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**Chair**

**Mr. Anthony Housefather**



## Standing Committee on Justice and Human Rights

Wednesday, October 18, 2017

• (1530)

[English]

**The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)):** Good afternoon, everyone. It is a pleasure to be joined this afternoon by the Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould.

Accompanying her from the Department of Justice is Laurie Wright, who is the assistant deputy minister, public law and legislative services sector. Carole Morency is back again. She is director general and senior general counsel, criminal law policy section, policy sector.

We begin our study of Bill C-51, an exciting act split into three parts.

Minister, the floor is yours. Thank you so much for coming to join us today.

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

Thank you to all members of this committee for inviting me to appear again at this time to speak to and discuss Bill C-51, an act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another act.

As you know, the Prime Minister has mandated me to review the criminal justice system, which is critically important and a long overdue task. As Minister of Justice and Attorney General of Canada, I am committed to making our laws fairer, clearer, more relevant, and more accessible to all Canadians. Bill C-51 reflects that commitment.

As I continue to work with the provinces and territories, as well as criminal justice system stakeholders, I am guided by a set of clear objectives.

First, using the criminal law to keep Canadians safe, and holding offenders to account for their crimes in a just and appropriate way. Second, making sure that our criminal justice system shows compassion and responds to the needs of victims of crime. Third, responding to the needs of vulnerable populations, and ensuring that the system does not exacerbate the challenges faced by already marginalized groups. Finally, working to make clearer links between the justice system and other social systems, so we are able to more effectively respond to the root causes of crime.

Bill C-51 reflects these objectives through changes that will have a positive and lasting impact on victims of sexual violence. This bill also affirms the fundamental truths upon which our justice system is based, including that criminal law should be used with restraint, that the state bears the responsibility of proving alleged criminal conduct, and that all criminal law must respect the Charter of Rights and Freedoms.

Mr. Chair and members of the committee, you will already be familiar with the content of the bill. In the time available to me, I don't think I can comprehensively speak to all aspects of the bill. Instead, I will provide a brief overview of the main aspects of the bill, and spend the remainder of my time focusing on some key points of discussion that have arisen since I first introduced the bill on June 6.

It may be useful to think of Bill C-51's proposed amendments as falling into four broad categories. Most of these changes are to the Criminal Code; however, the bill also proposes important improvements to the Department of Justice Act.

The first broad set of reforms under the Criminal Code seek to clarify and bolster the laws surrounding sexual assault. Second, Bill C-51 seeks to build on the proposed changes included in Bill C-39, which I introduced on March 8, by repealing or amending Criminal Code provisions that have been found unconstitutional by the courts. The third area of reform involves amendments that would remove a number of obsolete or redundant criminal offences. Finally, amendments to the Department of Justice Act would create a new statutory duty for the Minister of Justice to table in Parliament a charter statement for every government bill that sets out the bill's potential effects on rights and freedoms guaranteed in the charter.

Turning first to the sexual assault law reforms, all parliamentarians recognize the importance of taking steps to ensure that the criminal law is as clear and unequivocal as possible in its response to sexual violence. We all know that sexual assault complainants face significant challenges. Therefore, it is absolutely critical that our laws be both clear and clearly understood. This is important for all parties involved in such proceedings: judges, prosecutors, defence counsel, accused, and victims. It is also important for the proper functioning of the system overall.

In this respect, the proposed changes clarify that persons cannot consent to sexual activity when they are incapable of doing so, including when they are unconscious. This change is in line with the Supreme Court of Canada decision *R. v. J.A.*

Second, changes would clarify that accused persons cannot rely on the defence of mistaken belief in consent if their mistake is a mistake of law, or if their belief is based on the complainant's passivity. In this way, it would codify the Supreme Court's decision in *R. v. Ewanchuk*.

• (1535)

The bill will also fill the gap in law by introducing a specific procedure for determining the admissibility of private records relating to the complainant such as private journals that are in the hands of the accused. This will complement existing procedures that apply when the accused seeks to obtain records held by persons other than the crown, for example, a therapist.

I pause here to respond to the concerns that have been expressed around these changes. It has been suggested by some that these amendments amount to a codification of a defence disclosure obligation. I want to be very clear that this is simply not true. These changes provide no rights to the crown to receive evidence, nor do they mean that the defence would be obligated to hand such evidence over. Rather, the changes concern rules of evidence and seek to balance the rights of the accused with the rights of the complainant and to support the truth-seeking function of the courts.

As was noted in the Supreme Court of Canada's decision in *Darrach*, a *voir dire* held to determine whether evidence of past sexual history is admissible is not defence disclosure. Additionally, the bill proposes changes to remove laws that have been found unconstitutional by appellate courts. One example is the proposal to remove the restriction that prevents sentencing courts from giving enhanced credit to persons detained prior to being tried and convicted because they've breached a condition of bail. This was found unconstitutional by the Manitoba Court of Appeal in *Bittern*.

Next, Bill C-51 proposes to repeal 20 different offences that are either redundant of other offences of general application, or no longer have relevance in Canada today. Examples include challenging someone to a duel; posting a reward for a return of a stolen item, no questions asked; possessing criminal or crime comics; and publishing a blasphemous libel. These changes are expected to make our laws fairer, clearer, and more relevant and accessible to Canadians.

I've received a number of letters from Canadians expressing concern about Bill C-51's proposed repeal of section 176, which appears to offer specific protections to Christian clergymen. I'm grateful to have the opportunity to respond to these concerns now.

I want to be clear that removing this offence will not in any way undermine Canadians' ability to practise their religious faith, nor do I expect it to lead to an increase in violence in such situations. Many criminal offences of general application will continue to be available to address all of the conduct that is prohibited by section 176. It remains an aggravating factor in sentencing if an offence was motivated by bias, prejudice, or hate based on religion.

Finally, changes to the Department of Justice Act would require the Minister of Justice to table charter statements that would identify and highlight key charter rights and freedoms that are engaged by any government bill. They would also set out considerations that

support the justification of any limits that a bill may have on charter rights or freedoms.

As members are aware, I have been tabling charter statements for bills that I have introduced since becoming Minister of Justice. We have also begun to expand this practice to bills introduced by other ministers as well. The amendments would entrench this practice in law and extend it to all future government bills. These changes, as well as those proposed to the Criminal Code, reflect our government's unwavering and deep commitment to respecting the charter.

Quite simply, we can never abdicate our responsibility as a government to ensure that our decisions, including those reflected through law reform, comply with our fundamental rights and freedoms. That is why I'm so pleased to sponsor a bill that reinforces the obligation of current and future governments to adhere to this most basic duty.

Mr. Chair, I want to thank you again for the opportunity to appear before this committee and I look forward to all of the questions and discussions.

• (1540)

**The Chair:** Thank you very much, Madam Minister.

I also wanted to salute and say hello to Mr. Tabbara and Mr. Angus, who are joining our committee today. It's nice to have you gentlemen with us.

We're going to do one round of questioning and then general questioning while the minister is here with us, and we're going to start with Mr. Nicholson.

**Hon. Rob Nicholson (Niagara Falls, CPC):** Thank you very much.

Thank you for your appearance here today.

You will remember, Minister, that earlier this year there was quite a bit of discussion in Parliament, and a number of motions and debate, with respect to the protection of people's religious freedom. Also, with respect to the charter and the Constitution, people's right to practise their religion is a fundamental right that Canadians have.

I was surprised when I had a look at the details of this bill that one of the things it does is to remove the specific protection for religious services and members of the clergy. Now I notice that at the time it was announced, there was no mention of this. It was just said that it was obsolete, redundant, and no longer relevant.

I think most people in this country would agree with me that it is serious when anybody disrupts, threatens, or interrupts anybody's religious service, no matter what it is, and that it's worthy of the special section in the Criminal Code. Most people I think would agree that it's not the same as causing a disturbance at an arena or interrupting a meeting.

Why don't you agree with me that this section is in fact still relevant?

**Hon. Jody Wilson-Raybould:** Thank you for the question. I remember a lot of the discussion that took place back then.

In terms of section 176, as I stated in my opening remarks, there are certainly other provisions in the Criminal Code offences of general application that could capture all of the activities that could potentially occur in a religious facility against a religious officiant, such as provisions or offences around causing a disturbance, assault, uttering threats, mischief to property, or inciting hatred.

I recognize, as you do, that freedom of religion is a fundamental right that's guaranteed under section 2 of the Charter of Rights and Freedoms. This bill in no way proposes to make any changes in that regard. I know and am confident that Canadians can continue to practise their religious faith without fear of violence and disturbances. That is due to the protections in the charter, and to the offences of general application in the Criminal Code that will capture any activity. It's simply ensuring that we remove provisions that are already accounted for in the Criminal Code.

● (1545)

**Hon. Rob Nicholson:** I agree with you that somebody could be charged with mischief or threats and assaults, but I cannot see why this specific protection for people's right to practise their religion, or members of the clergy, would somehow get on the radar. It wasn't mentioned, if you remember, when the announcement was made.

Interestingly enough, in April of this year, it was reported in the paper that there was an attack in Saint Patrick Basilica on Kent Street. Someone broke the arm off a statue of Jesus on a crucifix just before an evening mass. A woman was charged with breach of a judicial release and disturbing a religious worship in relation to that incident. This is not obsolete, and it's not something that's not being used. This was right here in Ottawa about five or six months ago.

Therefore, I'm going to be bringing an amendment—and I'm hoping it will have the support of the members here—to delete the section that will remove the special protection for religious services. There are many great sections that you have in this bill, the codification, a number of the areas of sexual assault.

I'm hoping you will consider that and agree with me that we should remove the deletion of section 176.

**Hon. Jody Wilson-Raybould:** Thank you for your additional questions. As I have said every time that I appear, I would welcome any potential amendments that would seek to improve this legislation.

I will say, and the member likely knows this as well, that section 176 has not been charged very frequently. I am familiar with the case he is referencing in terms of the situation that happened in Ottawa.

Section 176 is difficult to prove. The various elements contained therein are limited to clergymen or ministers in the Christian faith, and it's not inclusive of other religious leaders. Again, I will say—and the member has agreed with me—that there are other provisions that will adequately capture all of the activity that potentially could take place.

**Hon. Rob Nicholson:** Let me ask one more. We will be following that up, you can imagine.

The very first section that was deleted, and again this didn't get any publicity, was the special section that makes it an offence if you in any way threaten or attempt to attack Canada's head of state, the

Queen. Wouldn't you think it's maybe bad timing on the 65th anniversary of the Queen's reign that we would be removing this specific section for somebody like her, who has an unparalleled public service record among public figures throughout the world?

Again, I would believe that most people would say that if you rough up somebody somewhere in a bar some night, this is not quite as serious as if you attempt to attack the Queen, who is the head of state. As I say, in many countries that would be treated as treason. Why would you find it necessary to remove that one this year?

**Hon. Jody Wilson-Raybould:** We've done a comprehensive review of the Criminal Code, engaged with many academics. We conducted round tables across the country, and had working groups in terms of federal, provincial, and territorial ministers that have discussed this.

In terms of the redundant provisions, the offence of alarming Her Majesty under section 49 is a historical provision. It has its origins in mid-19th century England. Again, as with other redundant provisions, we're confident that there are other offences within the Criminal Code that would account for this type of behaviour, whether it be uttering threats or assaults or the like.

**Hon. Rob Nicholson:** I think you would agree that the woman is Canada's head of state and that section protects her against any act that's intended or likely to cause bodily harm to Canada's head of state.

I believe if you ask most people, they will say that it is more serious than if you threaten your neighbour, not that it's correct either way. Again, I think most people would agree that this raises it to a whole new level, particularly in a day when public security and the security of public figures is so critical.

● (1550)

**Hon. Jody Wilson-Raybould:** I would perhaps echo the utter respect that I have and our government has for Her Majesty Queen Elizabeth. I would say again that this in no way detracts from the necessary protections and criminal offences articulated that could be relied on. I could reference other Commonwealth jurisdictions that have also repealed these provisions, such as Australia and New Zealand.

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

We're going to move to Ms. Khalid.

Ms. Khalid.

**Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.):** Thank you, Chair.

Thank you, Minister, for coming in today.

Minister, over the past week or so we've been seeing #MeToo on social media. These are tens of thousands of women who have come out and claimed that they have been sexually assaulted or have experienced sexual harassment. I begrudgingly added my own name to that list of tens of thousands. Can you talk about what kind of impact this will have on sexual assault and sexual harassment for those tens of thousands of women?

**Hon. Jody Wilson-Raybould:** I am familiar with the #MeToo campaign, and thank you for sharing your lived experience. I would say it is paramount. We had members in the House today speak to that campaign. It is critically important for individuals who are victims of sexual violence, sexual crimes, to come forward.

The intent behind Bill C-51, with respect to amendments to the sexual assault provisions and clarifying the law, is to do as much as we can to make it easier for victims of crime to come forward to share their stories. We know the statistics say that individuals do not come forward as much as they should. What we can do, in terms of amending the Criminal Code, and that's the intent behind Bill C-51, is to clarify the law around consent and to speak to disclosure and evidence with respect to records held by the accused around the complainants.

We're also taking substantive measures, from day one as a government, to work as hard as we can to ensure we provide effective resources in terms of victim support and victim services. We've allocated \$12 million in that regard in our victims fund. We're also committed to ensuring that individuals who sit on our superior courts across the country are provided and can take advantage of the necessary training in terms of recognizing implicit bias.

We've also invested substantively in other ways, including working with the Minister of Status of Women around a gender-based violence strategy that looks at prevention and that looks to ensure the criminal justice system is responsive to victims of sexual violence.

**Ms. Iqra Khalid:** Part of the debate that arose out of the #MeToo campaign was on what consent is, and Bill C-51 addresses that issue. Can you review what changes are being made to the law of consent, and why you think they are important?

**Hon. Jody Wilson-Raybould:** What we're seeking to do in Bill C-51 is to clarify the law around consent. Specifically, in terms of the sexual assault amendments relating to situations where there is no consent, the amendments would make clear that an unconscious person is incapable of consenting, and in a separate paragraph it would equally make clear that a person may be incapable of consenting for other reasons other than being unconscious.

This is activating or putting in place the clarity that was provided by the Supreme Court of Canada, as I mentioned in my remarks, in decision *R. v. J.A.*, and ensuring that there's clarity around when consent is obtained and when it's not.

● (1555)

**Ms. Iqra Khalid:** There is another part of that discussion, which is that the accused's rights, or anybody making an accusation against an individual for sexual assault or sexual harassment, are somehow being diminished. Can you explain how the rights of the accused were considered in the drafting of this bill?

**Hon. Jody Wilson-Raybould:** We have engaged in substantive consultations and round tables across the country. We've engaged in a specific round table in terms of victims' advocates, and recognize that in order to have a fairer justice system, we have to take into account the accused, the victims, and find the right balance.

What we sought to do to ensure there is that balance is to look at fair trial rights for the accused person. We took that into account

when we were considering and drafting the expansion of the rape shield provisions, but we also recognized we needed to respect the privacy rights of the complainant, and the interests of justice in terms of the determinations on admissibility. We took into account a significant number of necessary interests in terms of drafting the provisions.

**Ms. Iqra Khalid:** Thank you for your efforts in addressing this issue, and all your work with respect to gender-based violence. You're definitely an inspiration to a lot of people.

**Hon. Jody Wilson-Raybould:** Thank you.

**The Chair:** Thank you very much, Ms. Khalid.

Mr. Angus.

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Thank you, Mr. Chair, I'm honoured to be here at your committee.

My uncle, who's in your riding, says you're a nice guy. If my uncle says you're a nice guy, I'm going to say nice things about you.

**The Chair:** Thank you so much, and thank you to your uncle.

**Mr. Charlie Angus:** It's certainly an honour to have you with us, Madam Wilson-Raybould, and your incredible work as the justice minister.

I want to talk mostly today on the issue of the gender lens and how it applies in the indigenous communities. You have experience in many portfolios. Particularly when you were talking about #MeToo, it seems to me that the issue of the obligation of the state to prove the alleged criminal conduct of the defendant is a fundamental principle. But when it comes to sexual assault, it always ends up that the woman seems to have to prove the case herself.

We have situations and issues of sexual assault, the practice of "whacking the complainant", as they call it, where the credibility of the victim is put on trial. We see in the example of the Ghomeshi trial that the question of the violence that he committed was never ever the issue. The issue was the credibility of the women who came forward, after the police asked for witnesses to come forward.

I don't know if the provisions that you're bringing forward on consent are enough to protect women, to encourage them to come forward, and also to make sure that we maintain a balance of justice in terms of the rights of defendants. How are we going to square that circle?

**Hon. Jody Wilson-Raybould:** I'll say from the outset that it is an incredibly important question. The objective that you articulated in your question in ensuring that we do everything we can to protect victims of sexual assault, to ensure that we provide and create the space as best we can for them to come forward, is an objective that I think everybody around this table shares.

We have sought to ensure in Bill C-51 that we clarify the law around consent in the Criminal Code, that we ensure we expand the rape shield provisions, recognizing the twin myths, and that the ability to introduce evidence that's held in the hands of the accused's personal records regarding the complainant certainly can't be introduced for purposes of the proclivity of the complainant in the activity or that she's less worthy of belief. We set in place a procedure to provide discussion or advise whether or not those personal or private records of the complainant should be introduced in the procedure. Also, the proposed legislation provides legal representation to the complainant in these procedures.

Beyond what's reflected in Bill C-51, we have a lot of work to do. I'm happy that the government has thought to start doing substantive work in that area.

•(1600)

**Mr. Charlie Angus:** Thank you.

I'm pleased you talked about the need to move with effective resources, particularly for those who have difficulty accessing the system. The situation in indigenous communities, the lack of resources, where we spent months and months with police in our region trying to get rape kits that were not available.... How do you get evidence if you don't have rape kits? None of those cases could go to court. These are the basic resources that the communities I represent don't have.

The government is only paying for one shelter a year for indigenous women suffering violence, and nothing up in Nunavut. Given the extent and the isolation in communities, if we don't have the resources for women to get out of violent situations, how do we expect that we're going to end the cycle of violence?

**Hon. Jody Wilson-Raybould:** Ending the cycle of violence is an objective we all share. I hear you and recognize the lifelong advocacy that you have been involved in, in your remote community, and the remote communities you represent.

We have done a number of things. Can we do more? Of course we can. Are we committed to ensuring we do everything we can to provide for those complainants who do come forward—because not many of them do in indigenous communities, as you probably know—and ensure the tools and the mechanisms to be able to prove the charge are available, whether that be the rape kits, as you mentioned? We have made contributions in the area of \$12 million to our victims fund that provides supports to assist victims of sexual assault. We have an ongoing pilot project in Newfoundland.

**Mr. Charlie Angus:** My concern is that when we get to the fundamentals, for example, the child welfare system, the broken foster care system, it is the conduit for girls ending up on the street and boys ending up in gangs. Tina Fontaine...you name the children who have gone through that system and have been victims of violence, yet you're in court fighting the Human Rights Tribunal. Your government has put up about \$1 million fighting an order to end the chronic underfunding that is leading to young women and young boys being put out on the street and ending up in situations of violence.

I don't get that. Why are you not complying so that we can end this chronic denial of basic rights?

**Hon. Jody Wilson-Raybould:** On the question around sexual assault and supporting victims of sexual assault, and sexual violence crimes, I'm very proud of what our government has done to make inroads with respect to addressing these issues. In our last budget we committed \$100.9 million to a gender-based violence strategy—

**Mr. Charlie Angus:** You have the Canadian Human Rights Tribunal at Federal Court over children, the children who are being victimized in the broken foster care system. Why would you put all that money into fighting them in court when you could put that money into ending this systemic discrimination?

**The Chair:** Mr. Angus, we've strayed far away from Bill C-51 but I'll let the minister answer. We're at the end of your time anyway, so we'll let the minister answer.

**Hon. Jody Wilson-Raybould:** Without getting into specifics about specific cases, we are committed to ensuring that we provide the necessary supports to children in indigenous communities, and I am very pleased to be working closely with the Minister of Indigenous Services in the substantive work she is doing to invest in communities the necessary resources that are required for indigenous children not to be different from non-indigenous children.

This is an effort that is not going to be resolved in months or a couple of years, but it's an effort that is going to require all of us to ensure that we support indigenous communities having the necessary day-to-day resources and in closing the gaps in indigenous communities, from child welfare to education and health. But it's also to provide that fundamental pathway for indigenous communities and nations to rebuild and to be self-determining and ultimately have jurisdiction over these really important issues as communities take advantage of the Prime Minister's commitment to build a nation-to-nation relationship. This requires members all around.

I know the honourable member would be in agreement that we need to make this transition and transformation to recognition of rights and reconciliation with indigenous peoples.

•(1605)

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

Mr. McKinnon.

**Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.):** Thanks, Chair.

I'm interested in talking about section 176 as well. Mr. Nicholson asked some very good questions, and I appreciate your answers. I thought they were very good and substantive, but to go into that just a little bit more, I look at paragraph 176(1)(b) for example:

(b) knowing that a clergyman or minister is about to perform, is on his way to perform or is returning from the performance of any of the duties or functions mentioned in paragraph (a)

(i) assaults or offers any violence to him, or

(ii) arrests him on a civil process, or under the pretence of executing a civil process,

That's interesting to me because I don't see, specifically in terms of the "civil process" business, that the protections he might have under hate crimes and other things you mentioned would give him that kind of protection. Can you please speak about that?

**Hon. Jody Wilson-Raybould:** I'm hoping that I'm understanding your question. It is different from the question that Mr. Nicholson asked.

In terms of sections 176 and the protections that are provided to clergymen, this is referencing clergymen and not referencing broadly in terms of religious heads.

I'm confident that the offences of general application will cover the situations and fact patterns you pointed out around the provisions in terms of causing a disturbance at or near a public place, assault, uttering threats, mischief of property, and inciting hatred against identifiable groups. As mentioned in my remarks, it is an aggravating factor in sentencing where the offence was motivated by hate, bias, or based on religion.

Repealing section 176 certainly does not affect the freedom of religion as protected under the charter, but it removes a provision that is redundant in the Criminal Code. I think—and this could be said for other provisions within the Criminal Code—it speaks to a “clergyman” and it speaks to “his” calling. This would remove the reality of referencing one gender over the other as well.

**Mr. Ron McKinnon:** I accept all that.

I think the language could be broadened to cover all religions and genders and so forth. I agree with you that there are many provisions in the Criminal Code and elsewhere to protect in circumstances of violence or intimidation, or hate speech and hate crimes. The one interesting thing about this is that it kind of establishes a clergyman privilege of not being able to be arrested on a civil offence while they're on the way to or from performing one of their regular things.

I think it's interesting. I don't know if it's a really important thing, but it's not covered under all those other categories you mentioned.

**Hon. Jody Wilson-Raybould:** I hear what you're saying about the to and from.

I honestly do not have a specific answer to provide you with respect to that—I'll look at my officials to see if they do—but I'm happy to follow up on that specific question.

• (1610)

**Mr. Ron McKinnon:** Thank you. This is playing “stump the minister” today.

Could you maybe just carry on and talk about blasphemous libel? We're repealing that as an offence. Maybe we could talk more about that and explain how that protects religious freedoms, or not.

**Hon. Jody Wilson-Raybould:** I was just looking at my notes to see when this offence came in. It has its origins prior to our Criminal Code. Its origins come from 17th-century England. It was directed at attacks against Christianity. It has been interpreted as requiring the intention to publish material that in fact is likely to shock or outrage the feelings of believing Christians, not other religions.

As we stated earlier in this discussion, the Charter of Rights protects the right to equality, the right of freedom of religion and belief and expression, and this offence does not appropriately reflect those values. The other thing that I was looking for was that the last reported decision for this offence was in 1936, and England's blasphemy offence laws were repealed in 2008.

**Mr. Ron McKinnon:** There are a lot of bizarre and arcane laws on the books, obviously.

I am wondering how you went through and chose the laws to repeal. I know some of them were cases where they were deemed unconstitutional.

**Hon. Jody Wilson-Raybould:** For the past two years, and even before that, there have been many commentators—academics, people involved in the criminal justice system—who have made commentary around specific provisions in the Criminal Code.

We specifically sought to engage with academics on this issue. We've had over 15 round tables on the Criminal Code with criminal justice experts from all different areas. My officials have engaged in substantive working group discussions with our provincial and territorial counterparts to comprehensively review the Criminal Code, and certainly, as Bill C-39 reflects, eliminate unconstitutional provisions in the Criminal Code. With respect to Bill C-51, we looked at redundant and archaic provisions, and we also looked at where lower courts have considered specific sections to include and remove those provisions.

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

We're going to move to shorter questions. The minister is still with us for another 17 minutes, so we'll try to make the questions more brief.

I know I have Mr. Cooper and Mr. Fraser, and then I'll look for anyone else's hand.

Mr. Cooper.

**Mr. Michael Cooper (St. Albert—Edmonton, CPC):** Thank you, Mr. Chair.

Thank you, Madam Minister.

I certainly note that Bill C-51 does remove certain obsolete sections of the Criminal Code. I want to ask a question more broadly about the government's effort to clean up the Criminal Code. You have stated that it is a priority of the government.

One year ago, Travis Vader's conviction on two counts of second degree murder of Lyle and Marie McCann of St. Albert, Alberta was vacated after the trial judge applied an inoperative section of the Criminal Code, a section that had been found unconstitutional some 25 years earlier.

This committee wrote to you. I held a press conference with Bret McCann in December calling on the government to move forward to remove zombie laws, unconstitutional provisions. To your credit, you did introduce Bill C-39 on March 8, and seven months later, it remains stuck at first reading.

What is the delay on Bill C-39?

**Hon. Jody Wilson-Raybould:** I recognize the member's comments and advocacy with the letter that was sent from this committee around the zombie provisions that are in the Criminal Code.

I am fully committed to doing as much as I can to advocate for the moving of Bill C-39 through the parliamentary process. Like you, I want to have those provisions, section 230 of the Criminal Code, removed as well as the other unconstitutional provisions that are articulated in Bill C-39, and likewise, other bills that I have felt very fortunate to have introduced around the victim fine surcharge.

Bill C-39 was phase one of the Criminal Code cleanup bill, and Bill C-51 is the second phase. I'm hopeful that they will all proceed as quickly as possible because I share your concern about having zombie provisions remain in the Criminal Code and having individuals charged under provisions that have been rendered unconstitutional.

•(1615)

**The Chair:** Mr. Fraser.

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

Thank you so much, Minister, for being here, and thanks to your officials as well.

First of all, I want to thank you for the effort in putting this bill together, and I really appreciated your comments with regard to victims or complainants feeling perhaps more comfortable coming forward as a result of some of the steps that are being taken in this bill.

Coming from Nova Scotia, I know there has been certainly a high profile case and incidents there that are on the public's mind that have brought consciousness to this important discussion.

In balancing the rights of the accused and the victims or complainants, I want to turn to a topic that already had some discussion, and that's regarding the records relevant to the complainant that are in the hands of the defence. As I understand it, there will be a possibility of a hearing before the judge in a voir dire setting, where a determination will be made on the admissibility of that evidence by the judge.

I think it's good that the complainant would have the ability to have legal representation at such a hearing. I'm wondering, though, if you could touch on how we balance the rights of the accused to a fair trial with the ability of perhaps giving a heads-up, if you will, to the complainant about what evidence may be tendered on cross-examination, perhaps allowing an accused person an ability to tailor evidence based on what normally would be proffered at trial to cross-examine the witness.

**Hon. Jody Wilson-Raybould:** As we discussed a little earlier, we sought to balance the rights of the accused and recognize the challenges with respect to the complainants in coming forward and to do what we can to assist in that regard, broadening the rape shield provisions around where an accused person has personal records of the complainant. As mentioned, we have put in place in this particular bill a procedure for the determination of admissibility of evidence. It's not disclosure. It's looking at what types of personal records a judge would determine would be admissible. Certainly, nothing that touches on the twin myths I mentioned earlier would be admissible, but we provide the ability to have that voir dire for a judge to make those decisions.

In the legislation we are proposing that legal representation be provided to the complainant. I am pleased that we have, through our victims fund, been able to fund pilot projects in Newfoundland that are providing free legal advice to individuals and complainants of sexual assault or sexual violence. Other pilot projects are under way as well.

**Mr. Colin Fraser:** Thank you very much.

**The Chair:** I have one more for Mr. Cooper, but just before that can I see a show of hands? Which other members of the committee want to ask the minister a question?

I'm going to have Mr. Cooper and then Mr. Angus, and then we'll probably be finished the hour.

Mr. Cooper.

**Mr. Michael Cooper:** Thank you, Mr. Chair.

I would just reiterate to the minister the urgency in passing Bill C-39. What happened in the McCann case was not unique. It has happened before, and it is just a matter of time before another judge applies an inoperative section and another family is victimized like the McCanns.

Section 176 isn't unconstitutional. The constitutionality of it has been upheld by the courts. It isn't obsolete, given the fact that there have been multiple cases in which individuals have been charged and convicted under section 176. As well, it isn't redundant inasmuch as it is the only provision in the Criminal Code that directly protects individuals to freely practise their religion.

In your testimony you made reference to the fact that section 176 applies only in the case of the Christian faith, but subsection 176(2) very clearly speaks to disturbing religious worship or certain meetings and again makes reference to "religious worship". It says nothing about Christianity. I'm not aware of any court that has ever interpreted this section to apply only to the Christian faith. Perhaps you misspoke, or perhaps you could clarify on what basis you stated that section 176 applies to the Christian faith.

•(1620)

**Hon. Jody Wilson-Raybould:** Again, I'm not going to reiterate the redundancy of 176 and the reasons I gave earlier, but both paragraphs (a) and (b) speak to clergymen, isolating it to what is interpreted as being individuals, clergymen, or ministers of the Christian faith, and we do not want to limit it or isolate it to that.

**The Chair:** Mr. Angus.

**Mr. Charlie Angus:** I want to continue on the question of ensuring protection in the areas of sexual violence, because we deal with victims who have mental health issues and diminished intellectual capacities, where the system simply doesn't work for them. They get eaten up in the system.

Conversely, many people who end up as defendants, who are of a broken background, particularly those who suffered abuse in communities where they grew up and then ended up on the street, find that the system does not seem to address them in a fair manner, ensuring justice and protection.

Has your department put a lens on these issues of ensuring equity for both the defendants and complainants in cases of violence, in terms of mental health issues, diminished intellectual capacity, and fetal alcohol syndrome, and what steps does the justice system need to take to adjudicate these issues?

**Hon. Jody Wilson-Raybould:** This is a long conversation, and I would love to continue to have it with you around the substantive steps we have taken in terms of the broad, comprehensive reforms of the criminal justice system.

For me, the reality, in terms of the corrections system, is that approximately 70% of the individuals who are in the criminal justice system suffer from mental health issues, addictions, and are marginalized individuals. There's an absolutely appalling over-representation of indigenous peoples in that system. I am committed, through our comprehensive reform of the justice system, to ensure we put justice back into that system, recognizing that we must protect public safety, that we need to respect and support victims of crime, and that we need to uphold the Charter of Rights and Freedoms.

I'm looking forward to bringing forward, in concert and collaboration with my counterparts in the provinces and territories, substantive reforms to the justice system. We need to address delays, but also be very mindful that we need to do better in terms of individuals that find themselves, whether they're an accused person or a victim of crime, in the criminal justice system for reasons other than being inherently criminal.

I am a strong proponent, when somebody is in the justice system, of finding the necessary off-ramps for that individual, off-ramps that would provide the necessary care, whether that's treatment, ensuring we promote sentencing circles, or culturally appropriate transitions, as an example, for indigenous offenders.

Restorative justice measures across the country are something that I'm absolutely passionate about and hope to, and intend to, propel further.

• (1625)

**Mr. Charlie Angus:** Thank you. Just a quick follow-up.

No politicians ever got elected by saying they were going to provide justice for people in the criminal system. It requires enormous resources, especially given how overcrowded the court system is, the delays, and the difficulties in jails. This would require a major commitment to stop being just tough on crime, but to start being smart on crime.

What kinds of resources are we looking at from the justice department to make this happen?

**Hon. Jody Wilson-Raybould:** I am working very closely with my counterpart, the Minister of Public Safety. We have, and will continue to advocate for the necessary resources in order to achieve the changes that we're seeking in terms of the criminal justice system.

Likewise, I've been working very closely, as have my officials, with my counterparts in the provinces and territories, recognizing that the administration of justice is a shared responsibility. I'm very pleased with the common priorities we've identified in terms of substantive and bold measures that we can take to reduce delays. These include preliminary inquiries, mandatory minimum penalties, administration of justice offences, and bail reform.

Judicial case management has potential areas we can look at as well. We've had discussions around the federal-provincial-territorial table on how we can do better to recognize, address, and put in the necessary services, knowing full well this will require resources to substantively address those individuals who have mental health issues, addictions issues, or have fetal alcohol syndrome.

We also recognize that there are challenges that need to be addressed that aren't necessarily criminal in nature, but that we have to do better in matters of providing adequate housing for individuals to stay in, rehabilitate, and transition into the job market. This is a cross-government reality and approach, and a necessary commitment that our government has made. I look forward to working with you, and all members of this committee, as we roll out our broad criminal justice reforms.

**Mr. Charlie Angus:** Thank you.

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

Is it fair to say, members, that we can also excuse the officials together with the minister, or were there separate questions for the officials?

If not, I want to thank you very much, Minister, and I want to thank you both as well, ladies, for coming to accompany the minister. It is very much appreciated.

Colleagues, we're going to have a short recess, and then we're going to resume because we have a couple of committee items that will be very short. We'll now have a five-minute recess.

Thank you again, Minister.

**Hon. Jody Wilson-Raybould:** Thank you very much.

[*Proceedings continue in camera*]







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