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Chair

Mr. Anthony Housefather

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• (1100)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): It's a great pleasure to call this meeting of the Standing Committee on Justice and Human Rights to order, as this committee proceeds to its study of Bill C-16, an act to amend the Canadian Human Rights Act and the Criminal Code.

It is a pleasure to welcome Mr. Garrison to replace Mr. Rankin at today's meeting. Welcome, Mr. Garrison.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you.

The Chair: It's a pleasure to welcome Mr. Nater to replace Mr. Nicholson at today's meeting. Welcome, Mr. Nater.

Mr. John Nater (Perth—Wellington, CPC): Thank you. It's good to be here.

The Chair: It is also an enormous pleasure to welcome Minister of Justice and Attorney General of Canada Jody Wilson-Raybould for her second appearance before this committee in one week, which I think may be a record. Welcome, Minister.

Hon. Jody Wilson-Raybould (Minister of Justice and Attorney General of Canada): Thank you.

The Chair: I am also pleased to recognize Bill Pentney, deputy minister of justice and deputy attorney general of Canada, who is also here. Welcome, Mr. Pentney.

Mr. William F. Pentney (Deputy Minister of Justice and Deputy Attorney General of Canada, Department of Justice): Thank you.

The Chair: Minister Wilson-Raybould, we turn the floor over to you.

Hon. Jody Wilson-Raybould: Thank you.

I am certainly pleased to be here with my deputy minister and pleased for the opportunity to be able to present on Bill C-16 today. I look forward to answering any questions.

In my remarks today, I will outline the broad objectives of the bill, take you through some specific amendments, and then respond to three points that were raised during second reading debate.

Bill C-16, an act to amend the Canadian Human Rights Act and the Criminal Code, is an important step forward in protecting the equality, dignity, security, and freedom of transgender and gender-diverse Canadians.

Trans Canadians, like all Canadians, should have an equal opportunity to make for themselves the lives that they are able and wish to have. Indeed, all Canadians should be free to be themselves, without fear of discrimination, hate propaganda, and hate crime. Sadly, this is not yet the experience of many trans people.

As you are aware, trans and gender-diverse people face an elevated risk of violence, including physical and sexual assault, and verbal, physical, and sexual harassment. They also face significant obstacles in obtaining and advancing in employment, and not because of their lack of qualifications but because of discrimination.

Yet our human rights protections and criminal law do not explicitly protect this vulnerable group. With Bill C-16, Parliament has the opportunity to affirm in clear language that trans and gender-diverse people are entitled to equal protection from discrimination, hate propaganda, and hate crime.

Canada is strengthened by its diversity. Diversity flourishes when our laws and institutions promote social inclusion and participation for all, which is fundamentally what this bill seeks to do. To this end, Bill C-16 proposes to make three amendments.

It would amend the Canadian Human Rights Act to add two prohibited grounds of discrimination: gender identity and gender expression. As a result of this amendment, it would be a discriminatory practice, in matters of employment and the provision of goods, services, facilities, and accommodation in the federal jurisdiction, to disadvantage people because of their gender identity or gender expression.

This bill also proposes to amend the Criminal Code. It would expand the list of identifiable groups that are protected from hate propaganda by adding gender identity or expression to the list.

Finally, it would make it clear that hatred on the basis of gender identity or expression should be considered an aggravating factor in sentencing for criminal offences.

It is not the first time that parliamentarians are studying this issue. Indeed, this House has already passed substantially the same bill twice before. Moreover, most provinces have already made similar amendments. I believe these amendments are overdue. Nevertheless, it is evident from the debate in the House that there are questions about why we need to enact these amendments and what they will do. I listened carefully to the debate and I acknowledged the perspectives of my fellow parliamentarians. I would like to address some of the questions today.

Some wondered whether the amendments are necessary. It was pointed out that trans people may already complain of discrimination on the ground of sex under the Canadian Human Rights Act, and that the hate crime sentencing provision is open-ended and would therefore already include gender identity and expression. Allow me to offer three responses.

First, Canadians should be able to turn to our fundamental laws, like the Canadian Human Rights Act and the Criminal Code, and see their rights and obligations spelled out clearly. Promoting access to justice means working on an ongoing basis to make our laws as clear and easy as possible for everyone to understand.

Trans people who feel they have been discriminated against should not have to become experts in legal interpretation to advocate for their basic rights. Employers and service providers should know explicitly what legal duties they have towards their employees and customers. Adding these grounds to the Canadian Human Rights Act as well as the Criminal Code would ensure they are clear for all to see.

• (1105)

Second, Canadians expect parliamentarians to speak on their behalf to the social issues of the day and to affirm their fundamental rights. With this bill, Parliament has the opportunity to affirm that all Canadians should be free and feel safe to be themselves. The House can stand with trans and gender-diverse people to affirm their equal rights.

It is more than a symbolic gesture; this is about embedding new language of respect and inclusion in two important laws that set basic norms about how we conduct ourselves on a daily basis. This is about the Government of Canada sending a clear message that all Canadians are protected by and have the benefit of the law.

The third reason will be of special interest to this committee in its role of studying and recommending improvements to Canada's justice system. This legislation would fill an important gap in the criminal law. The Criminal Code's hate propaganda offences currently extend to the ground of sex, but there is no mention of gender identity or expression. As you know, gender identity is not the same characteristic as sex. Since criminal prohibitions are interpreted narrowly, in order to ensure that the offence protects against hate propaganda which targets trans and gender-diverse individuals because of their gender identity and expression, it is important for Parliament to legislate explicitly on this point.

We also heard questions about why gender identity and expression are not defined and whether their meaning is too subjective. Again, let me offer some comments.

Gender identity and expression are now found in most provincial human rights codes. Commissions, tribunals, and courts are expected to elaborate the meaning of such grounds in a reasonable way, with reference to the purpose of the law. They clarify these grounds, and indeed all grounds, through application of real-life examples, allowing the law to respond to individual situations in line with its purpose.

This does not mean that grounds are completely open-ended or that people can claim protection on a whim. There are real limits to what any ground can mean. The Federal Court of Appeal has insisted

that the grounds of discrimination in the Canadian Human Rights Act must be interpreted in ways that do not trivialize the Canadian Human Rights Act's important role in the legal system. By way of comparison, the ground of religion is also undefined in the act, yet one's religious beliefs are subjectively determined. As the Supreme Court of Canada has stated, legal protection depends on the religious beliefs being sincere, a requirement that tribunals and courts are used to assessing on an individual basis.

Finally, we've heard that there are diverse understandings of sex and gender in Canada. Some may ask whether these amendments would lead to criminal prosecution of people who express disapproval of diverse gender identities or expressions. The answer is no. As explained in the statement of potential charter impacts that I tabled at second reading, the amendments to the hate propaganda provisions respect freedom of thought, belief, opinion, and expression in a free and democratic society. The criminal prohibitions on hate propaganda impose a narrow limit on expression. This limit is demonstrably justified in a free and democratic society, given the important objective being pursued, namely, to target extreme and dangerous speech that one, advocates genocide; two, wilfully promotes hatred; or three, incites hatred in a public place likely to cause a breach of the peace against vulnerable groups. The target is speech that promotes unusually strong and deeply felt emotions of detestation or vilification, which is far from the expression of religious faith, dissenting views, or even opinion that some may find offensive.

The Canadian Human Rights Act is concerned with protecting for all persons, equal access to goods, services, and employment in the federally regulated sector. It is not concerned with regulating the expression of one's beliefs. Rather, the act prohibits discriminatory practices, including harassment when harassment is inflicted in the employment context or in the provision of goods, services, facilities, or accommodation available to the general public, commercial premises, or residential accommodation.

• (1110)

As interpreted by the courts and tribunals, harassment involves serious incidents of persistent treatment that accumulates to create a hostile environment in these contexts.

Many other topics have been raised in debate in the House; however, several of them concerned matters of provincial jurisdiction, and others referred to situations that are outside the scope of the bill, keeping in mind that the Canadian Human Rights Act applies only in the federal sector. This means that it applies to the federal government in its role as employer and service provider and to the federally regulated private sector, including crown corporations, interprovincial and international transportation companies, telecommunications, the postal service, and chartered banks.

To conclude, I encourage this committee to focus on the real subject matter of this bill. It is about equal opportunity for trans and gender-diverse persons in employment and in access to goods and services. It is about increasing their sense of security and freedom from the most extreme forms of hate speech, including calls for genocide and its promotion. It's about denouncing what we know are still all-too-frequent acts of violence and other crimes when they target persons out of bias, prejudice, or hatred based on an individual's gender identity or expression.

Surely we can all agree that these objectives are pressing and in urgent need of being addressed. Bill C-16 would make the amendments needed to pursue these crucial objectives.

Thank you for the opportunity. I look forward to questions.

The Chair: Thank you very much, Minister, for your opening remarks.

We will turn to questions. First up is Mr. Falk.

Mr. Ted Falk (Provencher, CPC): Thank you, Minister, for coming to committee twice in one week.

Mr. Pentney, thank you for coming as well and for the good work you do on our behalf. Mr. Pentney, I'd like to start with you.

In a Department of Justice backgrounder issued on May 17, 2016, the department, which I assume you are responsible for, stated that the Criminal Code also provides that a judge, when sentencing someone for having committed an offence, must consider any relevant aggravating circumstances, including whether the offence was motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disabilities, sexual orientation, or any other similar factor. It went on to say that this phrase is broad enough to include gender identity or expression.

That is a backgrounder from your department, sir.

I'm wondering how changing the Criminal Code as this bill is suggesting to do would impact criminal proceedings. What are, really, the palpable differences? Also, are there things that are covered in Bill C-16 that presently don't exist in either the Canadian Human Rights Act or the Criminal Code?

• (1115)

Hon. Jody Wilson-Raybould: Thank you for the question. I would invite my deputy to respond, if he wants to add—

Mr. Ted Falk: I asked Mr. Pentney.

Hon. Jody Wilson-Raybould: —but in Bill C-16 we are providing clarity with respect to the Canadian Human Rights Act and clarity with respect to the Criminal Code, as well as adding it as an aggravating factor in sentencing, to make the law clear, to ensure that we provide for protection against discrimination for individuals based on their gender identity and gender expression. This provides the necessary clarity and the ability for individuals to feel safe to be themselves.

Mr. William F. Pentney: I would add that there is a clear gap, in terms of some provisions certainly in the Criminal Code, in the sense that, as the minister has stated, the code will be interpreted narrowly, and so in order to determine whether or not “other similar factors”

would include gender identity or gender expression, there would be an argument required that would not be required if the words were plainly stated in the provision.

Second, in terms of the promotion of genocide, there is a clear gap. There would be no reasonable way for a court, we think, applying the doctrine that applies in terms of how to interpret the criminal law narrowly so as to protect to the maximum extent possible the liberties of the individual, to apply the kind of interpretive approach that has been applied historically and previously by human rights commissions abroad in liberal interpretations.

In terms of the sentencing provision, then, there would be an extra argument required that would be eliminated by the clarification that the bill proposes.

In respect to the promotion of genocide, we believe there is a clear gap that would be filled by adding the expression.

In respect to the Canadian Human Rights Act, as the minister has said, the Human Rights Act is recognized as quasi-constitutional. Short of the charter, it stands above other laws with some other fundamental laws that the Supreme Court has also recognized as quasi-constitutional.

The purpose of the bill is to make clear to all Canadians what Parliament and Canada stand for in respect of standing against discrimination.

Mr. Ted Falk: I don't argue with what you're saying, although that's not consistent with what your backgrounder said in May of this year. Your backgrounder suggested there were no gaps and currently everything would be covered under existing legislation.

On November 27, 2012, at the Standing Committee on Justice and Human Rights, Mr. Ian Fine, acting secretary general, Secretary General's Office, Canadian Human Rights Commission, stated, “the commission, the tribunal, and the courts view gender identity and gender expression as protected by the Canadian Human Rights Act.” He went on further to say, “if someone experiences discrimination based on gender identity or gender expression, they are currently protected under the Canadian Human Rights Act.”

On June 3, 2013, before the Senate Standing Committee on Human Rights, David Langtry, the acting chief commissioner of the Canadian Human Rights Commission, stated, “the tribunal and the courts view gender identity and gender expression as protected by the Canadian Human Rights Commission”. He also went on to state, “When someone experiences discrimination based on gender identity or gender expression, they are protected under the Canadian Human Rights Act. The commission already accepts complaints that raise transgender issues.”

Minister, in May of this year, you were participating in CTV's *Power Play* with Don Martin. In response to a question regarding legal recourse, you stated, “There is recourse under the Canadian Human Rights Act in terms of sexual orientation.”

By your own admission, this bill doesn't change anything. Why have you chosen to put forward a bill that really doesn't add a lot of value and for which the meaningfulness is minimal?

• (1120)

Hon. Jody Wilson-Raybould: I appreciate the question and I, even more, appreciate the opportunity to provide an answer.

I believe and am confident that Bill C-16 does something substantial in terms of amending the Canadian Human Rights Act to explicitly and in clear language add gender identity and gender expression as a prohibited ground. I want to acknowledge the decades of advocacy on behalf of the trans community to ensure that we have been able to get to this place wherein, as a Parliament, we have the opportunity to recognize that discrimination against trans individuals, individuals who have a different gender identity or gender expression, are now clearly protected under the Canadian Human Rights Act.

Furthermore, to add them as an identifier to the identifiable groups under the Criminal Code and have gender identity and gender expression added as an aggravating factor in sentencing goes to the intent, which I am very proud of in terms of Canadian values and recognizing that as a country we are stronger in terms of our diversity and we need to ensure that we do as much as possible to eliminate and eradicate discrimination wherever it finds itself in our society.

The Chair: You can ask a very short question, but you're out of time.

Mr. Ted Falk: If I'm out of time, I'll come back.

The Chair: Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): Minister, I want to thank you for appearing here today, but I also want to thank Mr. Garrison for his work in previous Parliaments in bringing this type of legislation forward. Thank you very much.

Minister, over the past 20 to 30 years, there have been significant developments in law and rights for the LGBT community. This is another piece of that puzzle for a more inclusive society. Can you please inform the committee as to why this was one of the first pieces of legislation that you decided to bring forward as Minister of Justice?

Hon. Jody Wilson-Raybould: As the Minister of Justice and Attorney General of Canada, but specifically as minister, I feel and take great pride and responsibility to ensure that we live in a legal and political system that will protect us regardless of our race, regardless of our sexual orientation, regardless of our faith.

For me, in terms of my responsibility and looking at the substantive amount of work that had come before me in terms of presenting bills back to members of Parliament Siksas and Garrison, as well as member of Parliament Fry, and the trans population across the country, who have elevated this to the point where they have articulated where they felt discrimination, to do our part as legislators and my part as minister, this was pretty much a no-brainer and something that I'm very pleased to have been able to follow up from the many who have advocated this in the past and put forward Bill C-16. I very much hope that this bill goes through our parliamentary process and becomes law, so we can amend those

statutes to provide for and eliminate discrimination as much as we can.

Mr. Chris Bittle: Minister, discrimination against trans people in society is significant. You touched on it. Trans people face higher levels of depression, suicide, inability to find work. Can you describe how this legislation will help trans people and punish those who discriminate against them?

Hon. Jody Wilson-Raybould: I believe this legislation is a clear statement on behalf of the Government of Canada, and further, on behalf of parliamentarians, that would say that discrimination in any way, shape, or form is unacceptable in 2016, and that we clearly recognize the challenges that individuals in the trans community face. When they face discrimination, there is recourse through the Canadian Human Rights Act, explicitly stated in terms of being able to hear their cases of discrimination, and when individuals who express their gender identity or their gender expression beyond norms, they have the ability in terms of criminal proceedings around hate speech or hate propaganda to have avenues for redress in that regard as well.

• (1125)

Mr. Chris Bittle: I'd like to build on something that was commented on by Mr. Falk a few months ago in *The Catholic Register*, in which he said that this legislation is forcing people to give up grounds in their personal right to share a bathroom with someone who may not identify with their biological sex.

Could you please comment on that? I believe it's troubling, personally, but I'm wondering if you could comment on those types of views.

Hon. Jody Wilson-Raybould: In terms of the concerns that some have expressed in accessing bathrooms or going into...?

I find it troubling as well. I think it's the very fact that questions are raised about concerns in terms of somebody who clearly identifies one way or the other There's a creation of fear of that person going into one bathroom or the other. The fact that we're having this conversation is the very reason that we need to have Bill C-16 in place. I hope, as a society, we will overcome these negative stereotypes and recognize that individuals should be free to be themselves and when they are free to be themselves, our society benefits.

Mr. Chris Bittle: Thank you.

The Chair: You have a minute and a half, if you have another question.

Mr. Chris Bittle: Do you have a question?

The Chair: Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): No, I'm okay, thank you.

The Chair: Okay.

We have Mr. Garrison then.

Mr. Randall Garrison: Mr. Chair, I am very pleased to be able to join the committee for this session, and I'm very pleased to be able to talk to the minister about this today.

I want to recognize the sense of urgency with which you've adopted your approach to this legislation. Mr. Falk has raised questions that are theoretical, for the future, on what may happen. To me, what is important about this bill is that it addresses what actually happens every day in our society. Mr. Bittle made reference to high levels of unemployment among the transgender community, despite very high education levels in general, and the very severe poverty suffered as a result of those levels of unemployment in the transgender community, plus very elevated levels of violence. So I applaud you for the sense of urgency in which you have brought the bill forward.

This has been before Parliament in one form or another for nearly 12 years, and it has already passed the House of Commons twice, only to die in the Senate—the unelected Senate, I should say. I really do applaud your sense of urgency and I hope we can keep this bill moving.

Today, your framing this in terms of access to justice is very important and perhaps something we neglected in the past. I particularly like your comments that everyone should not have to be an expert in legal interpretation to discover that this kind of discrimination is prohibited. I think that is key. If some of the arguments are made that this is already covered, that everybody already knows this, then I don't think we'd have these levels of discrimination that take place right now. I don't think everyone understands that this is covered by our various forms of legislation.

Also, there are gaps, as we have acknowledged. By forcing transgender people to go into the legal system and argue that they are like other people, but their discrimination is like something else, adds an unnecessary complication to their approach to the legal system. I think that's very important.

I do actually have a question, and I would like us to talk about what the bill will actually do instead of what it doesn't do. This bill doesn't do anything about bathrooms. This is really not about bathrooms.

There are some areas of federal jurisdiction where it will have an impact, such as discrimination in employment and things like banking where, I have to say, the TD Bank and Royal Bank have run well ahead of the government on this. They have very progressive employment relation policies in place. The unions in federal jurisdictions, like Unifor, have taken very progressive policies in helping come up with ways to transition in the workplace. There is one where there may not be as great an impact, just because people are already moving, and we'd be catching up.

In other areas, I would like to talk a bit about two things. One is corrections and immigration detention, where we have had problems with people being placed in dangerous positions as a result of policies. The other is on the question of air travel and the examination of gender at the gate in airports.

I wonder if you have a comment on either of those, and the kinds of changes we might see as a result of this legislation.

Hon. Jody Wilson-Raybould: First of all, to echo comments from other members around the table, Mr. Garrison, I commend you for your persistent advocacy in this regard, which is probably one of the main reasons we're sitting around this table.

I share your belief that this is something that needs to be done on an urgent basis, which is not to say that having Bill C-16 become law means that's the end of the work that we have to do. I have the same sense of urgency for the work we need to do after, I hope, this bill comes into place.

There are discussions that we're going to need to continue to have on that urgent basis around how we are going to deal with individual circumstances, whether that be travel for trans people, how we accommodate the identification on forms, or how we accommodate individuals in correctional facilities. These are ongoing discussions that I am committed to having, ensuring that we engage with the appropriate departmental officials and engage with stakeholders to get feedback.

Certainly, in particular cases, whether that be somebody who is in a correctional facility, it's going to depend on the particular circumstances of the individual case. But we need to have those conversations and find where those accommodations have taken place and how we can successfully do that more broadly.

I am committed to ensuring that I engage with my colleagues in government as well as looking to what has already started to happen in the area of identification, whether that be immigration, a border crossing, or otherwise.

• (1130)

The Chair: You have a little time left if you have another question, Mr. Garrison.

Mr. Randall Garrison: I do.

My background's in criminal justice. I taught criminal justice 20 years before I came here. One of the gaps in regard to transgender people is actually the collection of good statistics about violence. I wonder if the minister or deputy minister could comment on that gap. We really don't keep hate crime statistics on transgender people in any form that's useful.

Mr. William F. Pentney: Thank you for the question. I would say it's a subset, but an important subset, of a much bigger question. So much of the criminal justice administration right now that is done provincially, done locally by city police forces, provincial police forces, or the RCMP, is not capturing a lot of data about the way the system is working. We've seen efforts to address that in terms of racialized policing, certainly, and a variety of efforts to gather better data and try to understand what that data tells us about the lived experience of people.

I think this will be another situation where, as it's clarified in law, there's a whole variety of tools and practices that then will have to adapt. The minister mentioned identity documents. There's work federally and work with provinces and territories. We're confident the Canadian Human Rights Commission will take efforts to educate, to work through practical examples, to do more in terms of outreach, and then work with our provincial and territorial colleagues around data on hate crime, on sentencing provisions. You mentioned hate crimes. As you know, on sentencing, as well, much of the work of sentencing judges is not captured in any systematic way. That's not a criticism; it's just the way the system has worked.

The minister was just at a meeting with her provincial and territorial colleagues, and one of the elements of consensus, I think I can say among all ministers, is the need to understand more about what happens in a day-to-day way in the system, and we would include this among others. It's a very important element, but it will flow from clarification in the law, as well.

Mr. Randall Garrison: Thank you.

[*Translation*]

The Chair: Thank you, Mr. Garrison.

It is now over to Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you, Mr. Chair.

[*English*]

Thank you both very much for being here today.

Minister, I want to say thank you for bringing this important bill forward and the excellent work on this, and doing so in an expeditious manner. I also recognize Mr. Garrison for the good work he has done. I think this is another step forward in our country's history of doing what we can to make sure that people are not discriminated against.

I want to ask a question. I fully support the bill, there's no doubt about that, but there has been some criticism, some opposition, mentioned that gender identity and gender expression are not commonly understood and they're not defined. Some people have suggested in the past that maybe adding these terms would add vagueness to the law. I don't agree with that, but I would like to hear your thoughts on it.

Hon. Jody Wilson-Raybould: Thank you for the question. In terms of the definitions for gender identity and gender expression, we haven't, as I said, included definitions in terms of the Human Rights Act. Most of the prohibited grounds do not have definitions save and except disability, and I believe around pardons. There's definition applied around those. But it is to ensure that the protections in terms of discrimination are as inclusive as possible. As the deputy indicated, the Canadian Human Rights Commission potentially will consider providing, in addition to what it already has, a frame around these terms, gender identity and gender expression. But the reality is that discrimination in these areas could take many different forms, and things change, and individual circumstances that need to be taken into account in terms of the discrimination are different. But some guidance potentially could be provided by the Canadian Human Rights Commission.

• (1135)

Mr. William F. Pentney: May I just add one additional element? Canada is blessed to have a quite remarkable legal search tool called CanLII, which gathers cases from all across the country. This morning I took it upon myself to enter the search term "gender identity" in CanLII, and what I found was 4,091 hits: decisions from Ontario, from courts, from workplace compensation tribunals from the Northwest Territories, and others. I entered the search terms "gender identity and expression" this morning and came back with 2,266 hits.

There is ample jurisprudence working through specific cases and practical examples from human rights tribunals, from courts, from

other related bodies. These aren't academic articles and otherwise that are being cited; these are all decisions of one form or another, labour arbitrators or others. So there is an ample body of jurisprudence around what those terms mean that has been worked out case by case in particular circumstances.

That's how human rights law has generally evolved in Canada since 1960 when the first comprehensive law was adopted in Ontario.

Mr. Colin Fraser: Thank you very much for that. I'm very familiar with CanLII and it's important to get that on the record.

Minister, with regard to gender identity and the definition of gender identity and gender expression, it's not the same as sexual orientation. I just want to be clear on that. I hope you can comment on that difference and the importance of putting it in the list of enumerated factors in the code.

Hon. Jody Wilson-Raybould: You want a comment on the definition of gender identity and gender expression and the difference—

Mr. Colin Fraser: I would like you to comment on their not being the same as sexual orientation and why it's important to actually enumerate this and not just leave it to a non-exhaustive list, than try to put it somewhere else, maybe under sexual orientation, which some people may think is the same thing.

Hon. Jody Wilson-Raybould: Well, yes, they are different.

In terms of definitions, gender identity, I know individuals who probably define this better than I can. The definition that we have and we have been speaking to is that gender identity is each person's internal and individual experience with respect to gender. This is their sense of being a woman, a man, both, neither, or somewhere along the gender spectrum.

In terms of gender expression, this is the outward expression of how an individual publicly presents themselves, whether that be in terms of their hair, their body language, their voice, or their makeup.

Mr. Colin Fraser: With regard to the search of decisions, and perhaps the deputy minister may be better placed to answer this, do we know of any cases or what body of case law there might be with taking gender identity or gender expression into account as an aggravating factor on sentencing? Do we know if there have been examples of that?

Mr. William F. Pentney: No, I'm not aware of any specific examples of that, but we can certainly undertake to confirm that. I would hesitate to say we can be comprehensive because of the way in which these matters unfold, but I'm not aware of any cases.

Mr. Colin Fraser: I think you're correct, though, in suggesting that there have been many cases that have been reported and are on CanLII. It would be true, as well, that other decisions that weren't reported, perhaps at lower levels, may also include determinations based on gender identity or gender expression. I agree with the point that it's very important to clearly express it, so that lower court judges have that word there that they can use as an aggravating factor on sentencing still.

Thank you very much for your presentation.

The Chair: Thank you very much. You reached agreement just at your six minute mark. Excellent.

We'll now move to the second round, and we'll start with Mr. Hussen.

• (1140)

Mr. Ahmed Hussen (York South—Weston, Lib.): I'd like to thank the minister and Mr. Pentney for coming to the committee.

I'd also like to recognize, once again, the good work that Mr. Garrison has done on this matter. It's important to acknowledge that.

Minister, I want to thank you for introducing this bill and for working towards fulfilling your mandate on this issue, as set out by the Prime Minister in his ministerial mandate letter.

Can you give us a sense of the other issues faced by members of the transgender and LGBTQ communities in the justice system and what other measures you would consider in the future to deal with those issues?

Hon. Jody Wilson-Raybould: That's a really broad question, but a really important question. I'm very much looking forward to ensuring that we, and I, take a very comprehensive, very broad interpretation of the Prime Minister's mandate to me, in terms of looking at and doing an overall review of the criminal justice system, including sentencing reform, and in doing so, recognizing that we need to identify measurables or signals that we are making progress. One of those signals, and this is further identified in my mandate letter from the Prime Minister, is to look at the overrepresentation of indigenous persons or other marginalized persons who have been discriminated against for many reasons that deal with higher level or upstream societal realities, whether that be poverty, marginalization, lack of housing, etc. It's also to look to having a review of the criminal justice system that addresses those social concerns so we do not have a justice system that is a catch-all for our social ills, so to speak.

In terms of individuals who suffer discrimination based on their gender identity or their gender expression, or individuals who are in the justice system because they have a mental illness or addiction, or that they are indigenous, we need to be very mindful that the criminal justice system disproportionately impacts these individuals. We have to and are committed to doing better to address these broader societal issues, in terms of looking at the criminal justice system broadly, and ensuring that when individuals find themselves in the justice system, we create and provide off-ramps for them, and also have preventive measures.

I guess in terms of discrimination generally, and the recognition that we want to continue to live in a fair and just society, I consider it the most essential part of my mandate as the Minister of Justice.

Having come from a population that has been discriminated against historically and to a certain degree is still discriminated against, I think the most important thing I can do in my role as Minister of Justice is to recognize and acknowledge where discrimination exists, and do my part to build consensus among parliamentarians and raise awareness among Canadians that it is not acceptable. Our society would be the better for it when we do as much as we can to eliminate that discrimination wherever it exists.

Mr. Ahmed Hussen: Thank you, Minister.

I was encouraged by something you said earlier. You said part of your motivation was to combat hate and discrimination wherever they are found. Specifically now we're talking about transgender people.

The old section 13 of the Canadian Human Rights Act was removed by the last Parliament. This section permitted rights complaints to the federal Human Rights Commission for the communication of hate messages by telephone or Internet.

The Canadian Bar Association and other human rights groups have argued that section 13 was an important tool in helping to combat hate speech.

In your efforts to combat hate and discrimination wherever you find it, including hate and discrimination and hate speech in messages against transgender individuals, would you, in your view, consider looking at section 13 again? It was an important tool to combat these types of messages.

Hon. Jody Wilson-Raybould: I appreciate the question. It fits quite nicely into my previous comments in terms of doing everything we can to eliminate discrimination, to eliminate hate speech that is projected upon any individual in the identifiable group. It's part of the review that I'm undertaking. That review is looking at actions that were taken by previous governments. Certainly, that is something we can consider looking at in terms of section 13, and how we can make that more broadly applicable across the work that we're seeking to do.

• (1145)

Mr. William F. Pentney: If there's time, could I just add one thing?

As members would recall, one of the rationales for deleting section 13 was that the hate provisions in the Criminal Code were the more appropriate way of dealing with extreme speech. It underlines the importance of clarifying in the Criminal Code exactly what is covered...filling the gap in the promotion of genocide and clarifying the definition of identifiable group in the hate promotion speeches. In its interim period, adding gender identity and gender expression to the list of identifiable grounds in the Criminal Code would therefore be even more important in this absence because, as it stands now, without section 13, and without those provisions in the Criminal Code, hate speech, promotion or advocacy of hatred or violence towards these groups is not in and of itself a criminal offence.

Mr. Ahmed Hussen: [*Technical difficulty—Editor*] in the interim until we [*Technical difficulty—Editor*]

Mr. William F. Pentney: I think the minister has indicated a willingness and a commitment to look at section 13, but with Bill C-16, Parliament would have an opportunity more immediately to provide at least some protections in the criminal law.

The Chair: Thank you very much.

Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you very much, Madam Minister and Mr. Pentney.

I want first of all to say that I support the underlying intent of the bill. I stand in opposition to all forms of discrimination against transgendered Canadians. That's why I voted for this bill at second reading.

One of the concerns or issues that I did raise when I spoke to the bill in the House of Commons was on the need for the bill. I appreciate, Madam Minister, your efforts to address that issue this morning.

I noted when I was going through some of the cases that have been decided in terms of interpreting the term "sex" under the Canadian Human Rights Act, such as the Kavanagh and Correctional Services decision, the Montreuil and National Bank decision, the Montreuil and Canadian Forces decision, and the Nixon decision at the British Columbia Court of Appeal, that in all of those decisions the courts and the Canadian Human Rights Tribunal did interpret "sex" to include persons who are transgendered.

Are you aware of any cases where the term "sex" was interpreted narrowly against transgendered persons?

Hon. Jody Wilson-Raybould: I'm not aware. I looked over at my deputy, and he confirmed that he's not aware of any either.

Mr. Michael Cooper: Thank you for that.

There's only one other question I have. Bill C-16 is really a successor to Bill C-279, which had been put forward by Mr. Garrison in the last Parliament. At one point in Bill C-279, "expression" was removed from the bill, and it was limited to gender identity. Could you explain the rationale for including "gender identity" and "expression" in terms of the language in the current bill?

Hon. Jody Wilson-Raybould: I can explain why it's included here. I certainly would look to my deputy to explain why it was taken out before.

I very much appreciate the legislation that was put forward, in its full package, to recognize gender identity but also gender expression as a grounds of discrimination. Certainly, we heard from many groups in the trans community that we needed to be comprehensive, because discrimination does not just befall one's gender identity but certainly manifests itself in terms of an individual's gender expression.

We wanted to ensure, engaging with very knowledgeable members of Parliament as well as members of the community and stakeholders, that this was something that was deeply felt and needed to be included, and it needed to be inclusive to ensure that for individuals, whether in terms of their gender identity or how they express their gender, it's included both in the Canadian Human Rights Act and in the Criminal Code.

• (1150)

Mr. Michael Cooper: Those are all my questions, but maybe, Mr. Falk, if you have....

The Chair: You have about two and a half minutes more in this round if you would like to use them, Mr. Falk.

Mr. Ted Falk: Okay.

You stated that part of your rationale for presenting this bill at this time was because of the advocacy that had been present over many years and also to the current government.

Advocacy is one thing, and another rationale you indicated was that you wanted to make it explicit in law. You don't disagree that it is covered in existing legislation?

Hon. Jody Wilson-Raybould: Well, the Canadian Human Rights Act has covered this in terms of sex, but what we wanted to do is make it very clear and explicit so individuals will know how the law is and what the law is, so that they do not have to advocate or become legally enabled to determine or find themselves within another definition—that it is clear. In terms of the Criminal Code provisions that are essentially interpreted quite narrowly, we wanted to make it clear that gender identity and gender expression are specifically included.

Mr. Ted Falk: I want to state that I'm against discrimination as well, but there are many minority groups with a much larger representation than the trans group people who don't have that explicitly in legislation today. Why would you offer one group explicitly what you're offering people on the basis of sexual orientation and expression when there are many other minority groups that perhaps could also benefit? I think the reason that previous governments haven't done it is that the broadness in the existing law is of benefit to all groups, including all minorities.

You've obviously consulted studies, or you've examined data that would lead you to the conclusion you have, and I'd like you to cite some of those, please.

Hon. Jody Wilson-Raybould: Well, first of all, I feel compelled to respond to some of the comments you made. If there are other groups that aren't recognized in the prohibited grounds, or an identifiable group, I would very much like to know what those groups are.

I would further say the reason there are protections in the Canadian Human Rights Act isn't dependent upon, in my view, the number of individuals who experience discrimination, whether that be large or lower. Human rights are human rights, and we need to ensure, whether it's a small group of people or a large group of people, that we provide the necessary protection for those individuals. That's why we've introduced Bill C-16. That's why years of advocacy in this regard have brought us to this place. The prohibited grounds of discrimination in the Canadian Human Rights Act are quite broad and are clearly articulated so as not to exclude anybody who is finding discrimination.

I would put the question back to you. You say there are many others who aren't included explicitly. I would very much like to know. Perhaps we can have a conversation about that off-line. I would be interested in your thoughts in that regard.

The Chair: Thank you very much.

I also want to make one clarification: "sexual orientation" is already covered under the Human Rights Act and the Criminal Code. It's "gender identity and "gender expression" that we're now trying to cover, just so everybody has the lexicon correct.

We now move to Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thank you, Minister, for appearing before us once again this week, and thank you to Mr. Garrison for his many long years of activism on this file and keeping it on the front burner.

Most of my questions have been addressed either in your remarks, Minister, or in the very many excellent questions. I have one quick question, and then I'll share my time with Ms. Khalid. Can you speak about the experiences of jurisdictions that explicitly identify gender identity and/or expression as a prohibited ground of discrimination, either within Canada or abroad? Have they reported a noticeable increase in accessibility for those individuals or a decrease in criminal offences against this?

• (1155)

Hon. Jody Wilson-Raybould: That is an excellent question.

In terms of Canada, the vast majority of the provinces and territories have legislated in similar ways. The first jurisdiction to legislate was the Northwest Territories in 2002. Across the country, in terms of gender identity and expression now being explicitly included, we have Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, and Quebec. Gender identity is explicitly included in Manitoba, the Northwest Territories, and Saskatchewan.

In terms of the data and the impact of legislating in this regard, I don't have those numbers off the top of my head, but would be very much willing to provide them and consult with my colleagues in the provinces and territories to see if they have collected data in this way.

I don't know if the deputy has any specifics he could address.

Mr. William F. Pentney: No, not specifically. I think one would find that there have been numbers of complaints filed at various human rights commissions, but as with other types of discrimination, such as sexual harassment and other things, when they're explicitly listed, they do not magically disappear from the society. Commissions use a combination of education, providing practical guidance to employers and others, and vindicating rights through individual cases to try to change the social norm. Over time, one hopes, you move the yardsticks that way.

Even going back to the Northwest Territories, I don't believe you'd find jurisdictions that have adopted this saying that it has removed the problem. They would all say that they now have a firm legislative tool as a basis for all of those other activities, and a way, through individual cases, of making clear what the state believes, and also, that there is a practical way for individuals experiencing discrimination to vindicate their rights. That's been the genius of human rights law—and human rights commissions—throughout its life in Canada.

Mr. Ron McKinnon: Thank you.

The Chair: Ms. Khalid.

Ms. Iqra Khalid: Thank you, Minister and Mr. Pentney, for coming in today and speaking about this very important topic. Being from a minority group myself, I really understand the importance of a bill like this to recognize that as Canadians we celebrate each other's differences, and we're strong because of it. I really do support

the spirit and the intent of this bill. I think it's a great step forward for Canadians.

My question is around the front-liners, the people dealing with the hate crimes. They don't always have and I think mainstream Canadians may not have, and I can see around this table as well that we don't have, a clear understanding of the differences between gender expression, gender identity, and sexual orientation. For front-line workers such as police officers, prosecutors, defenders, and judges, who are dealing with these types of hate crimes, can anything be done, or is anything being proposed, to assist them in understanding so that victims' rights can be better protected?

Hon. Jody Wilson-Raybould: That's an extremely important question and an extremely important point to raise. The ongoing discussion over decades around gender identity and gender expression, around discrimination based on other marginalized individuals, is something we need to continue to elevate in the public discourse. The way in which societal norms change and evolve is by having discussions, by ensuring that we can be provided with and access information to understand differences—not that differences are wrong; that's why, as you say, we're such a great country.

In terms of looking at all the actors in the criminal justice system—the RCMP, other police forces, prosecutors, defence counsel, judges—these are individuals who may or may not have been confronted with differences. We need to ensure that there is training. We need to ensure that we're doing as much as we can to recognize the differences between and among us, and not that one is better or worse. Some implicit bias may exist, and we need to have training in terms of diversity, training in terms of explicit bias, and just training on how we are able to most effectively respond, whatever we are acting, wherever our place is in the criminal justice system, based on the recognition that the individual coming before us, who might be different, is dealt with fairly and consistently, and that we have the tools, and do our part to provide the tools, for individuals to be able to recognize and do their jobs as best they can.

• (1200)

Ms. Iqra Khalid: As you said, Minister, this is a bit of a no-brainer. I can see around the table that there is general consensus for how important this bill is.

If I may, I'd like to share a bit of a story with the members of this committee and you, Minister. In Toronto there was a law firm partner of many, many years. He had a number of employees under him. One day he came into the firm and wanted everybody to refer to him as a female. She felt that was her true gender. The discrimination she felt within the law firm was tough for her to deal with, and ultimately she had to basically leave the firm.

The point you raise is so important. We must get past what our physical differences are, what our individualities are, and really talk about what our capabilities are and really work on the merits.

Thank you very much for bringing this bill forward. I think it's just a fantastic thing you're doing.

The Chair: Thank you. That was beautiful.

Mr. Falk.

Mr. Ted Falk: Minister, I'll come back to the question I asked you, which I'm not sure you adequately answered. Can you reference any studies or data that you included in your decision to introduce this bill?

Hon. Jody Wilson-Raybould: Do you mean studies or data with respect to discrimination?

Mr. Ted Falk: Toward the transgendered, yes.

Hon. Jody Wilson-Raybould: I've had the benefit of meeting with a myriad of stakeholders, advocates in terms of the trans population, in one-on-one conversations, which I take incredibly seriously, and reference the situation that the member speaks about in terms of discrimination of the individual in the law firm.

I've heard many stories in that regard. I've read testimony in the blues around previous iterations of this piece of legislation, and I've heard from the advocates who presented on behalf of the legislation, whether it be around committee tables like this one or in the House. There is a substantive body of testimony, of personal reflections and factual circumstances that, without equivocation, lends itself to ensuring that we pass Bill C-16 as fast as we can.

Mr. Ted Falk: In other words, there is no data that you've referenced, and there are no studies that have been done on this issue. It's just a matter of people who have been effective in their advocacy.

Hon. Jody Wilson-Raybould: I think we are going to have to agree to disagree on that one, Mr. Falk. There are—

Mr. Ted Falk: No, just tell me—

Hon. Jody Wilson-Raybould: —substantive amounts of studies. Individual jurisdictions, the Canadian Human Rights Commission, and commissions in each of the provinces and territories have had great discussions on this and produced different documents to reflect the need and the reality of gender identity and gender expression. I would be very hard pressed to say that having personal circumstances and individuals present themselves to me is not direct evidence of the reality and the need to have this.

Other jurisdictions, governments, and provinces and territories have conducted studies on transgender. I am sure that we can provide you with a substantive list of the documentation and the publications out there that can further address your question.

Mr. Ted Falk: My question is that you, yourself, haven't looked at any studies or examined the data in bringing this legislation forward. Is that fair?

Hon. Jody Wilson-Raybould: That is not fair. In my second reading speech, I spoke to data from a study that was conducted in Ontario—I can't remember the exact name of the study—a Trans PULSE study.

I provided—

The Chair: It's called "Statistics from the Trans PULSE Project to Inform Human Rights Policy".

Mr. Ted Falk: That's wonderful. Now we have the chairman helping you out.

Hon. Jody Wilson-Raybould: I'm sorry, Mr. Falk, but I actually did indicate that I spoke to a study in my second reading speech. I am answering your question, and I would ask for the respect to hear

a response. I don't understand where this acrimony is coming from. I was answering your question. I'm sorry that I didn't remember the name of the study off the top of my head.

• (1205)

Mr. Ted Falk: Okay, I accept that.

You indicated in your interview on *Power & Politics* that you really didn't think there would be a significant change. I'm wondering whether you are aware of any particular cases, and whether you can cite any, that were unable to be prosecuted because of our existing laws but would have seen successful prosecution had Bill C-16 been enacted.

Hon. Jody Wilson-Raybould: One of the purposes of bringing this legislation forward is to show Canadians, individuals among the trans population, that their rights are protected in law. Many of those individuals feel that they do not have the ability or that there isn't a safe place for them to freely express themselves. We need to move beyond that.

In terms of the significance of Bill C-16, I certainly would point to the many individuals I've met, including a very young lady by the name of Charlie who was present when we introduced this legislation. My interaction with her was incredibly emotional. She feels incredibly empowered that the Government of Canada has recognized that there is discrimination, and that the government is seeking in Parliament, I hope, to do everything we can to eliminate that discrimination so she can be proud of who she is and feel that her views and the way she feels about herself are welcomed, and that we can provide the space for her to be as successful as she wants to be.

That is where the substantive nature of this piece of legislation is reflected, in the eyes and the mouths of the individuals—

Mr. Ted Falk: Thank you, Minister.

My point is that I believe strongly that when we make decisions as government, it should be evidence-based and fact-based. I see that missing here.

I think the legislation is addressing a gap that doesn't exist. I think our current description, under both the Canadian Human Rights Act and the Criminal Code, provides a broad enough description and is adequate enough to prosecute all cases, including those where transgender people have felt discrimination. I really don't think there's a need to be specific and explicit in legislation to address that concern. I think it's well addressed.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Falk.

Mr. Garrison, the time is now yours.

Mr. Randall Garrison: Thanks very much, Mr. Chair.

I want to start by thanking the minister again. When this Parliament resumed, I reintroduced a private member's bill. We had early discussions before this was introduced as a government bill. I feel that the minister has been very respectful of the work that came before her.

I thank all my colleagues for their kind words, but we're not here today because of my work. We're here today because trans Canadians stepped forward to demand the same rights, protections, and respect that all other Canadians have. Some very brave individuals came forward to tell their stories in previous hearings both here in this House and in the Senate. It's that work and that courageous struggle that brings us to this place today.

I don't want to do testifying—I want to ask the minister questions—but frankly, I find Mr. Falk's assertion that there's no gap and no evidence offensive. It disrespects the work that's been done by all the trans activists. It disrespects the fact that Parliament has twice before passed this legislation. The studies are quite clear. There's the Trans PULSE study from Ontario, which laid out the levels of discrimination and the levels of violence that people face. Egale in Toronto did a study of safe schools, about “every school and every class”—I also can't remember the title—which had transgender students testifying that every day, half of them face harassment and more than a quarter of them face violence in the school setting. So the evidence is here that discrimination is very real and there is a need to act. I thank the minister for giving this priority.

My question is about timing again. My private member's bill...

I guess maybe I should say one more thing. The reason “expression” was taken out of my private member's bill was that there were negotiations with a group of members of the Conservative caucus, led by Shelly Glover, who had concerns that the public didn't understand, and that the political repercussions of including “gender expression” would make it difficult. In negotiations over the bill in the last Parliament, I consulted with the trans community, who reluctantly agreed that in order to get a bill through, because of the urgency, it was better to limit the bill somewhat than to have no bill at all. It was a compromise essentially four years ago. I think the public has moved a long way since then in their understanding of these issues.

My bill passed in March 2013, two and a half years before the election, and it spent two and a half years in the Senate. The Senate

conducted hearings twice, in two different committees, and ping-ponged the bill around the Senate until it finally died.

My question for the minister is about the Senate and about her expectation for the Senate in dealing with this bill. In saying that, I acknowledge the new appointments today of some very prominent human rights activists among the nine people named to the Senate. I want to know if the minister has given some thought, like all of us, to how government bills now work in this new Senate.

• (1210)

Hon. Jody Wilson-Raybould: I appreciate the question.

I certainly recognize the thoughtfulness of the questions that were asked around this table and the expression of support that was reflected in the House of Commons' vote at second reading. I hope it moves very quickly through the House of Commons into the Senate.

I have confidence in the honourable senators to have dialogue and debate around Bill C-16, as they have done on other pieces of legislation. I do hope there is a recognition of the need to have this legislation in place in terms of gender identity and gender expression.

As the Minister of Justice, I am very open, as I have been on previous pieces of legislation, to engage at committee or individually with the honourable senators to answer any questions they may have and to provide any background evidence and studies they would require in making their determination. I very much look forward to the swift passage of Bill C-16 into law.

The Chair: Thank you very much, Minister, and thank you very much, Mr. Pentney, for your testimony here today. It is much appreciated.

Colleagues, we're going to take a brief recess while we clear the room for our in camera session.

To the public, have a good day.

[Proceedings continue in camera]

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