HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on the Status of Women

FEWO • NUMBER 061 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, May 11, 2017

Chair

Ms. Marilyn Gladu

Standing Committee on the Status of Women

Thursday, May 11, 2017

● (0850)

[*English*]

The Chair (Ms. Marilyn Gladu (Sarnia—Lambton, CPC)): Good morning, ladies and gentlemen. We are pleased to be here today for the clause-by-clause review of Bill C-337, an act to amend the Judges Act and the Criminal Code, regarding sexual assault.

We'll begin our clause-by-clause. Pursuant to Standing Order 75 (1), the consideration of the preamble and clause 1, the short title, is postponed.

(On clause 2)

The Chair: If you refer to the amendments that were sent out, you'll see that there is a Liberal-1 amendment. I want to inform the committee that if Liberal-1 is adopted, then NDP-1 cannot be moved, because there is a line conflict there. Just be aware of that.

Liberal-1 says that Bill C-337, in clause 2, be amended by replacing line 28 on page 2 with the following:

> hensive
> (i) education in sexual assault law that includes

Also, that clause 2 be amended by replacing line 32 on page 2 with the following:

> associated with sexual assault complainants, and
> (ii) social context education.

Is there discussion on the amendment?

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Do I have to speak first because I moved it?

The Chair: Yes.

Ms. Pam Damoff: Okay. I'm not actually going to move.... I guess I have to move it to have a discussion.

I'm going to turn it over to my colleague Sean, if that's okay, if you could recognize him.

The Chair: Do you intend to move it or not?

Ms. Pam Damoff: I'd like to have a discussion first, if we could. Is that allowed?

Mr. Sean Fraser (Central Nova, Lib.): If you want to move it, I think that's fine, Pam.

Ms. Pam Damoff: I can move it and then withdraw it if I want. Is that right?

The Chair: That's right.

Ms. Pam Damoff: I'll move it, but I may withdraw it.

The Chair: The amendment is moved.

We'll have discussion from Mr. Fraser.

Mr. Sean Fraser: Thank you very much.

Before we get into the specifics of the proposed amendment, which Pam will probably still want to speak to, I want to say to my colleagues around the table that this study has been an absolute pleasure to work on with everyone. I want to let you know from the beginning that we had a meeting of our caucus, and we are largely in support of this bill. We don't want to tear down any of the major provisions. I want to kick off the discussion with that sort of good-faith suggestion to let you guys know that we don't want to have a big fight about this issue. It's important that we all agree, and I think we all want to land in the same place.

Pam, I know you'll want to speak to the reason behind your amendment, so I won't step on your toes.

We've learned that Liberal-1, if adopted as is, would render null and void Sheila's amendment. Sheila, I wanted to let you know that we actually quite like where you are going with your amendment, and if there is an opportunity to collapse the piece that Pam is about to raise with what you are doing, we'd entertain that. When I read the language, I think it will simply be inserting the words “social context education” in the correct spot. I want to make sure that we do it in the correct procedural way, from the clerk's perspective.

With that, I'll hand it back over to Pam to talk about the importance of her proposed amendment.

Ms. Pam Damoff: Thank you, Chair.

Thank you, Sean.

We put forward our amendment because of testimony we heard in terms of the social context and the need for the training to focus not just on the law, which is extremely important, but also on the social context of the law. We heard, especially on our second panel, that, as it is worded right now, it's too narrow and it doesn't include that social context. It doesn't include the realities and the concerns Canadians have about what the training is right now.

As Sean said, we quite like Sheila's amendment, so perhaps the clerk can guide us on wording to get “social context” into NDP-1.

The Chair: Ms. Malcolmson, go ahead.

Ms. Sheila Malcolmson (Nanaimo—Ladysmith, NDP): I appreciate the spirit of collaboration around the table here. My team has worked with the clerk to identify a way to amend the Liberal amendment to include some of that social context. My sense is that if we were to proceed as per the normal path, then I would move an amendment, and I am ready to do that once the chair lets me know that the motion is on the floor.

The Chair: Actually, yours would be a subamendment to the amendment.

Ms. Sheila Malcolmson: I propose a subamendment to Liberal-1.

Liberal-1 says that Bill C-337, in clause 2, be amended "by replacing line 28 on page 2 with the following". My subamendment is in proposed subparagraph 3(b)(i), after the words "education in sexual assault law that". I would insert the following new words, and this is mostly what is written in NDP-1:

> has been developed in consultation with sexual assault survivors, as well as with groups and organizations that support them, and that includes

May I speak to that?

The Chair: Yes, please.

Ms. Sheila Malcolmson: The rationale is that we heard a number of witnesses testify that consulting women's organizations that have on-the-ground experience and experience with survivors of sexual assault...be able to formally inform the training of judges. We heard Mr. Sabourin say, "I welcome the involvement, and we want to do that at the CJC, working with NJI to involve community groups in the development" and that not consulting would be "a very bad idea".

We also had an overwhelming number of witnesses who have experience with supporting victims of sexual assault who said that they were never consulted. Jackie Stevens, from the Avalon Sexual Assault Centre, said that they have had many experts from the community working hands-on with these issues who wanted to be involved.

Nneka MacGregor, executive director of the Women's Centre for Social Justice, said that we must include the voices of those individuals who have lived through the justice system, because it's their experience "that is actually going to change the perception and the understanding".

We also had testimony from Marlihan Lopez, a liaison officer. She said:

> It's very important with these types of initiatives that the groups on the ground that have the expertise be consulted. I see it over and over again. [These] groups aren't consulted, then these projects are pushed forward, and finally they don't address the realities that victims, or survivors face in sexual assault.

Finally, Jeremy Dias, executive director of the Canadian Centre for Gender and Sexual Diversity, said that civil society should not be left out of the conversation. "Step one is opening the doors so we can engage with them in having that conversation."

The subamendment that I propose would be to formally bring those organizations in to shape on the type of sexual assault training that judges receive.

● (0855)

The Chair: Well done. Is there any discussion on the subamendment?

Mrs. Karen Vecchio (Elgin—Middlesex—London, CPC): We are on board with that. I think that is a very solid amendment. Thank you for all the work that both parties have done on it.

The Chair: Is there any other discussion on the subamendment?

Mr. Sean Fraser: Thank you very much, Ms. Malcolmson.

I have one point of clarity. When I heard it read into the record, I was unclear if that was in addition to what was proposed in the first amendment or if it was the amendment in totality.

The Chair: It was in addition to what was proposed in Liberal-1.

Mr. Sean Fraser: When I'm reading it, I'm just trying to make sure that I have a full grasp of it because where it picks up is mid-word.

Ms. Malcolmson, could you read what the complete amendment would look like, including your subamendment, if adopted?

Ms. Sheila Malcolmson: Liberal-1 reads, in your proposed subparagraph 3(b)(i) "education in sexual assault law that includes". If this amendment passes, then what would be inserted after your words "sexual assault law that" would be my wording, which is, "has been developed in consultation with sexual assault survivors, as well as with groups and organizations that support them and that", and then we go back to your wording, which was, "includes".

Mr. Sean Fraser: Perfect. Thank you very much for the clarity.

If I can add, I think this subamendment is clever and well thought out. It addresses both the concerns of the voices needing to be heard in the training process, but also should remedy the concern that we heard from the judicial council about not prejudicing the ability of a judge to make an independent, impartial decision by hearing expert testimony from someone they've learned from.

I personally will be supportive. I don't want to speak for the rest of the committee.

Thank you.

The Chair: Is there further discussion on the subamendment?

Ms. Pam Damoff: I just want to say as well that it's an excellent addition, combining it with the fact that we know that the impact on marginalized groups is.... The intersectionality of sexual assault and including that from the testimony we heard is an excellent addition.

(Subamendment agreed to)

(Amendment as amended agreed to)

The Chair: There's no NDP-1.

Shall clause 2 carry as amended?

Ms. Sheila Malcolmson: That went too fast.

The Chair: Because Liberal-1 is adopted as amended, we don't have an NDP-1. That means everything in clause 2 that has been submitted has been addressed.

Are there additional amendments?

Ms. Sheila Malcolmson: To replay our success on the first paragraph, it's the same situation. I have a subamendment to propose to Liberal-2.

The Chair: We're not at Liberal-2 yet. We're still finishing off clause 2, which included Liberal-1.

Ms. Sheila Malcolmson: I'm ready for the next one.

The Chair: This is excellent training. This is only our second bill, so we're getting better.

(Clause 2 as amended agreed to)

(On clause 3)

The Chair: Now, we are talking about Liberal-2. I wanted to inform the committee that if Liberal-2 is adopted, NDP-2 cannot be moved, because of a line conflict, as before.

We will start with the reading of Liberal-2

Ms. Karen Ludwig (New Brunswick Southwest, Lib.): Thank you, Chair.

In terms of our amendment, it would be taking the first part, which says “establish seminars for the continuing education of judges”, and changing it to “establish seminars for the continuing education of judges, including in respect of matters related to sexual assault and social context”. We're adding, “and social context”.

● (0900)

The Chair: Any discussion on the amendment?

Ms. Sheila Malcolmson: I have a subamendment to propose. It brings in the rationale I was going to propose in NDP-2. My amendment is, following the words, “social context”, in the Liberal-2 proposal, I would insert the words “that have been developed in consultation with sexual assault survivors, as well as with groups and organizations that support them”. It's the same rationale as we just discussed in the previous motion.

The Chair: Any discussion on the subamendment?

Mr. Sean Fraser: I have precisely the same wording written down on a page in front of me. I think you'll find support from this side.

Ms. Karen Ludwig: I support that as well.

I want to read into the record a couple of pieces of testimony. For example, Rona Ambrose said on April 4 in response to the question about intersectionality:

> I'm open to anything that will provide judges with better training about gender-based violence. At the end of the day—and I'm sure all of you know this—judges are just lawyers who are appointed to the bench; they don't come with all the training.

Reinforcing that, we're all on the same page on this one.

The Chair: Any further discussion on the subamendment?

(Subamendment agreed to)

Mr. Sean Fraser: Before we move to a vote, I have a quick piece of discussion on the amendment.

I know we heard a wealth of testimony about the need to educate specifically on issues of intersectionality. To anyone who might be watching the testimony, we also heard from academics, specifically professors Koshan and Craig, who suggested that references to social context would be specific enough to allow the training for the intersecting grounds of discrimination. I want to make sure that is on the record, and we're not ignoring that and have thought out why this wording is appropriate.

The Chair: I think that's an excellent clarification.

Any further discussion on Liberal-2 as amended?

(Amendment as amended agreed to)

(Clause 3 as amended agreed to)

The Chair: On NDP-3 the ruling for this one is that it's not admissible. Bill C-337 amends the Judges Act to restrict eligibility for judicial appointment to individuals who have completed comprehensive sexual assault education. The amendment seeks to establish an education program for persons who play a role in the administration of criminal justice beyond the one that the bill contemplates for judges. As *House of Commons Procedure and Practice*, second edition, states on page 766:

> An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, this amendment introduces a new concept that is beyond the scope of the bill. Therefore, I am ruling the amendment inadmissible.

Ms. Sheila Malcolmson: I think it needs to be said on the record that the committee heard in multiple testimonies from a range of witnesses that the judge is the final person who hears the result of the extent to which sexual assault informs every other element of the judiciary and every other element of the justice system.

We heard again and again that sexual assault training, gender-informed training, and trauma-informed training should be available to the crown prosecutors, police forces, lawyers, and the judiciary, and that in order for victims to have confidence in the justice system, they need to know they're going to be treated with dignity and respect by all participants at every level of the justice system.

I think it's important for committee members to reflect that we've heard that. The NDP proposal to amend was in that spirit. I understand that we are trying, through a private member's bill, to fix a whole lot of problems throughout a whole lot of police forces, so it's not a criticism of the drafters of the original bill, but this is a significant piece of work for which federal leadership is sorely needed. If it can't be accommodated here, then I think we all need to take some leadership in pushing to find the place where it can be accommodated, where we can make this change. Otherwise, training judges will not have the effect that we desire.

● (0905)

The Chair: I fully agree with your rationale and the need for this. It's just that it wasn't within the scope of the bill. That's why the ruling was as it was.

Is there any further discussion on that?

Mrs. Karen Vecchio: Thank you.

Sheila, I believe everybody at this committee would fully agree with you, but as indicated, with the scope of the bill, I believe this is a first step to democracy when it comes to those victims of unjust violence. I think this is a great first step, and something like what you have indicated could go into another bill, another motion, or something of that sort.

Unfortunately, I do not see it as within the scope of what we did study. Yes, we did hear a lot about it, but it could be a recommendation after the fact. Let's look at this as a very positive first step, working together to at least get judges started, and then we can grow from there.

Ms. Pam Damoff: I think everyone was moved by the crown prosecutor who testified, Ursula Hendel. I don't think I've heard more compelling testimony than hers.

That being said, so much of this training for police and crown prosecutors falls within the provincial jurisdiction. I completely agree that more needs to be done. I've already been talking to my counterparts in the province of Ontario, and also with our justice department, about how we can work with the provinces to ensure they are working towards training crown prosecutors.

As one witness said—actually, I think it was Ms. Ludwig—it's the police and the crown prosecutors that.... It's hard down here. Judges are at the tip, and by the time it gets there, a lot of mistakes could have been made.

I think we're all on the same page as you, Sheila.

The Chair: Because NDP-3 is inadmissible, shall clause 4 carry?

(Clause 4 agreed to)

The Chair: Now we will talk about NDP-4.

Ms. Sheila Malcolmson: My proposal is that Bill C-337 be amended by adding after line 18 on page 3 the following new clause:

> 4.1 The Act is amended by adding the following after section 74:
>
> 74.1 The Commissioner shall, within three months after the end of each fiscal year, prepare and publish on the Office of the Commissioner's website a report on the education in sexual assault law described in paragraph 3(b), including any observations and recommendations that the Commissioner considers appropriate.

The Chair: Is there discussion?

Ms. Sheila Malcolmson: The rationale is that we heard there is a need for the ongoing evaluation of the training for judges. This could be in addition to the annual report that's referenced in proposed subsection 62.1(2) of this bill.

There are new cases every year, so improving the training with new jurisprudence would be beneficial to the improvement of judges' training. We want to make sure there is a requirement that the training remain relevant. The commissioner could be the judge of that.

I'll leave it at that.

The Chair: Very good.

Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.): I want to thank Ms. Malcolmson. I fully agree with the spirit of what this is trying to achieve.

One of the issues that some of the experts we've consulted with raised was the word “website”. Because it isn't mandated by law that there be a website, it's very hard to then mandate by law that something be on a website, because it doesn't exist. That creates some difficulties with this.

The report will be tabled in the House, and everything that's tabled in the House is made public, so this is actually already being achieved. Because of the fact that it is being tabled, it is being made public. It will be presumably on the parl.gc.ca website. That is already happening, and in order not to create some confusion on this, it's probably best left to have it tabled in the House.

The Chair: Ms. Damoff.

Ms. Pam Damoff: I'm fine.

(Amendment negatived)

(On clause 5)

The Chair: Now we move to amendment Liberal-3, and again I would inform the committee that, if amendment Liberal-3 is adopted, we cannot adopt amendment NDP-5 because of the line conflict.

Amendment Liberal-3 is moved by Mr. Fraser.

Would you like to speak to it?

Mr. Sean Fraser: Certainly, I'll move the adoption of the proposed amendment Liberal-3.

Is it necessary for the record that I read it in or is the written copy acceptable?

● (0910)

The Chair: The written copy is acceptable.

Mr. Sean Fraser: Thank you very much, Madam Chair.

There are three components, essentially, that are important here, if I can take our eyes off the language and explain them in more general terms to begin with. Two are of a technical nature, and one is substantive. The technical amendments, I expect, will be easier for this committee to deal with as a matter of course, so I'll address them first.

The first, which you'll see in part (a) of the proposed amendment, is simply to achieve a coordinating amendment. Section 159 of the Criminal Code has been deemed unconstitutional. There's a bill before the House to actually remove it from the Criminal Code. This is simply to erase from the books a zombie law that has been deemed unconstitutional. I don't anticipate that will be a problem, but I'll leave it to the members of the committee to object if they see one.

The second theme of this amendment is in new proposed subsection 278.92(5) and is also with respect to the word “judge” as opposed to “court” under part (a) under the proposed section 278.92. The reason for these proposed amendments is that, under the common law, and I believe it's enshrined in the Criminal Code as well, there's not an obligation on a jury to produce reasons. By adopting this motion, we would be potentially running afoul of legal principles that I think we have no business interfering with. I expect this is something I would not have caught had I been drafting it, but when we ran it through some extra sets of eyes, this concern was raised, and I support it entirely.

The third and perhaps trickiest amendment—we had some conversations with other members of the committee, some department officials, and our legislative clerk—might give us some problem here, but the substance of this issue is really the requirement for written reasons. We heard compelling testimony actually from Professors Elaine Craig and Jennifer Koshan. I studied under Professor Craig while I was in law school, and I appreciate the need for written reasons for two main purposes. One, the exercise that a judge goes through in preparing written reasons improves the quality of the decision. There's no question that, when you take the time to write something down, you think it through, and you're less likely to make an offhand offensive comment, and I accept that.

The second reason, in my mind, is really about the access of interested audiences. I can think of a need for access to decisions for academics, for NGOs, for the press, for the litigants, of course, for the public at large, and for lawyers dealing with sexual assault matters who want to research the jurisprudence that's currently not being reported.

The tricky part today is that, if there's not a reporter sitting in the room, oftentimes these reports aren't made public. Generally speaking, I support the requirement for written reasons. I propose an amendment that I believe is similar in spirit to the amendment proposed by Ms. Malcolmson that I'll address in a moment, but my concern about having a requirement for written reasons in 100% of cases was borne out only weeks ago in one of the communities that I represent.

In the small university town of Antigonish, Nova Scotia, we have seen what I believe is the first decision of its kind in my province of a sexual assault charge against a university professor having been stayed under the Supreme Court of Canada's Jordan decision. If we specifically require written reasons in every sexual assault case, we will be adding a procedural step and presumably some additional delay, specifically to sexual assault cases, which will lead to, presumably, more people who could or should be convicted of sexual assault getting out without ever having their matter go to trial. I expect that is not the outcome that anyone on this committee wants, and it really becomes a matter of how we address it.

Ms. Malcolmson, I initially took a shot at drafting this and had almost identical language about whether the judge considers it in the interest of justice to do so. Upon further reflection, the “interests of justice”, in my understanding, is a legal term of art that can have a specific meaning in different sections of the law. For example, if you're considering whether to allow a third-party intervenor to take part in litigation where they don't personally have an interest, there are concerns about whether they bring a new perspective, whether they have something of value to add. I have concerns that my initial thoughts as to the appropriate language, which are reflected in your proposed amendment, will lead to unintended consequences that we as a committee have not fully thought through and have heard no evidence on.

I took a shot—the best I could—at some plain language writing that would suggest that, despite the proposed subsection requiring written reasons, the “reasons for a decision need not be given in writing if the judge does not consider it practicable to do so.” This would require, in my mind, that the judge make an assessment, and they have to decide that it is not practicable for them to offer written reasons.

● (0915)

The real reason I wanted to include this is that of delay and the Jordan decision under the Supreme Court of Canada. I think this will allow a judge to say that if this is going to literally let an accused person go free without trial, that's unacceptable, and if judges can give an oral decision in shorter order to ensure justice is served, they will have the ability to do so.

However, to protect against the potential trend that would see judges do this as a matter of course, because they don't feel like it, I inserted proposed subsection (3) and proposed subsection (4) that says that if proposed subsection (2) applies—meaning if the judge decides they can give oral reasons—the court shall prepare a paper or electronic transcript. I've said paper or electronic now. It's not actually in this, but this is something I expect will need to be borne out in further discussion with the assistance of the clerk, of the reasons delivered orally or ensure access to an audio recording of the oral reasons. Then under proposed subsection (4), “Any written reasons given or transcript prepared under subsections (2) or (3) shall be entered into the record of proceedings”.

After a discussion we had with a departmental official and briefly with the legislative clerk, what I really hope we land on here, as someone who worked as a lawyer and relied on legal research tools in my career before politics, is an electronic site on which we can search the decisions, even if they're not officially published in the way that written decisions typically are.

We run into some serious difficulties if we require that a court develops a database, because there are constitutional concerns under the sections 91 and 92 divide that put the administration of justice squarely within the purview of the provinces. If we require the provinces to spend money on the administration of justice in federal legislation, the clause could be struck down entirely as being unconstitutional and render moot the exercise that we're going through and the purpose of this proposed amendment.

I would suggest that the language I've put forward may not be perfect, and if the chair would allow a brief suspension to discuss with members of the different caucuses represented here, the legislative clerk, and potentially, a department official with expertise on this specific matter, I think the legislation would be significantly improved.

Madam Chair, with your permission, I'd recommend we suspend for a few minutes to sort out the details.

The Chair: I see there is agreement to do that, but I want to bring to the committee's attention that the amendment changes have only been brought in English. I would need unanimous consent of the committee, since things are normally provided in English and French, to consider them only in English.

Do I have the unanimous consent of the committee to do that?

Some hon. members: Agreed.

The Chair: Excellent. Okay.

We'll suspend and I'll look to you guys for an indication of when you've come to a conclusion.

● _____ (Pause) _____

●

● (0930)

The Chair: We're back discussing Bill C-337 on the clause-by-clause.

We're fortunate to have as help for us today from our justice department, Gillian Blackell and Uzma Ihsanullah.

Mr. Fraser, we'll go back to you.

Mr. Sean Fraser: Thank you very much for indulging us with a brief suspension, Madam Chair.

After a quick huddle with all parties, and with the help of our clerk and with department officials as well, I believe if you seek it you'll find unanimous consent to withdraw the motion I've had on the floor and to introduce a new motion, which we've had the opportunity to discuss but will need to further debate.

The Chair: Do I have unanimous consent from the committee to withdraw Liberal-3?

(Amendment withdrawn)

The Chair: We'll go back to you, Mr. Fraser.

Mr. Sean Fraser: I do have a proposed amendment, which doesn't have a fancy title like Liberal-3. However, I will provide a copy in writing once I read it for the benefit of the crowd.

Also I believe the French version is available as well, but I handed my copy to another member of the committee. Once I read the English version into the record, I'll share both copies in writing with you and then have a few questions for our department officials.

The new amendment would read that Bill C-337, in clause 5, be amended by replacing lines 21 to 24 on page 3 with the following: "Reasons, 278.92 (1) In proceedings for an offence under section 151, 152, 153, 153.1 or 155, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272, or 273, the judge shall provide reasons for a decision that a person is". As well, it would amend clause 5 by adding, after line 30 on page 3, "Record of reasons", and this is the key part that differs from the previous iteration, "(2) The reasons shall be entered in the record of the proceedings or, if the proceedings are not recorded, shall be provided in writing."

Then, similar to what we had previously, it says, "Proceedings before a judge, (3) Subsections (1) and (2), apply only in proceedings before a judge without a jury."

● (0935)

Ms. Sheila Malcolmson: The clerk has it now.

The Chair: Can we hear some commentary from our justice department officials?

Ms. Gillian Blackell (Senior Counsel and Acting Director, Policy Centre for Victim Issues, Policy Sector, Department of Justice): Thank you, Madam Chair.

First of all, I would like to thank the honourable member for proposing that the requirement for written reasons be replaced by language that is already reflected in the Criminal Code. It is reflected in section 278.8 as well as 276.2 with regard to third party record application hearings as well as rape shield application hearings. Also, they require either written reasons, or if those written reasons are not possible, that the reasons be entered into the record of the proceedings. Therefore, they would be made available and it would be clear for the parties and anyone else who is interested in having the information about how that decision was rendered. That replies to the evidentiary provisions.

However, the proposal here would have it apply to all the sexual assault matters that are enumerated in this bill, and therefore, would expand it without requiring written reasons in every case, which, as noted, could have significant implications for the effectiveness of the administration of justice and consequently for these cases of sexual assault before the courts.

These provisions that already exist in the code have withheld constitutional scrutiny. They have been maintained.

There is a desire to remain with existing language in the standards for drafting in the code. As they have already been interpreted, it makes it easier to use the similar language within the code.

They also remain within the constitutional mandate of Parliament for criminal law and criminal procedure and do not stray into the administration of justice by specifying exactly how the reasons would then be dealt with once they are on the record. They have been made available in the application of these provisions because the courts know there is an interest in them and a specific requirement for those reasons to be transcribed and available on the record. As a result they are regularly uploaded onto CanLII, which is a free website with a database of over a million judgments and decisions from all the Canadian courts, as well as laws. That website is maintained through the Federation of Law Societies in collaboration with a private company.

The Chair: Excellent. Thank you very much.

We'll go now to Ms. Damoff.

Ms. Pam Damoff: I wonder if you could clarify a couple of things for me.

Everyone around this table and the drafter of the bill want to achieve that we have written decisions where possible. We've heard testimony—and I don't recall who said it—that it's become public in the past because a reporter was in the room. That's what we're trying to avoid. We also want to avoid a huge cost to the survivor or to the media, or to anyone else who wants to investigate these decisions. That's the end goal.

I understand from our conversations that you have very serious constitutional concerns about the wording we had put in, and that this would achieve our goal without.... We are not allowed to force the provinces to spend money constitutionally. The way we'd worded it in the past would have done that.

I guess I want an assurance that this new amendment would be constitutional, but it would also achieve the goal that all of us want, which is to ensure that written decisions are available and that there would not be a huge cost to the people who are trying to access the decision.

Ms. Uzma Ihsanullah (Counsel, Constitutional, Administrative and International Law Section, Department of Justice): Good morning, Madam Chair.

I understand the question to be on whether the amendment as proposed will achieve the goal of the committee without straying into an area that is beyond Parliament's jurisdiction. The question here is staying on the side of what criminal procedure is in these circumstances and not straying into the area of the administration of justice.

The amendment that has been proposed that reflects other wording in the Criminal Code has been upheld as constitutional. The reason is that it stays on the side of criminal procedure, which Parliament does have jurisdiction over. To make it a requirement for courts administration to publish decisions would be to stray into the area of the administration of justice. There is some very old and well-established case law from the Supreme Court that tells us that Parliament cannot require provinces to spend money within their area of legislative jurisdiction.

A relatively recent case, from 1982, which was in the context of the Criminal Code, was regarding a provision that allowed a judge to require a municipality to support a young offender while they were serving a sentence. It was struck down as unconstitutional because that was considered to be an area in the provincial jurisdiction. Parliament had no business requiring a municipality to be spending money in those circumstances.

I think the concern that has been raised here is that while we can require reasons to be provided in the record of the proceedings, and essentially that is an area of criminal procedure, the provision is saying that the record of this particular trial is not complete without a record of the reasons, whether they be oral or whether they be written.

What happens after that is within provincial jurisdiction. Certainly court files are public, and when a transcript or written reasons are available, as Ms. Blackell mentioned, there are private companies that pick them up and they are published. However, it is beyond Parliament's jurisdiction to require that to be done by the courts themselves.

● (0940)

The Chair: Very good.

Ms. Vecchio.

Mrs. Karen Vecchio: Thank you very much.

You mentioned that the site is maintained by CanLII, and I want to get some clarification. Is that a public website, or is that specific to judges and lawyers only? Would anybody in Canada be able to access that?

Secondly, in looking at this, I totally understand where you're coming from, but one of my concerns is that if it comes to the provincial level—I realize there's going to have to be a balance here when we come to the Constitution—we recognize that there's access to information. That's another hurdle.

We do not want to put in any hurdles, whether for our media or our victims, whoever it may be, with another cost. These can be very expensive things as well. We want to make sure that this is easily accessible and at very little cost, if any cost whatsoever.

First of all, could you comment on CanLII and let me know about that? That may be the best opportunity or the best situation we have, and you could continue from there.

Ms. Gillian Blackell: Indeed, CanLII is a free and extensive online search engine that contains over a million decisions from Canada's courts and administrative tribunals, as well as laws and regulations from across the country. It's a non-governmental organization and it is funded by the Federation of Law Societies of Canada, which is the national coordinating body of Canada's 14 provincial and territorial law societies. Funding for specific projects are also sometimes provided by other levels of government as well. It works with the privately run company, Lexum.

When CanLII started in 2000 it was a bit of an experiment. There are private companies, like Quicklaw, that cost money for access, which lawyers had traditionally accessed. CanLII is part of an international project for free law and access. It has actually grown. It's extensive. It's publicly available. It's used regularly. The reports of its use and expansion is quite progressive.

Mrs. Karen Vecchio: Right now, I would be able to go on CanLII and be able to pull up a thing. Any Canadian would have access to that. Is that right?

Ms. Gillian Blackell: Absolutely.

In terms of the court record, I want to make it clear that when an oral reason is recorded on the court record, it becomes available. It's available at the court. Some places sometimes have certain photocopy fees, but those are more minimal. That's distinguished from the actual transcript. If you want the transcript of the entire proceeding, those are usually through companies that are external. Again, the practice varies depending on the court. Having it available on the court record and then making that accessible would be up to the courts, but it's not the same in terms of accessibility as an entire transcript.

● (0945)

The Chair: Very good.

Mr. Fraser.

Mr. Sean Fraser: Thank you very much. I sincerely appreciate your advice and information.

To address Ms. Vecchio's issue regarding the cost, I understand that the cost of an actual transcript is in the range of seven cents a word. I think the likely solution is that at the provincial level, the folks making the decision on the mode of making accessible these decisions will likely get with the times and use an electronic version, I would hope. I think that would be preferred.

I would suggest it would be appropriate for this committee, if this amendment is adopted, to write to our provincial counterparts, or different bodies that we identify—it doesn't have to take place in this meeting—and recommend strongly that they make these available online so anyone with an Internet connection can access the decisions that currently might be recorded but not reported.

I think we'd be on safe ground to make that recommendation, as long as we're not trying to do it through the criminal law power and usurp provincial jurisdiction.

With that, I think I'm pleased to move to a vote, unless there's further discussion on the amendment.

The Chair: I have Ms. Vecchio on the speaking list.

Mrs. Karen Vecchio: If we're going to vote, that's fantastic.

Ms. Sheila Malcolmson: As a heads-up, we won't move forward with the amendment that we had proposed because Mr. Fraser's new motion captures it. But I want again on the record to have the witnesses who came before the committee note that we heard them and we heard from a great range of people who certainly pointed out, whether they were representing victims or whether they were people on the advocacy and justice side, that the need for this is great.

I'll say as well, we were delighted to see mainstream media reporting on the worst of the sexual assault trials that go sideways. We also know that we have less and less money in conventional publishing to go out and do that investigative journalism, which is a great cause of concern.

If we're able to adopt Mr. Fraser's proposal, which has been guided off the rocks a little bit by the justice department—so thank you for that teamwork—then it will respond to a need that's been identified on the record by witnesses. We will, for the New Democratic side, be supporting it.

Mrs. Karen Vecchio: We fully support the amendment. We believe it will have the best outcome.

One thing I would like to see actioned, as indicated by Mr. Fraser, is the letter that goes off to the provinces. Since we'll be voting on this amendment and not actually that letter, what are the actions we must take to show that we, as a group, have decided that we will provide a letter to the provinces? I want to know a little more on the actions that need to be taken.

The Chair: I've taken a note to have that action. I believe we need a motion for that action. We've just given the instruction to the clerk to do that, should this next amendment that we're about to vote on happen.

I want to thank our experts from the justice department for helping us, and I want to thank the collegial and co-operative spirit of this committee.

With that, the new Liberal-3 has been moved. Is there any further discussion on it?

(Amendment agreed to)

The Chair: Wonderful.

I understand from Ms. Malcolmson that NDP-5 will not be discussed.

Mr. Sean Fraser: I believe we voted just on the amendment, but not on the clause.

The Chair: You're right. I was about to get there.

I'm just confirming, though, that we're not moving ahead with amendment NDP-5.

Ms. Sheila Malcolmson: Yes. I will withdraw amendment NDP-5. It's no longer necessary by virtue of Mr. Fraser's motion.

The Chair: Very good.

(Clause 5 as amended agreed to)

The Chair: Shall clause 6 carry?

Some hon. members: Agreed.

The Chair: Shall the preamble carry?

Some hon. members: Agreed.

The Chair: Shall clause 1 carry?

Too fast?

Ms. Anita Vandenbeld: Yes.

The Chair: All right. Clause 1 is the short title. I think everybody agreed with that, is that right?

Just for clarity, shall the short title carry?

Some hon. members: Agreed.

● (0950)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Mr. Sean Fraser: I have a quick point of order again, Madam Chair.

We voted for the coordinating amendment in clause 6 a moment ago. I believe, by virtue of Liberal amendment number three, which removed section 159.... I don't know if that impacted how the coordinating amendment should have been dealt with.

The Chair: At this point, having approved clause 6, I would have to have your unanimous consent to unapprove it so that you can consider it.

Do I have unanimous consent to unapprove clause 6?

Some hon. members: Agreed.

The Chair: Now we can discuss clause 6.

Mr. Sean Fraser: Can I just have 30 seconds to have a quick discussion and make sure I understand what I'm about to argue here.

The Chair: Absolutely.

Mr. Sean Fraser: Thank you very much.

As a result of Liberal amendment number three, which no longer included section 159, the coordinating amendment has become unnecessary, so I would suggest that we actually vote against clause 6. I think we were going through it quickly and out of routine thought we were approving it. I did intend to vote against clause 6, so the legislation makes sense, given the previous amendment.

The Chair: All right, so the motion is to remove clause 6.

Mr. Sean Fraser: Yes.

The Chair: The clerk says that I ask the question, "Shall clause 6 carry?" If you don't want it to be there, say no.

Ms. Sheila Malcolmson: As my father would say, can you say the funny part slowly? That was way too abbreviated.

The Chair: Basically, if we want to get rid of clause 6, then when I ask the question "Shall clause 6 carry?", you say no.

Ms. Sheila Malcolmson: Okay, you are clear. Mr. Fraser was not.

Voices: Oh, oh!

The Chair: All right, Mr. Fraser.

Mr. Sean Fraser: That's right, I have that problem by times.

With respect to the section that dealt with written decisions in my opening remarks on that proposed amendment, there were three things that it did. One was the piece about the substantive issue about written decisions, which we've discussed at length and I think we're all on the same page on. The second dealt with jury trials, which was a technical issue that's still dealt with in the new proposed language. The third section dealt with section 159, which has been deemed unconstitutional, and is the subject of legislation that will remove what I called a "zombie law" from the books.

The coordinating amendment in clause 6 seeks to do the same thing in a different and perhaps more complicated way. It becomes unnecessary because section 159 is no longer part of the section dealing with written reasons after Liberal amendment number three was passed.

Does that make sense or am I still being unclear?

Ms. Sheila Malcolmson: Almost, but I want to make sure that our Conservative friends who are the shepherds of this think it makes sense.

Mrs. Karen Vecchio: I see exactly where he was referring to, and I recognize that section 159 is being removed so this is just a duplication, redundant.

The Chair: With that in mind, shall clause 6 carry?

(Clause 6 negatived)

The Chair: We return to our regularly scheduled program. I think the title is where we were.

Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: We will try to bring this back to the House as soon as we can, tomorrow if possible, otherwise Monday.

Ms. Damoff.

● (0955)

Ms. Pam Damoff: Do you need a motion now for us to send a letter to the provinces?

The Chair: I don't require a motion. We've given instruction to the clerk. If you want to make a motion, it's fine.

Ms. Pam Damoff: No. That's fine. As long as she has it, that's fine. Who moved that originally then?

Mrs. Karen Vecchio: It was Sean.

The Chair: It was originally Sean who moved it and all were agreed so far, but I'll call it as a motion just so it's official.

The motion is to write to our provincial bodies to recommend online access for these written decisions.

Ms. Karen Ludwig: Online, but as well it should be searchable so that someone's not getting a large transcript and having to read through it. They can actually search it, for example, for keywords.

The Chair: It should be online and searchable. Okay.

Ms. Sheila Malcolmson: I find it a little strange for a parliamentary committee to write to provincial ministers. Is there consideration instead of us asking our justice minister to reach out to her provincial counterparts? That seems more ordinary and also probably more effective.

The Chair: I'm open to suggestion. We did send the copies of the "Taking Action to End Violence Against Young Women and Girls" report broadly throughout the province. We communicated directly that way.

Mr. Sean Fraser: I think it's a good idea. I think as well perhaps what we can do is task the clerk with preparing a draft for our consideration, and we can think of who might be the recipients of this letter and the feedback that it should include. We can deal with it during committee business at our next meeting, or even potentially at the subcommittee.

I think we're roughly on the same page, but if we want to go through our own justice minister, I have no issue with that. However, I think we can probably sort out the details of this letter at the subcommittee or during another meeting.

The Chair: Right. I'm going to ask the clerk to bring a draft for our consideration at the next committee business. At the next committee business, we will craft the motion exactly as we would like to have it be. Then we will execute as such.

Ms. Sheila Malcolmson: I have two points. One is that the committee distributing a report that it has sent to Parliament is one thing, but in this case we're actually taking on an advocacy area so that's where I think minister to minister is most effective.

I also want to make sure that we are going to capture the consensus I heard around the table that we've identified a need for sexual assault and trauma-informed training throughout the entire justice system, not only for judges. If this remains the will of the committee, then maybe one letter could identify the publishing online of judicial reasons but also the training for other members of the justice system in one letter intended to change provincial policy.

The Chair: Yes. I think that would be excellent.

Are there any comments?

Mr. Sean Fraser: I think it's fine.

The Chair: Very good.

We have some additional time, so while I have your attention, I want to tell you some exciting things that have been shared from the LIAI committee about upgrades to committee business in terms of social media.

In addition to the Library of Parliament providing reports, instead of the usual black reports that have the seal at the top that are incredibly visually stimulating, it will be able to put up to three pictures and a colour band on our reports, so that is quite exciting.

The Library of Parliament will also be introducing Twitter announcements for committees. It will tweet out when committees are meeting. It will tweet out when there is a press release, and it will tweet out when there is a call for submissions. We are able to ask the Library to tweet anything else out, and we may retweet and they will use #FEWO as the tracker for that, so you will see that rolled out.

The other thing that's new is that the parliamentary website is going to be updated. It will have a much better visual display and accessibility will be very good. I don't know if you've had some difficulty trying to find things on the committee web pages, but the Library has made it friendlier and searchable. I saw those updates yesterday, and the Library will send us a presentation that I will send along to you, but I wanted you to be aware that the Library is thinking about moving into the next century.

I've also told the Library that seven million people use Twitter and 22 million Canadians use Facebook, so I've encouraged the Library to get on Facebook, and move our committees in that direction as well.

Thank you to our wonderful committee today for your co-operation. We've achieved an outcome here that was a recommendation from our report “Taking Action To End Violence Against Young Women and Girls in Canada”, and it is a good outcome.

The meeting is adjourned.