. However, the Supreme Court could also hold that the sections are not constitutional. In which case, the ball would be back in your court as parliamentarians. Then you will have to decide what you want to do about it.

That may be the time to adopt the Swedish model, which criminalizes the pimps and the johns, the people demanding the service, and decriminalizes the prostitutes, the people who are most affected and who have to be helped to get out of prostitution. That is the Swedish model, and I encourage you to read up on it, because it works.

[*English*]

**The Chair:** Thank you very much for those questions and answers.

From the Conservative Party, we have Mr. Albas.

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

To all the witnesses, thank you being here today. Certainly, this bill has gotten a thorough amount of witnesses and testimony, but I found that all three groups had very important things to say today, so I thank you for your presence.

It does seem to me, Mr. Chair, that we're receiving a large amount of support for the bill, in that it does stiffen and send very clear signals that the perpetrators of these crimes against... Again, the case before us, as we hear, is that it's mainly men, but I'd also like to talk about other measures that the government either has put in place currently or will be putting in place over the next few years.

For example, last June, the Conservative government launched a national action plan to combat human trafficking: to enhance our ability to prevent this crime, to better support victims, and to ensure that traffickers are held accountable. The government has directed this and is planning to spend more than \$25 million over four years to implement this plan.

Furthermore, the victims fund has supported trafficking in persons projects, including partnerships with Public Safety Canada's contribution program to combat child exploitation and human trafficking, as well as various community workshops to raise awareness of trafficking in persons.

First of all, I'd like to ask all three groups, do you support these initiatives? Also, why do you think it's important not only to support this piece of legislation with some amendments, but to also continue to work on this issue?

**The Chair:** Okay. We'll start on that side and work our way across.

Go ahead, Mr. Maidment.

**Mr. Michael Maidment:** The Salvation Army was part of the round table that led up to the national action plan and, of course, part of the announcements as they were made across the country. I mentioned at the end of our presentation that we certainly think it's important to do both things at the same time. That national strategy is essential in preventing the victimization from occurring in the first place. Definitely, those strategies are very important.

I don't know if you would like to add to that, Naomi.

**Ms. Naomi Krueger (Manager, Deborah's Gate, Salvation Army):** I would just say, on behalf of the victims whom we serve on a day-to-day basis at Deborah's Gate, that certainly the efforts of Mrs. Smith and Bills C-268 and C-310 have created opportunities to better support these victims. Our message here today is that we want to continue to see these types of provisions created for law enforcement officers that reinforce the work we do on the front line. In the past year, we've been in court with two separate witnesses who have testified and been disheartened by the response at the justice level, because of a lack of understanding and a lack of ability on the part of the courts to respond from a criminal justice perspective.

Certainly, we would support any efforts to create opportunities for our residents to accomplish the goals and dreams they have for themselves, for them to be able to be empowered and be restored, and for them to be able to complete high school and to be able to do all of the things they want for themselves now that they've been able to be free and to experience what life looks like without exploitation.

[*Translation*]

**Ms. Louise Dionne:** As we mentioned in our presentation, we welcome the plan of action warmly because it seeks to determine who the victims of trafficking are. The victims are women, children, aboriginal women and migrants who, in many cases, are in the programs for unskilled workers. That also helped us to make Canadians aware that trafficking really does exist. For example, CATHI is a beneficiary of the Justice Canada's victims fund, through a project in Quebec.

We would have liked to see the plan go further to give a little more support to the provinces, especially for the needs of victims, such as health care and psychological care. That is the responsibility of the provinces, but the federal government could have provided them with some support.

We would also have liked the plan to have been designed a little more along the lines of the Swedish model in terms of the demand for sexual services. There is nothing in the plan about that.

Those are our caveats. But we still welcome the plan.

• (1610)

[*English*]

**The Chair:** Okay.

**Mr. Dan Albas:** Mr. Chair, this committee did study the victim surcharge, which the House then passed. We've doubled that. Those moneys go specifically to the provinces.

So I appreciate hearing that. I'm glad to say that the government has taken action on some of those concerns already.

Thank you.

[*Translation*]

**Ms. Julie Miville-Dechéne:** In general, I agree with Louise Dionne. We also consider that the principles in this action plan are a step in the right direction.

To be perfectly frank, unlike British Columbia, Quebec has no shelters for women who are victims of trafficking. In general, we have no specialized programs to help prostitutes get out of the situation. We need specialized services, like detox. They do not quite match the needs that shelters for abused and battered women address. So we are asking for resources. Clearly, it is all in provincial jurisdiction, but we are happy about anything that can help the provinces provide victims with better support.

Training of police officers is another thing. We have seen trained police officers in Quebec. It makes a considerable difference when they see that women, prostitutes or not, who have lived a difficult life and who may sometimes not obey or appear to be a threat, are actually victims. You have to learn to look them in the eye, not at their chest. There are all kinds of little tricks that law enforcement has to learn in order to be able to have a conversation with these women and earn their trust.

And finally, we have to make sure that judges, lawyers and the entire legal system understands the issue. That is another stage.

[*English*]

**The Chair:** Okay, merci.

Thank you for that question and those answers.

From the Liberal Party, Mr. Scarpaleggia.

[*Translation*]

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** Thank you, Mr. Chair.

As I am not a regular member of this committee, I have no in-depth knowledge of the issue. Please forgive me.

I found your testimony extraordinary, each of you.

You mentioned the psychological aspects, like the Stockholm Syndrome. When we think about human trafficking, we often think of slavery, people who are physically forced to do work that they do not want to do. You quite rightly said that there is also a psychological aspect to keeping these women captive.

Does the fact that the constraints are psychological make cases more difficult to prove in court?

I don't know who would like to answer that question.

**Ms. Julie Miville-Dechêne:** By definition, the victim's cooperation is needed for a court appearance. But the victim goes through various stages: she loves her pimp, she does not love him any more, she sees qualities in him, and so on. With young victims, especially very impressionable ones, it can be difficult.

But there are some quite extraordinary programs in Quebec. With Mobilis, for example, all the social services in a youth centre join with a police service in an attempt to make the victim's testimony and care easier. Everyone says that it all comes down to the way victims are looked after. If they have good support with them in court, if they are not left by themselves, they will testify against their pimps.

• (1615)

[English]

**Ms. Naomi Krueger:** I would say that absolutely it's very difficult to prove trafficking in court because of the psychological damage that occurs throughout the grooming and recruitment process. It's a very targeted, manipulative practice. It's predatory. They choose women and girls who have a need in some capacity, and they provide for that need, and they abuse and violate that trust. Then to have somebody who doesn't know the definition of trust turn around and speak to that in court and be able to articulate very clearly to a jury or a judge or somebody who has no concept of their definition of trust the process that the perpetrator went through to recruit, groom, and exploit them can get very difficult. Often it's just damaging and discouraging for somebody to even attempt to make that definition and to make that clear to those determining the sentencing or determining the outcome of their lives.

[Translation]

**Mr. Francis Scarpaleggia:** So it gets very complicated.

It seems that there are gangs recruiting these women. It seems that it is not just one person doing the trafficking, but groups of criminals. These are always gangs, are they not?

**Ms. Julie Miville-Dechêne:** It depends. I said gangs because we know of situations in Montreal where street gangs of young men are involved in this kind of trafficking. But I would not venture to say that it is the norm.

**Mr. Francis Scarpaleggia:** So it could be one person acting alone.

**Ms. Claudette Bastien:** Yes.

**Mr. Francis Scarpaleggia:** A little earlier, you talked about what leads these people to become victims. Are strip clubs one of the main channels for trafficking? Is that obvious to you?

**Ms. Julie Miville-Dechêne:** Yes, because they are places that are tolerated, given the legal vacuum, so to speak. Perhaps I shouldn't

call it a vacuum. Let's just say that there have been conflicting rulings on lap dancing. Does it constitute prostitution? According to the latest information, I believe it did.

Strangely enough, the police don't get involved when strip clubs offer lap dancing. Do you know what lap dancing is? It can go way beyond a simple caress. It's verges on prostitution. In fact, it's a gateway for the dancers who go in those enclosed areas. Unfortunately, there are a lot of those establishments in Quebec, 200, I believe.

**Ms. Claudette Bastien:** More than 200.

**Mr. Francis Scarpaleggia:** They're often run by gangs. Very often, that's the case. It's part of the structure that was set up to exploit these women.

**The Chair:** A minute left, Mr. Scarpaleggia.

**Mr. Francis Scarpaleggia:** Ms. Bastien or Ms. Dionne said there was a danger in this bill. There is a risk that victims might be blamed when they live with the procurer and do, for example, the bookkeeping for that person. Perhaps I shouldn't have worded it like that, but the fact remains the victim could be someone who is helping with the operation somehow.

**Ms. Louise Dionne:** That wasn't what I meant.

Our concern has more to do with the fact that this involves a progression. It's important to understand that trafficking is a world of manipulation. Confinement isn't always the tactic used. The perpetrators know how to make someone agree to do things and to be exploited without being paid.

**Mr. Francis Scarpaleggia:** Why do you think those people might be seen as being guilty?

**Ms. Louise Dionne:** Oftentimes, the only way for a victim of exploitation to get out of the situation is to become a trafficker herself. International reports have also shown that more female traffickers had been arrested than male ones.

[English]

**The Chair:** Thank you for those questions and answers. This is excellent.

From the Conservative Party, Mr. Seeback, go ahead, please.

**Mr. Kyle Seeback (Brampton West, CPC):** Thank you, Mr. Chair.

I want to talk a little about the sentencing provisions of this legislation, in particular with respect to the imposition of a consecutive sentence.

Ms. Dionne, I know you've said you have some issues with that, because you think there might be circumstances in which a victim could suffer the consequence of that section. I want to hear from others what you think about consecutive sentences.

I think it sends an important message to condemn this type of behaviour, and it will dramatically increase the sentences for people who are convicted of those crimes. I'll throw that down, and if I have time, I want to ask a couple of questions on the presumptions sections.

• (1620)

**Mr. Michael Maidment:** I think that's one of the things we were referencing. There's a bit of an equation that traffickers use. If the sentence isn't appropriate, traffickers see that potentially as part of the risk of committing the crime. I mentioned the experience of a victim who raised an estimated \$620,000 for her trafficker over a two-year period. If there's an insignificant sentence that comes along with that, it's part of the risk that traffickers are willing to take on to make that amount of money. That's just one individual. If we were talking about an individual who had trafficked 10 or 20 victims and we start to compound the actual dollar amounts, then maybe a year or a couple of years in prison is not a bad risk.

**Mr. Kyle Seeback:** That's what we've heard as well from other people who have come to the committee. They say if you're going to serve your sentences concurrently, you might as well exploit six or ten women. But when you make them consecutive, maybe the equation doesn't add up quite so well.

**Ms. Naomi Krueger:** That's probably something I could echo from the survivors I work with on a day-to-day basis. They say, "What am I doing this for? Why am I testifying? Why am I spending 55 hours telling my story if I know he's going to get a year to two years with time served? How does that help me in the long run?" Not only would it send a strong message to victims who would want to tell their story and go before a judge; it would also send a strong message to traffickers that we've changed the way we do things in Canada and this is no longer okay, and they are going to be punished for it.

**Mr. Kyle Seeback:** That's a really good point actually. You think it will actually help victims come forward so they'll think that their testimony is worthwhile. I hadn't thought about that.

Thank you.

Ms. Bastien or Ms. Dionne.

[*Translation*]

**Ms. Louise Dionne:** I would add that it's important that justice be done to the victims, because they truly are victims. However, we have to be careful about how we go about it.

I agree this is an appalling crime and the perpetrator should be punished, so that everyone knows this practice is unacceptable in Canada. But that's not the point I wanted to make. We want to be certain that the reality and progression of the victims is taken into account. I wanted to make that clear.

**Ms. Julie Miville-Dechêne:** I would also say that we support consecutive sentences, especially given that the Criminal Code already provides for that in the case of other crimes. I am thinking of possessing and making explosives or using a firearm, be it real or fake, in the commission of an offence. When you compare human trafficking to those crimes, it's clear that it is equally, if not much more, serious.

That being said, let's not be naive. You know as well as I do that studies of the United States show that the severity of sentences, all the way up to the death penalty, does not necessarily have the deterrent effect we would like and does not result in fewer crimes. We can hope that happens, we can try to make it happen, we can decide it's a priority and take action accordingly, but we shouldn't expect a miracle.

[*English*]

**Mr. Kyle Seeback:** That's great.

I want to quickly talk about the presumption sections in this bill, because I think those are also very important. We've heard from other witnesses who say this is going to give police a very important tool by which to prosecute, because sometimes victims don't actually want to come forward, and the police can make use of that section.

How important do you think it is to make sure that is drafted correctly and as clearly as possible?

Anyone who wants to can respond.

**Ms. Naomi Krueger:** It absolutely makes sense that we need to equip law enforcement as much as possible to be able to respond to this crime. A lot of what we're asking for is to do just that, but we're also asking for the information to be communicated effectively to those who are responding to this crime.

With regard to making sure it gets drafted correctly, my colleague mentioned that a lot of times some of our residents will give a statement to the police or at the hospital in triage and say, "No, no—he's my boyfriend. It's okay. I want him in the room with me. I'm really happy he's here. He's really supportive". Then that statement is dragged into the whole case and used as evidence that maybe it wasn't as bad as she's saying it is now. We don't want to see that happen. We want to make sure that those kinds of statements and that kind of evidence don't get to be used as evidence to the contrary. We know that those kinds of statements are given as a survival technique or defence mechanism and that they are merely part of the case of trafficking and part of its complexity.

• (1625)

**The Chair:** Thank you for those questions and answers.

Our next questioner is Mr. Mai from the New Democratic Party.

[*Translation*]

**Mr. Hoang Mai (Brossard—La Prairie, NDP):** Thank you, Mr. Chair.

Thanks to each and every one of you for being here today. I also want to thank you for the incredible work you do.

My first question is for the CATHII representatives.

I've already asked the bill's sponsor whether this legislation could also apply to individuals who are exploited in the workplace, such as domestic workers. A number of experts have confirmed that it would apply to those situations, because there is a real problem in that regard.

I think you mentioned it, but could you elaborate on how this bill could help domestic workers?

**Ms. Louise Dionne:** Ms. Mourani's bill builds on what already exists to address human trafficking. As we mentioned during our presentation, oftentimes, this involves a progression. After working so many years with domestic workers, I do know that, in many cases, these migrant workers have had to prostitute themselves before coming to Canada.

In Canada, they are exploited doing domestic work, but that might be the least of what they've suffered in the course of their experience. Frequently, it's the same agency they dealt with in the Philippines, Hong Kong, Paris and Montreal. Having a piece of legislation that makes it possible to separate the two situations while addressing both is a positive addition.

**Mr. Hoang Mai:** Some experts have drawn a distinction. They said that domestic workers were indeed exploited and trafficked, but that the situation was not the direct result of prostitution or that it didn't necessarily involve that. They did confirm, however, that the issue needed to be addressed. We agree on that.

Ms. Miville-Dechéne, I hope I will be able to be there—and I do think I will—when we really get into the discussion on prostitution. The decision in the Bedford case is an important consideration. What's more, a number of experts who appeared before the committee talked about the Swedish model.

I believe you said that prostitution did not always lead to trafficking, but that trafficking always led to prostitution.

Aren't we overlooking female domestic workers who are exploited but not necessarily involved in prostitution?

**Ms. Julie Miville-Dechéne:** I never meant to suggest that. I was saying that trafficking people for the purpose of sexual exploitation always leads to prostitution, but not the reverse.

You are right to point out that we must not overlook women—and men, for that matter—who are in that situation. We don't have very reliable figures on that, but as far as prostitution is concerned, we know that about 80% of the victims are women and young girls. But they make up 66% of forced labour victims. So although they aren't quite as prominent, they still represent the majority in that respect.

I must admit that our expertise doesn't extend to that issue. Our position really focuses on sexual exploitation. Ms. Dionne knows a good deal more than I do on that topic.

**Mr. Hoang Mai:** I agree that sexual exploitation is horrible and seriously needs to be addressed. But since we're discussing these issues and talking about prevention, I think it's important to deal with this situation, which affects many women.

On that note, I am going to give the rest of my time to my colleague, Mr. Jacob.

•(1630)

[English]

**The Chair:** We have space for him.

[Translation]

**Mr. Pierre Jacob (Brome—Missisquoi, NDP):** One of the concerns we raised pertained to aboriginal women, who, I believe, experience problems unique to them.

I'd like each of you to comment on their situation.

Who would care to start?

**Ms. Julie Miville-Dechéne:** Aboriginal women are tremendously overrepresented among female prostitutes. That absolutely sad state of affairs is due to a number of factors, including acculturation and migration to cities. It's quite a terrible problem.

I will let Ms. Dionne speak to the trafficking dimension. I must tell you, even though I have to cut my comments a bit short because of time, this is one of our major concerns.

**Mr. Pierre Jacob:** Okay.

**Ms. Louise Dionne:** The channels that aboriginal women use to get out of their situation hinge on support for community-based initiatives. So even though the national action plan to combat human trafficking set out programs tailored specifically to women and aboriginal groups, we feel that support for community-driven initiatives is still insufficient.

These women often feel marginalized, generally speaking. For them, it can really be a way to gain the upper hand. When it comes to that form of exploitation, in other words, domestic trafficking, they are overrepresented, despite the fact they represent just 2% or 3% of Canada's population. Not doing more to help them is unacceptable.

**Ms. Julie Miville-Dechéne:** I simply wanted to say that the Government of Quebec just launched an initiative to combat violence against women that focuses on aboriginal women. We haven't seen any results yet, as it was just announced not that long ago.

[English]

**The Chair:** Thank you very much for that.

Mr. Jacob, we have another slot for the NDP that you may want to consider.

Our next questioner is from the Conservative Party, Mr. Armstrong.

**Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC):** Thank you, Mr. Chair. I may share some of my time with my colleague.

I'm going to start with the Salvation Army.

Ms. Krueger, can you tell me briefly what Deborah's Gate does?

**Ms. Naomi Krueger:** Deborah's Gate is a safe house for survivors of human trafficking. We have 10 beds available to women who have been exploited, both from within Canada and from outside of Canada.

We exist to create a safe place, first and foremost, so it's an undisclosed location. It's a place where we have 24-hour support. We have amazing community support in Vancouver. We have clinical counsellors who provide trauma counselling. We have addiction counsellors who provide case-by-case addiction counselling. We have incredible support from Citizenship and Immigration; we have a representative from CIC in Vancouver. We have a vast team of legal experts who speak to us on different things. A lot of times, there is divorce or family law and different issues like that, and they provide resources and services to us.

We do our best to give back to survivors what has been taken from them, whether that's a grade-12 education, a relationship with their family, or an opportunity to work in employment they aspire to work in. It looks very different from day to day, but for the most part it's really just a restorative, safe environment.

**Mr. Scott Armstrong:** This came up in Mr. Seeback's question on sentencing when we were talking about the difference between "concurrent" and "consecutive". In your experience, have there been a lot of victims who do not testify because they think the perpetrator will not get enough of a sentence? Even if four or five would testify, if there were a concurrent sentence, they might wonder what would be the use.

Is that a prevailing feeling among victims you've dealt with?

**Ms. Naomi Krueger:** I would say that we have only recently had any success encouraging victims to testify, because only recently have we had the support and community understanding of what trafficking is in relation to the Criminal Code. We've only recently been able to work with law enforcement officers who are willing to investigate under those Criminal Code provisions.

Your latest case was very disheartening. The victim was left wondering what all her trouble was for, why she bothered to put herself through all of that. Really—and this is quite telling—she said, "If they can't get the criminal justice process right, how can they keep me safe?". She'd been told by law enforcement officers that she'd have the best lawyers, and they'd put everything right. Her response was that if they couldn't get that part right, there was no way they could keep her safe.

• (1635)

**Mr. Scott Armstrong:** Moving to consecutive sentencing, how long would it take for that message to get out among the victims of this crime? Is that going to be a win for them? Are they going to view it that way? Will it inspire them, or would there have to be more changes later on?

**Ms. Naomi Krueger:** I was actually able to share with a few of our residents who are facing trials the fact that I would be here today speaking on their behalf and talking about the fact that you folks in this room are willing to look at consecutive sentencing. What they said to me was, "Just tell them how much safer I would be in Canada if this was available." That's their message.

**Mr. Scott Armstrong:** Thank you.

I'll pass along the rest of my time along.

**Mrs. Joy Smith (Kildonan—St. Paul, CPC):** I have just one minute, Mr. Chair? Okay.

Very quickly, Naomi, I know that I'm going to have a chance in a little while, so I just want to make a statement. The Salvation Army has done amazing things to help the victims of human trafficking. You give all of us courage, and I think the consecutive sentencing is very, very strong for all the victims....

I know that I don't have much time, so I'll just pass it over, Mr. Chair. I have a couple of very important questions, but we don't have the time. Thanks.

**The Chair:** Thank you, Ms. Smith.

We have two groups left. We have Madame Morin from the New Democratic Party, who has the next five minutes, and then we'll finish up with Monsieur Goguen.

Madame Morin, the floor is yours.

[*Translation*]

**Ms. Isabelle Morin (Notre-Dame-de-Grâce—Lachine, NDP):** Thank you kindly.

I want to thank the witnesses for being here today. Their comments are extremely relevant.

I want to start by addressing the CATHI representatives.

I attended the conference you held in April. Most of the speakers highlighted the importance of putting the victim at the centre of the process. I found it very enlightening when, on the first day, a woman who had been involved in prostitution got up and explained how hard it was to break away from that. She also underscored the fact that there was little support to help with that.

One of the action plan's four pillars addresses support for victims. But I believe that component receives the least investment.

Do you think more could have been done as far as the assistance provided to victims goes?

My question is for all of the groups.

**Ms. Louise Dionne:** As I mentioned, in the case of aboriginal women, supporting community-based initiatives is truly imperative. The communities know the issues and have the ability to find solutions. They have them.

Your colleague mentioned forced labour victims earlier. On that issue, revisiting the immigration programs for foreign workers is essential, in my view. Those individuals are put in vulnerable positions. I once helped a domestic worker break away from the exploitation she was suffering only to realize that she was falling into a procuring ring. We solve one problem, but because we don't have the resources to help those people, they fall victim to domestic trafficking.

It's important to connect the two situations. They aren't inseparable. Ms. Mourani's bill does not separate them: it strengthens one of them, but does not take anything away from the other. I don't think there's a problem in that regard.

Supporting the provinces when it comes to assistance measures is also key, especially as regards health, social services and education. It's also important to help these women find a job so they can leave prostitution behind. Otherwise, they'll remain vulnerable and continue to work in prostitution.

**Ms. Claudette Bastien:** Ms. Dionne mentioned the Palermo convention and the possibility of using the proceeds of crime and assets confiscated from traffickers to help trafficking victims. I don't think that was included in Ms. Mourani's bill, but such a significant measure could help victims. Police who work in Montreal's west end have told us they don't have enough resources in their budget to help trafficking victims. Even they don't have enough money to help trafficking survivors. That's a major weakness.

•(1640)

**Ms. Julie Miville-Dechêne:** Like Ms. Dionne, I agree that we need to provide these victims with health and social services and, as a result, support the provinces. All of that is expensive. We have ten recommendations, one being support for the provinces. I will tell you that success also depends on a change in thinking. How do we change the mindset of prostitution clients? Female prostitutes are involved in trafficking because there are clients.

A profound change in mentality is paramount. We have to undertake public campaigns to make people realize that seeking out a prostitute's services is not some innocuous activity, but a form of exploitation. You might think me naive, but Sweden managed to convince a large part of its population that this was a form of exploitation. So awareness campaigns do work, as in the case of domestic violence. The same approach should be used for trafficking and prostitution.

[English]

**Ms. Isabelle Morin:** I don't know if you would like to add something.

**Ms. Naomi Krueger:** I should just say that Deborah's Gate is entirely privately funded, so we are at the mercy of the community supports around us. So if there were going to be a way to further augment the amazing work that's already been done, having resources to be able to support these initiatives not only in British Columbia but across the country, I think, would be a tremendous way to do that. Six hundred and twenty thousand dollars is a lot of money, so if there were a way to kind of clawback some of those resources and put them towards the benefit and the healing process for victims, I think that would give an incredible strength to the work that's already being done.

**The Chair:** Thank you. That's your time. I'm sorry, madam.

Thank you for those questions and answers.

Our final questioner is Monsieur Goguen from the Conservative Party.

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

My question will be short, and I'll share my time with Mrs. Smith.  
[Translation]

Thank you for appearing before us today.

In November 2012, Bill C-10, Safe Streets and Communities Act came into force. One of the things that legislation did was make it impossible for a judge to sentence someone convicted of human trafficking to house arrest.

Do you feel it's important to prohibit individuals convicted of human trafficking from receiving house arrest sentences?

**Ms. Louise Dionne:** Well—

**Mr. Robert Goguen:** That would seem to go without saying.

**Ms. Louise Dionne:** The jails are full. I don't know whether we have the resources to keep everyone in jail.

We aren't against the idea. Is it doable? That is what I'm wondering.

**Mr. Robert Goguen:** I'll turn the floor over to Ms. Smith.

[English]

**Ms. Naomi Krueger:** I would just say that we could reprioritize: He goes to jail. I think that trafficking absolutely has to be addressed from a Criminal Code perspective.

**Mr. Robert Goguen:** It's a horrific crime.

**Ms. Naomi Krueger:** Yes, horrific.

**The Chair:** Ms. Smith.

**Mrs. Joy Smith:** Thank you.

Thank you, guests, for being here today.

I have two questions. I agree with you about the Swedish model. It became the Nordic model, and that focus needs to be on the perpetrators and not on the victims.

But let's talk about the victims for a minute.

Naomi, you and I went through a horrendous time this past year with a victim who was tried. Her case did not turn out so well, because there's organized crime involved. Organized crime is tremendously powerful in terms of financial resources.

When you have one small girl sitting in a courtroom and the perpetrator's staring her down and his friends are coming in and doing the same not only to her but to everybody else in the courtroom, and you talk about victims' rights, including the right to be able to testify without that coercion and intimidation that's unspoken but very prevalent in terms of body language and all the rest of it, what can we do in terms of victims' rights? What should we do to change that?

**Ms. Naomi Krueger:** I think we need to remember that this is about dignity, testifying with dignity and being a witness with dignity and our ensuring that we recognize that somebody is describing horrific details to complete strangers—often before male juries and judges. So it's a form of retraumatization. I think we really need to recognize and there needs to be some sort of training and awareness of PTSD created among those who are involved in the criminal justice process and human trafficking so that when a victim does get to the stand and is willing to tell her story, she can count on the protection of those who are exacting her safety.

•(1645)

**Mrs. Joy Smith:** Let's take the case of this individual, because you and I know her very well. She went through the trial and she knew something was going wonky, and now she's in hiding again, but you're here today. This is very practical, and I know this means a lot to the victims. You're here today knowing that in this Parliament there are members on all sides of the House who are working together to strengthen the law against the traffickers and who are trying to make it as tight as it can be to protect her.

That evening when we were in the secret place with the detectives and everything, one comment she made was, "Thank you for making me feel as though I'm worth something". Can you extrapolate on that today, on how that's going to help her to keep going? Because she has over a year to go before she can testify again.

**Ms. Naomi Krueger:** For this individual, the case went to a mistrial. They recently announced that the new trial date would be in September 2014.

So after waiting a year and a half to testify against her five traffickers, a mistrial was declared. She will have to wait another year and a half to testify again.

In that time, she was going to school. As soon as she finished testifying, she was off her anxiety medication. She was excited to go back to school. She started planning for her future. She was going to be reunited with some of her family members. Then, when she found out that it went to mistrial, it really set her back. We lost a year and a half of the work we'd been doing to rebuild her dignity, to rebuild hope. After hearing that she has to wait another year and a half to testify, she's really struggling to understand the meaning behind it all.

I think that really speaks to the brokenness in our criminal justice system to address this crime. I think it speaks to the reality that these are people's lives that we're asking them to put on hold so that we can hold the perpetrators accountable. We shouldn't be placing that much onus, that big a burden, on the victims. I think we need to get creative about the ways we look at this crime, in terms of holding perpetrators accountable, without asking so much from the victims.

I'll just leave it at that.

**The Chair:** Thank you very much.

Thank you for the questions. That's our time for that.

I want to thank our panellists here today for providing the information regarding the bill we're dealing with. On behalf of the committee, I want to thank each and every one of you and your organizations for the work that you're doing in this field. We appreciate that those of us around the table here don't see the issue—maybe Ms. Smith does—on a daily basis, but we know that you folks are dealing with it, and we really, really thank you for that.

With that, we'll suspend for one minute while our guests leave. We'll ask the staff from the justice committee to come forward, and the legislative clerk, to deal with clause by clause.

•(1645) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1650)

**The Chair:** I call this meeting back to order.

I would also invite Madame Mourani to the table, if she'd like to come. It's a private member's bill, her bill, and I think that's only appropriate if she'd like to be here to take part in the discussion. As chair I think I'll honour that, as it's a private member's bill.

Ladies and gentlemen, I think we have nine amendments to the six-clause bill. We have set aside until 5:15, but we can go longer if needed, obviously, as we need to do this.

So we are doing clause by clause of Bill C-452. Put up your hand and we'll take notes and we'll recognize you. And if you want to ask the staff from the department a question, they'd be happy to do that—I'm not sure Nathalie's happy to answer, but she's here for that—or to deal with anything about the ruling. That's why I'm surrounded by clerks, because they don't think I know what I'm doing.

**Mr. Kyle Seeback:** They would be right.

**Voices:** Oh, oh!

**The Chair:** There you go.

(On clause 1)

**The Chair:** On the first clause, there are amendments from the Liberal Party and amendments from the Conservative Party.

The clerks have informed me that the four Liberal amendments are actually out of order, but I will let the Liberal Party speak to the amendments. Then I will read why, based on the clerk's information, they are out of order, and we can go from there.

For that, if you disagree, then you have to challenge the chair, and then there will be a motion to sustain the chair, blah blah blah.

**Voices:** Oh, oh!

**The Chair:** But we won't worry about that until we get there.

At any rate, for clause 1, the first amendment is from the Liberal Party.

Mr. Casey, I'll turn the floor over to you, if you'd like to move your amendment.

•(1655)

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

You have amendment Liberal-1 before you. Bill C-452 requires judges to issue consecutive sentences for offences under section 212 of the Criminal Code. This amendment would allow for exceptions if the judge deems consecutive sentences to be not in the best interests of justice, and would require a written explanation from a judge in such cases.

I wasn't here for the testimony, but I understand that you've heard compelling testimony that concurrent sentences for exploitation are presently the norm, and that this norm has to be reversed in order to create a disincentive for those committing exploitation to expand their operations. I believe that this can be done without compromising the proper role of the judiciary or charter guarantees such as those against cruel and unusual punishment.

As such, this amendment would preserve the bill's instruction to judges that sentences under section 212 of the code are to be served consecutively, while allowing for concurrent sentences in exceptional circumstances, thus retaining judicial discretion. Further, it would require judges to explain in writing their decision to provide concurrent sentences in such cases.

**The Chair:** Thank you, Mr. Casey. I will rule on that amendment.

Bill C-452 amends the Criminal Code to provide for consecutive sentences for offences related to procuring and trafficking in persons. This amendment proposes to include a provision whereby the sentences for those offences could be served concurrently.

As *House of Commons Procedure and Practice*, second edition, states on page 766, “An amendment to a bill that was referred to committee *after* second reading is out of order if it is beyond the scope and principle of the bill.”

In the opinion of the chair, the inclusion of a provision that could permit sentences for these offences to be served concurrently would be contrary to the key element of the bill and therefore is inadmissible. As amendment Liberal-4 is consequential to this amendment and contains the same provision, it is also inadmissible.

I'm ruling that it is out of order. Are there any questions or comments on that?

Seeing none, we will move on. Shall clause 1 carry?

(Clause 1 agreed to)

(On clause 2)

**The Chair:** Clause 2 has amendments.

On government amendment G-1, we have Monsieur Goguen.

**Mr. Robert Goguen:** Mr. Chair, you have all the amendments in front of you. I trust that everyone has copies. There's no point in me repeating the amendment, I take it, so I'll just proceed as to the reasoning.

**The Chair:** Yes, the reasoning would be great. I think everyone has copies.

**Mr. Robert Goguen:** Very good, Mr. Chair.

This is on subclause 2(1). We're proposing that subclause 2(1) of the bill be deleted. This clause proposed to include the phrase “in a domestic or international context” under “Trafficking in persons”. That's under section 279.01.

The objective of subclause 2(1) is unclear and could cause interpretation problems. If its objective is to ensure that the offences apply to Canadians who commit trafficking offences abroad, the Criminal Code does this already as a result of Joy Smith's bill, Bill C-310, enacted on June 2012, which extended extraterritorial jurisdiction in this context. If the objective is to ensure that the offence applies to trafficking cases involving the crossing of Canada's borders, as well as those that take place entirely within Canada, the offence already applies to both of these scenarios.

Further, the proposed amendment would result in inconsistent treatment between the main trafficking offence and the three others.

**The Chair:** Thank you for that.

For future reference, your English is so good that if you could slow down a bit for translation that would be great.

**Mr. Robert Goguen:** Sold.

**The Chair:** Sold.

Are there any questions on amendment G-1?

Ms. Mourani.

[*Translation*]

**Mrs. Maria Mourani (Ahuntsic, BQ):** I want to start by thanking all of my colleagues for letting me be here today to discuss

the proposed amendments. I could have commented more, but unfortunately, I did not receive them until this morning.

I fully appreciate my colleague Mr. Goguen's position. But what is being added here does not have to do with extraterritorial jurisdiction. It addresses a point that was repeatedly brought to my attention: as things stand now, be it prosecutors or the police, when deciding whether the offence constitutes human trafficking or not, they do so more or less as they see fit.

When it involves foreigners coming to Canada, the trafficking is truly considered international, but when we're talking about domestic trafficking, between cities or provinces, for example, there is a subjective element there. In some cases, it's considered trafficking and in others, it's seen as procuring, if there's sexual exploitation involved. So this doesn't pertain to extraterritorial jurisdiction, which is already dealt with in the Criminal Code. It was Ms. Smith who introduced the measure, for that matter. The purpose is merely to clarify that, in cases where individuals are moved from one city to another or from one province to another, the offence constitutes trafficking and isn't necessarily just a matter of procuring.

The witnesses we heard from today said that, because of the technicality, the Criminal Code could be interpreted differently in some cases, depending on the individuals involved. All this does, then, is make things clear.

● (1700)

[*English*]

**The Chair:** Merci.

Our next commenter is Mr. Casey.

**Mr. Sean Casey:** I agree, actually, with Ms. Mourani. Bill C-452 adds the phrase, “in a domestic or international context” to the offence of trafficking in persons. But this amendment seeks to take it out, if I hear Mr. Goguen correctly, because it's not necessary and because it already applies in domestic or in an international context.

We know from witness testimony and from various NGO reports that this really is, in general terms, an international crime. I think this phrase clarifies Parliament's intent that an offence in human trafficking should be prosecutable whether the trafficking occurred wholly in Canada or beyond its borders. I think it recognizes the scope and scale of the problem, and our desire to address it to the fullest extent possible. I think something is added by having it there, and I don't feel that it should be taken out or that the amendment should pass.

**The Chair:** Madam Boivin.

[*Translation*]

**Ms. Françoise Boivin:** I'd like to hear the opinion of the justice department official.

I understand the point. As I read it, the application isn't limited. When I listen to the bill's sponsor speak, I realize that the application is also seen from a very broad perspective. Both of you are saying the same thing in a different way. It may be helpful to hear your comments on the matter.

Does adding both expressions limit things?

[English]

**The Chair:** Madam Levman.

**Ms. Nathalie Levman (Counsel, Criminal Law Policy Section, Department of Justice):** The offence as currently drafted applies to cases that take place entirely within Canada and to cases that cross international borders. In that sense, this is not necessary. It already applies.

The other concern is that this phrase is only added to section 279.01. We that know we have a child-trafficking offence as well as a financial benefit offence and a documents offence, which are equally trafficking offences. If you put a phrase in one offence and not in others, a court may interpret that as meaning something different in the different contexts. I think the lack of consistency may end up being a problem when it's being interpreted by the courts.

[Translation]

**Ms. Françoise Boivin:** That was the point I wanted to make. If we add the expression, we also have to add it to section 279.011. Otherwise, it won't be consistent. There are two possibilities: either we add it everywhere or we don't put it anywhere.

The problem is that we may not have the information we need to determine if it can be added to other provisions. In reading the section as a whole, I was still able to see that it could apply to section 279.011 as well. I don't understand why it no longer applies in the case of minors but it does apply in other contexts.

I believe you answered that. From what I gather, then, even if the idea isn't included in the bill, we will still be achieving what Ms. Mourani is trying to do. Is that what you're telling us?

• (1705)

[English]

**Ms. Nathalie Levman:** Yes, it currently applies to both the domestic and the international cases.

The other thing you might want to consider is whether or not there are other types of offences that have international aspects that you might want to add that phrase to. I say so because the court may consider, even if it were in all the trafficking offences, that there is a difference between trafficking offences and other offences that take place across Canada's borders.

**The Chair:** Thank you very much for those answers.

All those in favour of amendment G-1?

(Amendment agreed to)

**The Chair:** Now we go to amendment G-2.

Mr. Goguen.

**Mr. Robert Goguen:** Nice and slow....

**The Chair:** Well, slower....

**Mr. Robert Goguen:** I'm just kidding, Mr. Chair.

We propose that subclause 2(2) be amended.

This clause proposes to add a presumption that an accused is exploiting a trafficking victim if they are shown to be habitually in the company of that person.

Our proposed amendment would ensure that the clause creates a true presumption, consistent with the existing Criminal Code presumptions, such as that found in subsection 212(3) of the code. Presumptions enable prosecutors to prove a required element of the offence by proving a fact related, which is not an element of the offence.

As currently worded, the proposed presumption does not accomplish this objective, primarily because the presumed fact that the accused is exploiting the victim, is not actually an element of the trafficking offence.

Our amendment would also ensure that the proposed presumption applies equally to the child trafficking offence in subsection 279.01 (1), as enacted in June 2010 by Joy Smith's private member's bill, Bill C-268, An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years).

**The Chair:** Thank you.

We have comments from Madame Boivin.

[Translation]

**Ms. Françoise Boivin:** I don't know whether it's due to the fact that I'm not feeling well and my head is a bit foggy, but I'm having a hard time with the numbering for this clause.

If we adopt amendment G-1, basically, we will be deleting subclause 2(1) of the bill. That would mean that clause 2 would no longer contain subclause (1). I'm not sure that the numbering is right, but I might be the confused one. The amendment reads as follows:

That Bill C-452, in clause 2, be amended by replacing lines 1 to 7 on page 2 with the following:

“(3) [...]”

But it's no longer subclause (3). I assume it should be subclause (2).

[English]

**The Chair:** Do you want to answer that?

**Ms. Nathalie Levman:** I believe the (3) is in relation to where it would fall in the actual code—

**Ms. Françoise Boivin:** —the actual bill, but we understand that wouldn't be (3) any more because (1) has just been—

**The Chair:** Let me answer.

**Ms. Françoise Boivin:** Just so that we're sure of what we're doing

**The Chair:** From the clerk, 279.01, the only thing that amendment did was take out the words “in a domestic or international context”. The paragraph in the parent document still exists. All the verbiage was to remove those four or five words.

**Mr. Blaine Calkins (Wetaskiwin, CPC):** The number is plain in this bill, not in the legislation.

**The Chair:** Is that all right.

Mr. Casey, and then Madame Mourani.

**Mr. Sean Casey:** The verb “harbours” has been taken out. It's in the original but it would disappear by virtue of the amendment. Is there a rationale for taking that out?

**Mr. Robert Goguen:** The new definition would take that into account, would it not?

**The Chair:** Would you like to answer that question?

**Ms. Nathalie Levman:** “Harbours” is one of the *actus reus* verbs in the actual offence. Here, this is describing the related fact that the prosecutor would have to prove. So the prosecutor would prove “living with” or “habitually being in the company of” an exploited person, and once the prosecutor has done that, the prosecutor has made out an actual required element of the offence, which is exercising controlled direction or influence over the movements of that person.

It's a bit of a technical amendment but if you look at subsection 212(3), which is very helpful, it's modelled on subsection 212(3) which was found to be constitutional by the Supreme Court of Canada in 1992, which was why we used that as a model.

• (1710)

**The Chair:** All right.

Is that okay, Mr. Casey?

**Mr. Sean Casey:** I have some submissions with respect to it. I'm satisfied with the answer to the question, but I have some concerns about the amendment. Bear with me, Mr. Chairman. In my submissions there are a couple of hypotheticals, so it's a bit lengthy and it's been prepared in advance.

This amendment replaces the key provision providing the presumption that one who lives with a person being exploited is deemed to have exploited or facilitated for the purposes of trafficking in persons.

The committee will know that we have also submitted an amendment to this section that may or may not be brought up or debated. It specifically references “living off the avails”, which we believe is an important element that should be incorporated. My concerns with respect to the proposed amendment G-2 will necessarily reference the fact that we feel “living off the avails” should be there.

The first general concern is that the presumption here applies to a person who is not exploited, but who “lives with or is habitually in the company of a person who is exploited”. This raises the issue of minors whose parents may be human traffickers or who are unaware of what is occurring. It would also apply, for example, to teachers who may not know that a child in their classroom is the victim of exploitation, as teachers would arguably meet the definition of “habitually being in the company of”.

Certainly, we want to facilitate the prosecution of traffickers, but not at the risk of casting too wide a net. As such, I hope that if amendment G-2 passes, Liberal 3 will be given strong consideration to exempt minors from the operation of this provision. If that language is not acceptable to the government, I hope that it will propose a subamendment to G-2 to address this problem.

My second concern relates to the specifics of the presumption at issue. In Bill C-452, the proposed presumption deems someone living or habitually in the company of an exploited person as exploiting them or facilitating their exploitation. Amendment G-2 stipulates that evidence that someone is in this situation is proof that

the person exercises control, direction, or influence over the movements of the exploited person. I believe this presumption is problematic and counterproductive to our shared goal of enhancing the prosecution of human traffickers.

In the presumption in Bill C-452, what is rebuttable is whether or not someone has exploited or facilitated exploitation. This is a different presumption to counter and one that goes to the heart of the matter, namely, exploitation. The wording in this amendment seems to suggest that we are concerned about who exercised control, direction, or influence over the movements of the exploited person or persons.

Let's imagine a scenario where two brothers live together and run a trafficking ring from their house. While one brother who interacts with the exploited individuals would surely be caught by this presumption, the sibling who does only the financing and who has no real interaction with those being exploited may raise arguments that his actions do not control or influence the movements of the persons. He may not be caught by this presumption, whereas the mere fact of his shared residence would be sufficient for a presumption of his involvement under both the bill unamended and under the bill with the Liberal amendment.

While that example illustrates the narrowness of the presumption after amendment under G-2, in some cases it may also be over-broad. For example, women working together as sex workers may not know the extent to which one may be controlled by her pimp, financially or otherwise. But a broad reading of this presumption would operate to target all of the sex workers in habitual contact with her as facilitating her exploitation. I don't believe that's our intention.

We're all aware that a similar presumption, relative to prostitution-related cases, is under review by the Supreme Court in the Bedford case. I don't wish to prejudice their analysis in any way, but I believe that this presumption may operate in a wholly undesirable, if not unconstitutional, way.

• (1715)

Thanks for your patience, Mr. Chairman.

[Translation]

**The Chair:** Ms. Mourani, go ahead.

**Mrs. Maria Mourani:** Thank you, Mr. Chair.

I want to thank my colleague for that amendment. I think it provided more teeth. In the French version, however, if possible, I would like to add the word “et” after “exploitée” so that it reads “qui n'est pas exploitée et vit”. That reads better than “qui n'est pas exploitée vit avec une personne”, which sounds a bit funny to me.

In addition, I'd like to ask Ms. Levman a question about adding "proof that the person exercises control, direction or influence over the movements of that person for the purpose of exploiting them or facilitating their exploitation". Won't that makes things harder for the police who have to collect the proof, even though the onus is reversed? Under the original clause, as soon as a person who is not exploited lives with a person who is exploited, that person is deemed to be exploiting the person being exploited, in the absence of evidence to the contrary. That is very broad, making the police's job much easier in terms of proving the offence beyond a shadow of a doubt using other methods of investigation.

So doesn't adding the words "control", "direction" and "influence" create obstacles for police, who have to prove the offence? With the amendment, won't they have to first prove the person exercised control, direction or influence before the reverse onus can be applied?

[English]

**Ms. Nathalie Levman:** No, actually, that's not how the presumption would function. All that the police would have to do is prove that the person lived with or was habitually in the company of the exploited person. Once they've proven that, they've made out one of the required elements of the offence. The expression "exercises control, direction or influence over the movements of a person" was only chosen because it was felt that it best reflected the types of actions that would be involved in living with or being habitually in the company of the exploited person.

So you don't have to prove that actual element of the offence. The related fact is proven; the element is made out. Just to clarify, this is a side issue, but that phrase has actually been interpreted by the Quebec Court of Appeal in a case called Perreault c. R., and it establishes a very low bar.

Even if this presumption doesn't function for whatever reason and the police and prosecutors have to prove in a court of law that someone is exercising control, direction, or influence over the movements of another person, that is fairly easy to make out based on the Quebec Court of Appeal decision. In fact, in a recent case called Urizar c. R., they interpreted that phrase using the Perreault decision.

I'm quite confident that phrase does have meaning in law, even though it doesn't have to be proven for this presumption to function. That's just a side issue since it's come up.

**The Chair:** Is there anything else?

[Translation]

**Mrs. Maria Mourani:** Thank you very much. That's a good point.

[English]

**The Chair:** Okay, thank you.

Madam Boivin.

[Translation]

**Ms. Françoise Boivin:** I just want to make sure my understanding of the burden of proof is correct as far as what the police, or rather the Crown, have to prove. It is, after all, the crown attorney who has to establish the proof. This doesn't make things harder for them than

the original bill did. Unless I'm mistaken, we're repeating the language in sections 279.01 and 279.011 of the Criminal Code. We're doing somewhat the same thing when it comes to section 212 and the language regarding the presumption and evidence that the person lives with or is habitually in the company of a prostitute. So we're always repeating the language of the offence itself. That seems to make things clearer than they were originally in Bill C-452. That's what you're telling us, basically.

Using that language has absolutely no bearing on the strength of the burden of proof for the Crown. That's what the bill is trying to do, in other words, provide more tools to eradicate a scourge. That should be our focus. Indeed, if we want to send a crystal clear message that we have zero tolerance for human trafficking and we want to give police more tools, the language in question is perfectly fine.

Is my understanding correct? If so, then, I'm okay with it.

• (1720)

[English]

**Ms. Nathalie Levman:** I believe so. I believe this accomplishes the same goal as is in Bill C-452, but it better reflects the type of language that's already used in the Criminal Code and that has been found to be constitutional, so it's safer. But it affects the same thing.

**Ms. Françoise Boivin:** Are you worried with regard to the examples that Mr. Casey was mentioning? Because I thought they were a bit off the wall, in a sense, in that I don't think teachers would be.... I have a hard time seeing it, honestly. I mean, of course I can take the most extreme cases, but if the objective is really to send a strong signal against human trafficking, should I worry about teachers being brought in front of courts?

**Ms. Nathalie Levman:** One would have to conceive of a situation in which a teacher would be living with or "habitually in the company of" an exploited person, so I leave that to your....

**Ms. Françoise Boivin:** Thanks.

**The Chair:** Is there any further discussion on amendment G-2?

Seeing none, all those in favour?

Ms. Smith, you can't vote. I'm sorry. I know you'd like to but you can't.

**Voices:** Oh, oh!

(Amendment agreed to)

**The Chair:** That is carried, and now we're on to amendment Liberal-2, which I think in a sense was basically introduced by Mr. Casey.

Do you want to move the item?

**Mr. Sean Casey:** Yes, please.

Mr. Chair, you have Bill C-452 before you. I referred to this in my intervention with respect to amendment G-2. Essentially, this adds in the provisions with respect to living off the avails of human trafficking or exploitation, so it deals with the example I referred to in amendment G-2, the example of the two brothers, where one would have the availability of the presumption. One would be forced to deal with the rebuttable presumption, but the financier wouldn't. This would catch him.

I do share the concern of the sponsor of the bill and the witnesses over low prosecution rates for trafficking offences and agree that the presumption provisions may be beneficial. Such provisions, while not unprecedented in the Criminal Code, are limited in number, and rightly so, given the presumption of innocence. The committee has heard testimony that this reversal would help convict offenders when the victims of exploitation are too frightened to testify. This is a worthy goal, and I'm not seeking to do away with the reversal of the burden of proof.

I am, however, seeking to ensure that this extraordinary measure will not unintentionally lead to the conviction of a person who is not guilty. The current wording of the bill applies this provision to anyone who is "habitually in the company of" an exploited person, which is overly broad. The amendment would require someone to be living off the avails of the exploitation in order for the reversal of burden to apply.

Given the importance of these reverse onus provisions to the presumption of innocence, I think it's extremely important that we get it right. On the suggestion that the example may be off the wall, I don't think the example of the two brothers is. I heard Mr. Calkins referring to the availability of the aiding and abetting provisions within the Criminal Code, which would provide some assistance with respect to the actual offence, but in terms of the rebuttable presumption that we're now building in, it wouldn't.

I would ask that this be considered. Thank you.

• (1725)

**The Chair:** Thank you for that. As chair, I'm going to rule that it's inadmissible and I'm going to give you the *Reader's Digest* version why.

This amendment proposes to create a new parameter whereby the presumption cannot exist unless it is first proven that the person is living "on the avails of the exploitation". As *House of Commons Procedure and Practice*, second edition, states, again on page 766, "An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill."

In the opinion of the chair, the inclusion of this parameter is contrary to the basic premise of the presumption contained in clause 2 and is therefore inadmissible.

Is there any further comment on that? No? Okay.

Now we'll go to amendment Liberal-3.

Would you like to move it, Mr. Casey?

**Mr. Sean Casey:** Thank you, Mr. Chair.

The amendment is before you. This one is fairly straightforward. It would exempt minors from these reverse onus provisions that we just talked about. I need to remind you that minors could still be prosecuted for commission of this offence to the full extent of the law. That doesn't change with the Liberal amendment. The simple change is that they would be prosecuted in the normal course with the crown having the full burden of proof throughout the proceedings and not having the benefit of this rebuttable presumption. So it does not change the fact that minors can be prosecuted. It does change this evidentiary shift that is contained in the law now. That's what this proposes to do.

I would ask all members of the committee to join me in inserting this important safeguard into the bill.

Thank you.

**The Chair:** Thank you for that.

I am going to rule now that this amendment proposes to introduce an exception to the provisions of presumption by limiting its application to that of persons over the age of 18, and of course, the *House of Commons Procedure and Practice*, second edition, again, on page 766—I should read that page more closely, I guess—reads, "An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill."

In the opinion of the chair, by limiting the application of this section, the amendment would be seeking to introduce an exception where none currently exists. This is a new concept that is beyond the scope of the bill, and therefore inadmissible.

(Clause 2 as amended agreed to)

(On clause 3)

**The Chair:** On clause 3, we have G-3, the third amendment from the government side.

The floor is yours, Monsieur Goguen.

**Mr. Robert Goguen:** Okay, Mr. Chair.

There are subclauses 3(1) and 3(2), and what we're proposing to do is delete 3(2) so there will no longer be a 3(1), there will just be a clause 3. Those are the two parts of it.

Now I'll give you the rationale for why we're proposing to delete subclause 3(2).

This clause would create a new definition of exploitation for the purposes of trafficking offences, which would include specified means such as the use of force, fraud, deception, and abuse of authority, or a situation of vulnerability. Subclause 3(2) is vague and includes concepts that have not been interpreted by Canadian law, and is therefore likely to confuse. Moreover, the issue that this amendment proposes to address was already clarified by Joy Smith's Bill C-310, An Act to amend the Criminal Code (trafficking in persons), which enacted an interpretive provision that stipulates factors the court may consider in determining whether an accused exploited another person for the purposes of the trafficking provisions.

These factors include whether the accused used force, or deception, or whether the accused abused a position of trust, power, or authority.

**The Chair:** Thank you. Are there any questions or comments?

Madame Mourani.

[*Translation*]

**Mrs. Maria Mourani:** As I understand it, point (a) of the amendment is intended to remove the redrafted version of subsection 279.04(1) of the Criminal Code, from clause 3.

Perhaps Ms. Levman could confirm this for us, but currently, the English version of subsection 279.04(1) reads “to provide, or offer to provide”. But the French doesn't have that nuance. It says “à fournir son travail”, and not “à fournir son travail, ou à offrir de fournir son travail”. There's an inconsistency between the English and French versions.

This provision is supposed to correct that inconsistency. Is that correct?

• (1730)

[*English*]

**Ms. Nathalie Levman:** And you're absolutely right. In fact, I was involved in the original drafting of the provision, and this wording was in the original drafting, I think, unfortunately, by error. It was removed by Bill C-310 when C-310 was enacted. It just was something that the drafters didn't catch.

So I'm sure everyone will be very grateful to you for this correction. It's going back to how it was originally drafted.

[*Translation*]

**Mrs. Maria Mourani:** I would point out to my colleague that, by stating “par substitution, à la ligne 7, page 2” in amendment G-3, it actually reintroduces the old subclause in French, which is not the same as it is in English. So we're back to square one.

As it stands now, subsection 279.04(1) of the Criminal Code doesn't contain the same nuance that the English does. By doing this replacement, we're likely to end up back at square one. That's the first point I wanted to make about the amendment.

I'll let you respond to that, Mr. Goguen.

**Mr. Robert Goguen:** We're actually not touching the proposed definition for subsection 279.04(1) of the Criminal Code. Since we're removing the second subclause of clause 3 in the bill, that leaves only one subclause. Instead of having subclause 3(1), it will just be clause 3, because there won't be anything after it.

The definition you proposed won't change in the least. All that will change is the numbering. So we support the correction you're making.

**Mrs. Maria Mourani:** By correction, then, you're referring to adding the words “ou à offrir de fournir”. Is that what you're saying? You say you're supporting the correction, but I can't see that. Forgive me.

**Mr. Robert Goguen:** I'll show you; it'll be easier that way.

**Mrs. Maria Mourani:** I am indeed a visual learner. Go ahead.

[*English*]

**The Chair:** Will it take long?

**An hon. member:** No.

**Some hon. members:** Oh, oh!

**Mr. Robert Goguen:** I'll speak slowly.

[*Translation*]

There's no longer a subclause (2), so we're removing the mention of subclause (1). That way, it becomes simply clause 3.

**Mrs. Maria Mourani:** I see. That's fine.

But there's another point I want to raise concerning the amendment.

[*English*]

**An hon. member:** The government is here to help.

**Some hon. members:** Oh, oh!

[*Translation*]

**Ms. Maria Mourani:** The other thing the amendment is doing is deleting subsection (1.1), which was added to refer specifically to sexual exploitation. It was added because, as the Criminal Code currently stands, labour is defined as follows: “For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service [...]”. Prostitution and sexual exploitation aren't, however, services. We have to be careful here.

Every women's group I consulted with is asking that, under the Criminal Code, prostitution cease to be considered labour or a service. It is neither. It's sexual exploitation.

Actually, nothing in subsection 279.04(1) is changing. We're merely adding a subsection (1.1) to set out as clear of a definition as possible of all the methods that procurers can use to trap victims and exploit them. We're proposing this new subsection, in the context of sexual exploitation, to try to provide for all possibilities, whether it's providing, or offering to provide, sexual services by the use or threat of force, by fraud, deception, manipulation, by obtaining the consent of a person or by whatever means it may be. We tried to provide for all possibilities because I was even told that, in some cases, procurers were able to argue that they had never given the money to the victims. That's why we added the idea of the promise even without the acceptance of payments. It's so comprehensive that it covers, to the extent possible, all the cases I was told about.

So I urge my government colleagues to rethink their amendment. I believe it's paramount that we distinguish between sexual exploitation, services and all the details that go along with that.

• (1735)

[*English*]

**The Chair:** Okay, thank you for that.

Are there any comments?

Madame Boivin.

**Ms. Françoise Boivin:** Maybe you can enlighten us on both arguments.

**Ms. Nathalie Levman:** I can explain the amendment. It does create a separate legal test for exploitation, so the police would have to decide which definition they would go with. Previous witnesses have correctly pointed out that much of this language is derived from article 3 of the United Nations trafficking protocol and, as has already been pointed out, that language has not been judicially interpreted in Canada so there really is a problem with vagueness and potential overbreadth here with some of this language. It could confuse the operation of the law, and it raises potential charter considerations.

On the point of the words “labour services”, the current provision in section 279.04 is intended, of course, to cover all types of labour or services including sexual services. Bill C-452 does refer to sexual services in the separate legal test it provides and, of course, that relates back to the prostitution provisions, which also refer to sexual services.

This is a term that has meaning in our law, is intelligible, and has been judicially interpreted.

**The Chair:** Thank you.

**Ms. Françoise Boivin:** Am I correct in saying that when I read the amended definition in clause 2, which we're looking into right now, it seems a bit more complex for the crown to get into proof of all of these elements? I don't know if it's just an impression I have. The text as it is seems a bit more simple, and it's easier to fit in a lot of things.

**Ms. Nathalie Levman:** To be fair, Bill C-452 does say “or”. The crown would have to prove only one. You're quite right that some of these expressions have no legal meaning in Canadian law whereas in section 279.04 as currently drafted, each word is carefully chosen and has been judicially interpreted. So arguably, it would be more easily interpreted by a Canadian court, which is, of course, the point.

**Ms. Françoise Boivin:** I guess a better question would be whether you can foresee any problems such that somebody could just fall through the cracks because of the actual way the article is written, which the amendment might help. Or, do you not see that?

**Ms. Nathalie Levman:** I believe the current definition covers all of these different scenarios. Bill C-310 also provided an interpretive tool, which I think really helps. It uses language that has meaning in Canadian law to assist judges in interpreting when exploitation has taken place for the purposes of section 279.04.

**The Chair:** Thank you very much.

Let's take a vote on amendment G-3.

All those in favour of G-3?

(Amendment agreed to)

**An hon. member:** We're running out of time, Mr. Chair.

**The Chair:** I'm going to get to it as soon as we're done here.

We're on clause 3 as amended.

All those in favour?

(Clause 3 as amended agreed to)

**The Chair:** We are about seven or eight minutes past the normal end of the meeting. The rule is that we can extend the meeting with a majority vote.

I can tell you, just so you have an understanding of where we are, that we have clause 4 with no amendments, clause 5 with one amendment, and clause 6 with one amendment. We're at least halfway through if not more. If you want to continue, I'd be happy to continue, and I can ask the question again at 6 o'clock if we're not there by 6 o'clock.

**Mr. Kyle Seeback:** Mr. Chair, I have House duty right now and I'm already late.

**Ms. Françoise Boivin:** We can continue on Wednesday then.

**The Chair:** We have Wednesday open.

My concept today, to be frank with you, was that we would get this done, and then we wouldn't have to meet on Wednesday, but would meet on the Wednesday that we get back—

**Mr. Robert Goguen:** We didn't anticipate Mrs. Mourani commenting on every amendment.

**The Chair:** I know. You're probably raising your eyebrow at that, but for a private member's bill I think every member has the right to come and talk to the bill and the amendments to it. That's why I invited her to join us. I think that's only fair to all members of the House as has been discussed recently in the House of Commons.

• (1740)

**Mr. Kyle Seeback:** We haven't done it for any other private member.

**The Chair:** I'll be frank with you, Mr. Seeback. We have invited others to show up for clause by clause and they haven't come. Ms. Mourani made the choice.

**Mr. Robert Goguen:** It doesn't matter. We're beyond it now.

**The Chair:** I'll take a motion to continue with a majority vote. What do you want to do?

Mr. Albas.

**Mr. Dan Albas:** Mr. Chair, I think we should just end the meeting.

I'll just point out that there should be a vote of the committee. It's the committee's choice, not yours, with all due respect.

**The Chair:** I'll take that under advisement for the next time.

**Mr. Blaine Calkins:** Motion to adjourn.

**The Chair:** All those in favour of adjourning?

(Motion agreed to)

**The Chair:** Okay. We'll meet on Wednesday.

The meeting is adjourned.







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