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Standing Committee on Justice and Human Rights

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• (1105)

[English]

The Chair (Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.)): I call this meeting to order. Welcome to meeting number two of the House of Commons Standing Committee on Justice and Human Rights.

As we can see, today's meeting is taking place in a hybrid format, pursuant to the House order of September 23, 2020. The proceedings will be made public and will be available via the House of Commons website. Just so you are all aware, the webcast will always show the person who is speaking rather than the whole committee room.

Before we go into clause-by-clause consideration of Bill C-3, which is on the agenda today, let's first adopt the subcommittee report from the meeting last Tuesday. I ask for your support on adopting the meeting minutes, which have been circulated to you.

(Motion agreed to)

The Chair: This Thursday, we are receiving the minister for main estimates. Last week, the committee received the order of reference for the examination of supplementary estimates (B). Is it the will of the committee to also do the supplementary estimates at the same time this Thursday, or would you like to do it at a separate time? I open it up for anyone who wants to address this. Would the committee be okay to have the supplementary estimates be brought forward to the minister at the same time as the mains for the Thursday meeting? Can I see a thumbs-up from everybody in agreement? Good. Okay.

Mr. Clerk and analysts, if we can amend the briefing books so that they include the supplementary estimates as well, that would be great. Thank you.

In our last meeting, Mr. Garrison had a question about whether the whips' office staff and members' staff could have access to our Zoom virtual room, with the camera and mike off, for public meetings. We're happy to report that a pilot project is currently going on allowing the whips' and House leaders' office staff to attend in that manner, with their mikes muted and their videos off. We are looking into extending that possibility to members' staff as well.

Pursuant to the order of reference of Monday, October 19, 2020, the committee is meeting today for the clause-by-clause consideration of Bill C-3, An Act to amend the Judges Act and the Criminal Code.

We are joined today by video conference by officials from the Department of Justice. We have Stephen Zaluski, general counsel and director of the judicial affairs section; Adair Crosby, general counsel, judicial affairs section; and Gillian Blackell, senior counsel and team lead in the criminal law policy section.

You will be able to ask the officials questions, through me, if you have any questions around what we're doing today with the clause-by-clause consideration, to clarify any issues that arise.

To ensure an orderly meeting, I'd like to outline a few rules that we should be following.

Members and witnesses may speak in the official language of their choice. Interpretation services are available for this meeting. You have the choice at the bottom of your screen of floor, English or French. You may choose whatever interpretation you would like to hear.

For members participating in person, proceed as you usually would when the whole committee is meeting in person in a committee room. Keep in mind the directives from the Board of Internal Economy regarding wearing your mask and health protocols. I see that we have at least one member who is in the committee room today.

Before speaking, please wait until I recognize you by name. For those of you participating virtually, please click on the microphone icon to unmute yourself. For those in the room, your microphone will be controlled as normal by the proceedings and verification officer who's here. I remind you that all comments by members and witnesses should be addressed through the chair.

• (1110)

When speaking, speak slowly and clearly. Note that there is a bit of lag with the interpretation, so when you end a sentence, give it a few seconds before carrying on in another language or before the next speaker speaks, to allow the interpreters to finish speaking. When you're not speaking, I would ask that you put your microphone on mute, so we're not disrupting anybody else who's speaking.

With regard to a speakers list, the committee clerk and I will be doing our best to maintain a consolidated order of speaking for all members, whether they're participating virtually or in person. When you're participating virtually, please use the "raise hand" function through your participants list. I will be able to recognize the members who are in the room. Just flag to the clerk if you would like to be put on the speakers list; the clerk will let me know and we'll do so accordingly.

Are there any questions at this time from anybody?

I'd like to provide members of the committee with some instructions and a few comments on how the committee will proceed with the first clause-by-clause consideration of a bill in a hybrid meeting format. This is the first time we're doing this. I'll be going as slowly and as cautiously as possible. We obviously don't want to inadvertently do something that we may have difficulty taking back later on. Hopefully, this will go smoothly with the help of all these wonderful supports that we have here today.

As the name indicates, this is an examination of all clauses in the order in which they appear in the bill. I will call each clause successively, and each clause is subject to debate and a vote. If there is an amendment to the clause in question, I will recognize the member who is proposing it, who may explain or speak to the amendment that they have submitted. The amendment will then be open for debate. When no further members wish to intervene, the amendment will be voted on.

Amendments will be considered in the order in which they appear in the bill or in the package that each member has received from the clerk. If there are amendments that are consequential to each other—and I will identify them as we get to them—they will be voted on together.

Pursuant to the House order of September 23, 2020, all questions shall be decided by a recorded vote, except those that are decided unanimously or on division.

In addition to having to be properly drafted in a legal sense, amendments must also be procedurally admissible. I may be called upon to rule on amendments if you feel they are not admissible because they go against the principle of the bill or beyond the scope of the bill—both of which were adopted by the House when the bill was agreed to at second reading—or if they offend the financial prerogative of the Crown.

If you wish to eliminate a clause of the bill altogether, the proper course of action is to vote against that clause when the time comes, not to propose an amendment to delete it.

Since this is the first clause-by-clause consideration of a bill in a hybrid meeting format, I will go slowly to allow all members to follow the proceedings properly. If, during the process, the committee decides not to vote on a clause, that clause can be put aside by the committee so we can revisit it at a later time in the process.

The amendments have been given an alphanumeric number—that is in the top right-hand corner of the package that has been given to you—to indicate which party submitted them. There's no need for a seconder to move an amendment. Once it is moved, you will need unanimous consent to withdraw the amendment.

During debate on an amendment, members are permitted to move subamendments. These subamendments must be submitted in writing or by email for members participating virtually. They do not require the approval of the mover of the amendment. Only one subamendment may be considered at a time and that subamendment cannot be amended. When a subamendment is moved on an amendment, it has to be voted on first. Then, another subamend-

ment may be moved or the committee may consider the main amendment and vote on it.

• (1115)

Once every clause has been voted on, the committee will vote on the title and the bill itself, and an order to reprint the bill may be required, if amendments are adopted, so that the House has a proper copy for use at report stage. Finally, the committee will have to order the chair to report the bill to the House. That report contains only the text of any adopted amendments as well as an indication of any deleted clauses.

I thank the members for their attention and wish everyone a very productive clause-by-clause consideration. If there are any questions at this time, you can raise them now.

[*Translation*]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): I have a question, Madam Chair.

[*English*]

The Chair: Monsieur Fortin, go ahead.

[*Translation*]

Mr. Rhéal Fortin: Earlier you mentioned a bundle of documents with the name of the party making the proposal written at the top, but I did not receive it. Perhaps I misunderstood. Can you tell me what it is? What I have is the document from this morning.

[*English*]

The Chair: Yes, absolutely. Would you just show that to me?

No. The clerk would have sent you a package of the amendments. There were nine amendments in total that were submitted by various parties.

[*Translation*]

Mr. Rhéal Fortin: Can you tell me when it was sent? I don't remember seeing this.

[*English*]

The Chair: Mr. Clerk, would you please speak to when they were sent? I'm sorry, I don't have the date on hand.

[*Translation*]

The Clerk of the Committee (Mr. Marc-Olivier Girard): Madam Chair, the document was sent last Friday, but I will try to resend it to Mr. Fortin in the next few seconds, if that will help.

Mr. Rhéal Fortin: That's good of you, thank you.

[*English*]

The Chair: Thank you very much.

Monsieur Fortin, just bear with us. We will resend them to you very shortly.

[*Translation*]

Mr. Rhéal Fortin: It's okay, I just saw that I received it on Friday. I apologize, it was my mistake. Thank you.

[*English*]

The Chair: That's wonderful. Mr. Fortin, thank you very much for clarifying that.

Just as a reminder, if there are amendments to be moved to the floor, please have them ready in writing so that we can circulate them to all members at the time we're going to debate them, so that we all know concretely what we're speaking to.

If there are no other questions, we will go right into the clause-by-clause.

We'll start with clause 1 of the bill. On clause 1, I see there is an amendment proposed as LIB-1 by Mr. Fergus.

Mr. Fergus, would you like to speak to the amendment you're proposing?

[*Translation*]

Mr. Greg Fergus (Hull—Aylmer, Lib.): Thank you very much, Madam Chair.

Hello to all my colleagues in the House of Commons.

[*English*]

The Chair: Mr. Fergus, I'm sorry. I'm just going to stop you right there for a second. I see the legislative clerk has her hand up.

Is it with respect to anything we've spoken about before?

Ms. Émilie Thivierge (Legislative Clerk): Yes. It's just that, before going to clause 1, we should mention that the preamble will be postponed.

The Chair: Yes. Thank you for reminding us of that.

When we go into clause-by-clause, the preamble will be discussed at the very end. We'll start with clauses 1, 2, 3, and 4, and then we'll go into the preamble before we vote on the title, and then the bill itself, as amended.

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): Madam Chair, does that mean that the preamble is capable of being amended once we've completed our clause-by-clause?

The Chair: Yes. The only portion of the bill that is not able to be amended is the summary.

Please correct me if I'm wrong on this, but my understanding is that the only portion that cannot be amended is the summary of the bill. Therefore, the preamble is open for amendment also, after we've gone through all the clause-by-clause.

Mr. James Maloney: Can the clerk confirm your interpretation with respect to the summary?

The Chair: Madam Clerk, would you speak to that, please?

• (1120)

Ms. Émilie Thivierge: Yes, that's correct. The preamble can be amended at the end if there are substantive amendments to the bill.

Mr. James Maloney: What about the summary?

Ms. Émilie Thivierge: The summary can't be amended.

The Chair: Does that clarify it for you, Mr. Maloney?

Mr. James Maloney: It does. Thank you very much.

The Chair: I will go back to—

[*Translation*]

Mr. Rhéal Fortin: Madam Chair, I had a discussion this morning with my Liberal colleague, Mr. Virani, and I would like to submit some amendments. I believe Mr. Virani has circulated the document, but I'm not sure. If he hasn't, I could forward it to you right away. Mr. Virani could tell us whether or not this document has been circulated.

[*English*]

The Chair: Monsieur Fortin, I will ask that you circulate them to all members of the committee, as well as the analysts and the clerk. We will have them ready, then, so that when we come to that specific section in the bill we will turn to you to make sure that everybody has them in front of them when you speak.

Are these amendments starting from clause 1? I don't think so. I think the first one comes from clause 2. Is that right?

[*Translation*]

Mr. Rhéal Fortin: Yes, it relates to clause 2 of the bill and is intended to amend proposed subclause 60(3) to be added to the Judges Act.

Do you want me to distribute it to everyone? I don't necessarily have everyone's address. Can I send it to the clerk?

[*English*]

The Chair: Yes, perhaps you can send it to the clerk.

Mr. Clerk, if you could circulate that to everybody, that would be great.

Monsieur Fortin, we'll come to you, but right now we're on the first clause. We have to go clause by clause. My understanding is that none of your amendments seek to amend any part of clause 1. We will come to you once we come to your specific amendment. Is that okay?

[*Translation*]

Mr. Rhéal Fortin: One moment, please. There are too many people at the same time and it's becoming complicated to manage. I'm looking for the clerk's address, but I can't find it. If someone has it, they could give it to me, otherwise I will keep looking.

[*English*]

The Chair: Mr. Clerk, can I please ask you to send an email to Monsieur Fortin's P9 so that in reply to it he can just attach whatever documents he needs to send to you?

The Clerk: Yes, I will do that, Madam Chair.

The Chair: Thank you.

Monsieur Fortin, the clerk will send you an email very shortly.

[Translation]

Mr. Rhéal Fortin: Thank you.

[English]

The Chair: Is there anything else, Monsieur Fortin, that you're having challenges with at this time?

[Translation]

Mr. Rhéal Fortin: No. I will send you the document. It's just that I'm trying to work with the interpretation, which is excellent—well, I think it is, but since I don't hear both versions, it's hard to judge—but there is always a lag. It's nobody's fault. I have to get used to it.

Thank you and I apologize for the inconvenience.

[English]

The Chair: Thank you, Mr. Fortin.

(On clause 1)

The Chair: We'll go back to Mr. Fergus to speak to LIB-1, which amends clause 1.

Go ahead, Mr. Fergus.

[Translation]

Mr. Greg Fergus: Thank you very much, Madam Chair.

Mr. Fortin, French is never an inconvenience.

First of all, I would like to thank everyone for giving me the opportunity to present amendments. As you know, I am not an official member of the Standing Committee on Justice.

The purpose of Bill C-3 is of great concern to me, not only as a member of Parliament, but also as chair of the Caucus of Black Parliamentarians.

The work you are doing to make our justice system aware of the reality of the status of women is very important. It's commendable, it's essential. I support this bill in its entirety. Having said that, there is a great opportunity for us to include other groups in the objectives of the bill. That is why I am proposing small amendments to indicate that the social context includes not only the issue of the status of women and sexual assault, but also systemic racism and discrimination.

I hope you will support this change, which is broad enough to include groups that experience discrimination, but specific enough to be clear.

A little later, I will present another amendment that is very similar to the one I just proposed.

• (1125)

[English]

The Chair: Thank you, Mr. Fergus.

Just for clarity, LIB-1 will be amending the bill on page 2, at line 22, by adding the following language after “social”: “context, which includes systemic racism and systemic discrimination, including by attending seminars established”.

I will now go to the speakers list for those members who would like to speak to it.

I see you, Mr. Virani. You're next on the speakers list.

Mr. Arif Virani (Parkdale—High Park, Lib.): Thank you, Madam Chair.

I wanted to speak in support of Mr. Fergus's suggested amendment. I think this amendment reflects the importance of tackling these issues as part of the judicial training that is being recommended to the judges by this bill. I think it reflects where we are as a nation and as a continent, and I think you can see the importance of it, given that similar amendments were proposed by three different parties that are participating in today's session. Clearly, parliamentarians are fixated on ensuring there's no ambiguity in terms of the necessity of addressing racism and discrimination and its systemic aspects in the context of looking at what social context is meant to mean in terms of the way it is used in this bill.

I wanted to echo my support for what Mr. Fergus is suggesting here.

Thank you.

The Chair: Thank you, Mr. Virani.

Does anybody else want to speak?

Monsieur Fortin, I see that your hand is raised.

[Translation]

Mr. Rhéal Fortin: First, I also welcome Mr. Fergus' amendment to indicate, in addition to the issue of sexual assault, that the social context includes racism and discrimination. On the other hand, I have major reservations regarding the word “systemic”. I know that the word has been trending in recent months or years. However, I realize that not everyone necessarily agrees on the nature of systemic discrimination and racism.

I'm wondering if it might be better to keep the words “racism” and “discrimination” without adding the word “systemic” because of the potential interpretations of that word. I don't want to get into the debate again because it could be a long one. As you know, it's being talked about in the House, in committees, in the media, and in the provinces, particularly in Quebec.

I suggest that we avoid this trap by removing the ambiguity of the word “systemic”, while keeping the words “racism” and “discrimination”. In any case, discrimination is already defined in charters and various laws. In my opinion, that is sufficient.

[English]

The Chair: Thank you, Monsieur Fortin.

Mr. Fergus, I see your hand is raised. Go ahead.

[Translation]

Mr. Greg Fergus: I would like to thank Mr. Fortin for supporting at least the objective of this amendment.

I don't want to go into detail here, but it seems to me that there is a broad consensus on the use of the terms “systemic racism” and “systemic discrimination”. This gives a slightly broader meaning to the words “racism” and “discrimination”, since we are talking about the systems or institutions that are involved in all of this.

As I said, although it is not unanimous, I think that a consensus is building regarding the use of the terms “systemic racism” and “systemic discrimination”. So I'm very reluctant to change the wording to give it a narrower meaning.

• (1130)

Mr. Rhéal Fortin: Am I to understand that the word “systemic” would be removed?

[*English*]

The Chair: Sorry, Monsieur Fortin, I have a speakers list here. If you'd like to speak, please raise your hand.

[*Translation*]

Mr. Rhéal Fortin: I just wanted a clarification from Mr. Fergus, but I can wait.

[*English*]

The Chair: Just raise your hand and we'll come back to you.

I have Mr. Moore, and then Mr. MacGregor.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Madam Chair.

The “raise hand” function will serve us all well, so we don't have a free-for-all.

This discussion brings me to a point. I am questioning...and maybe some members from the other parties can answer this. This is our third try at this bill. The bill passed through the House and is now in our committee. It has the support of all parties, I believe, but then we saw this flurry of amendments on Friday. There are some questions being raised about the amendments. I'm sure there are questions about each one of those amendments, and it would be interesting to hear from experts on the impact of each amendment.

We've studied Bill C-3 in its current format a couple of times, but these amendments.... It was the wish of the other parties not to have any more witnesses, so there is no expert to speak to the amendments that are being proposed. That is a shame. As a committee, we're proposing amendments but we haven't heard testimony on the specifics of the amendments. That's not how, in my view, we do our jobs as legislators. We want to get the bill right, so to propose a flurry of amendments without having heard testimony that's relevant and could speak to the specifics is leading us, I think, down the wrong path.

This is an interesting discussion, but it would have been nice to hear some witnesses who could speak to these amendments.

The Chair: We have Mr. MacGregor, then Mr. Fortin and Mr. Virani.

Go ahead, Mr. MacGregor.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you, Chair.

Hello, everyone. It's good to see all of your faces again.

I will be supporting Mr. Fergus's amendment. I'll address Mr. Fortin's concerns first.

I did a quick search of the word “systemic” in witness testimony. The word “systemic” is used multiple times by witnesses who appeared before our committee when this bill was being studied in the first session. I think it's widely understood that this country does have a systemic problem when it comes to discrimination and racism. It's not a term I have problems understanding, and I am sitting here as a white male. I think it's broadly understood and important to have there.

Second, to Mr. Moore's points, I would also draw his attention to witness testimony from the first session. There were a number of witnesses who did in fact tell our committee that the fact that social context was not defined was problematic. We could go through a laundry list of what social context means, but I think Mr. Fergus has done it correctly by using the terms “systemic racism” and “systemic discrimination”. Those two terms are broad enough to encompass a lot of the discrimination factors that people of colour and people of different sexual identities face on an everyday basis. We would be kidding ourselves if we thought those weren't tied up to sexual assault and the problems that many women and many people of different backgrounds face on a daily basis with our justice system.

On the two objections that have been raised, I would say they are in fact addressed by witness testimony that this committee has already heard, which I think is broadly supportive of the amendments put forward by Mr. Fergus.

• (1135)

The Chair: Thank you, Mr. MacGregor.

Monsieur Fortin, you are next on the list.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Madam Chair.

I raised my hand because I didn't quite understand what Mr. Fergus meant at the end of his comments. He seemed to be saying that he would support the idea of narrowing the meaning. I think he was agreeing to remove the word “systemic”. Did I understand him correctly?

I'm being told that this was not the case. In that case, I reiterate that this is a problem.

I know the witnesses have talked about it. In fact, everyone is talking about it all over Quebec, and I am convinced that it is the same in the rest of Canada. The word “systemic” has become as fashionable as some of the other words that have been censored and only referred to by their first letter.

That said, we are talking about amending a law. Judges are going to have to commit to receiving training in sexual assault law and social context. There is no problem with that. However, it is now being specified that this training will also have to address systemic racism and discrimination. I don't think there is a real desire to require judges to take training on the concept of systemic discrimination. Rather, it is up to parliamentarians, when passing laws, to ask themselves if there really is systemic discrimination in our organizations.

I agree that judges, who have to interpret legislation, should be trained to be aware of racism and discrimination. I think this is a good thing. However, you want to introduce the word "systemic" in a law, which is a vague notion. As Mr. Fergus himself said, there is no unanimity, but there is some consensus on that. If the committee is aware that a word is not very clear, as legislators we should avoid introducing it into legislation because it will necessarily be challenged in court. There will always be a lawyer who will interpret that word in his or her own way.

If what we want is for judges to be educated about discrimination and racism, then let's say so, and let's avoid introducing concepts that are too confusing to achieve unanimity when the time comes to interpret them.

[English]

The Chair: Thank you, Monsieur Fortin.

Go ahead, Mr. Virani.

Mr. Arif Virani: I have a couple of points.

In response to what Monsieur Fortin is raising, I would simply state that the notion of "systemic" is quite critical, and it's a term that's being used appropriately right now by many elected representatives and other individuals.

I would point everyone's consideration to the way Senator Murray Sinclair put it in the last Parliament when we were studying religious discrimination and systemic racism in the heritage committee. He said, "systemic racism is the racism that's left over after you get rid of the racists." That's a very elegant way of talking about the fact that there is something very different in an individual act motivated by an individual who has mal-intent, versus rules and norms that pervade institutions.

I'll give a tangible example to everyone, because it went right through this justice committee, when we made a change to peremptory challenges of jurors. These are challenges where you can just look at the juror and decide you don't want that person on the jury, without having to motivate why; you've enabled a form of racism in the justice system that is systemic. By eliminating that in the last Parliament's Bill C-75, we tackled a manifestation of systemic racism.

I do think it's very critical, and I would echo the comments you heard from Mr. Fergus and from Mr. MacGregor.

With respect to Mr. Moore's point, I think it's our role to hear the witness testimony and then to gather from it and glean from it proposed amendments, which is exactly what we've done here. The terms "systemic" and "systemic discrimination" were used on a

number of occasions by a number of witnesses, thus the formulation of the amendment that you see before you.

Thank you very much.

• (1140)

The Chair: Thanks, Mr. Virani.

Mr. Fergus, you're next.

Mr. Greg Fergus: Thank you, Madam Chair.

I hope we were able to clarify my comments to Monsieur Fortin. I did not wish to give the impression that I would be willing to move off the word "systemic". No. I think it's a very important word, for the reasons that Mr. Virani just pointed out.

Second, just because there is a large consensus, that doesn't mean it's unanimous. However, there is a large consensus, I think, across the country as to the use and meaning of the words "racism" and "systemic discrimination". I liked what Mr. Virani pointed out in what Senator Sinclair raised as an example.

I would offer another example. Studies have shown that Black or indigenous people are no more likely to commit a crime, all factors kept the same, than non-indigenous or non-Black people, yet when you take a look at our incarceration populations, you will find that Black Canadians are three to four times more overrepresented in our carceral system than non-Black Canadians. For indigenous people, it's worse. It's seven to eight times their demographic weight.

We know, or we strongly suspect, that there are no racists who are administering justice throughout the entire system, even including judges, yet there is something that is going on that's leading to these wonky results. That is the systemic nature of discrimination and racism at work. These are the things that force us to ask these uncomfortable questions, and by including this in the training, we are just heightening people's awareness of it so that they can get at the things they really can't normally see. That's the insidious nature of systemic issues.

I hope, with those examples, that we can move on and achieve consensus around this table that these are important elements to include in this bill.

Thank you.

The Chair: Thanks, Mr. Fergus.

I have Mr. Maloney next on the list.

Mr. James Maloney: Thank you, Madam Chair.

I support the amendment as well, for the reasons that have been outlined by others, and Mr. Fergus in particular.

As for Mr. Moore's concerns, there was evidence heard by the committee back in February. This isn't identical to the bill that was debated and passed by the House last year—you're quite correct—but the evidence we heard in February I do not believe was available last year, and circumstances have changed. My understanding is that there is almost universal support for this language in this bill, beyond this committee, so I am quite comfortable with that. I respect your concerns, but I am comfortable that the amendment doesn't cause any difficulty because of that.

As for Mr. Fortin's comments about using the word “systemic”, his point was that this may be crossing a line because we're telling judges or signalling to judges—perhaps that's a better way of putting it—what they should be thinking and doing.

I think that argument is more universally applied to this bill, but we've crossed that threshold, Mr. Fortin, and I think the use of the word “systemic” does not cause any difficulty. It's not in any way indicating to judges...nor would judges interpret it as instructional, if I can use that word. In fact, I think people who are troubled by the suggestion that there is systemic racism should not be worried, because I think that in the context of the courses they take, the pros and cons of all these arguments will be fleshed out. For that reason, I think it's a good move to include it in the amendment and, as I said, I am supporting it.

Thank you, Madam Chair.

The Chair: Thank you, Mr. Maloney.

I have three more people on the speakers list before I call the question on the amendment that is LIB-1.

We have Mr. Battiste, Monsieur Fortin and Mr. Moore.

Go ahead, Mr. Battiste.

• (1145)

Mr. Jaime Battiste (Sydney—Victoria, Lib.): Thank you very much.

As an indigenous person who is coming to you from an indigenous community, I really do support MP Fergus's wording around this. I do not feel that “systemic racism” is a popular term that we're using because it's popular recently. I believe it's an acknowledgement of what's going on in society and an acknowledgement and a realization that things need to be done.

From the judges' perspective.... Three years ago, I was the treaty education lead for Nova Scotia and was invited by all of the Atlantic federal judges to give a one-hour presentation on reconciliation. These are things that judges are currently doing.

What I think MP Fergus is doing gives more clarity to what was meant by “social context” in the past, and it's not changing the legislation. It's just putting more clarity into the usage of “systemic racism” and “systemic discrimination”. I applaud him and will support him on this.

Thank you.

The Chair: Thank you, Mr. Battiste.

[*Translation*]

Mr. Fortin, the floor is yours.

Mr. Rhéal Fortin: Thank you, Madam Chair.

I want to make three points.

First, I want to correct one thing. Earlier, my colleague Mr. Vi-rani said that peremptory challenges in jury trials constitute systemic racism. I'm sorry, but this issue has nothing to do with systemic racism. When counsel challenges a juror, the reason is that counsel believes that the person wouldn't be appropriate under the circumstances. It may be because of the person's gender or race. It may also be because of their professional training or criminal record, or because they've been a crime victim. Counsel will challenge a prospective juror for any number of reasons, and these reasons have nothing to do with systemic racism. It's something completely different. We must understand this. Otherwise, we'll get nowhere. This was my first point.

Second, the purpose of the bill that we're studying is to ensure that judges receive training on sexual assault. We've been working on this bill for years. It was originally tabled by Ms. Ambrose from the Conservative Party. The Bloc Québécois supported this bill and continues to do so. However, the proposal now is that the bill should go beyond training on sexual assault. The bill should also address racism and discrimination, which are described as “systemic”. We're a long way from the original purpose. We went out to buy potatoes and we're coming home with strawberries. I'm sorry, but this doesn't work. I don't think that we can do this.

I have a third point. The proposed bill concerns sexual assault. If we also want to talk about racism and discrimination, that's fine. It may be appropriate to do so. However, we'll need to create another bill and hear other witnesses speak about this issue. I agree with what Mr. Moore was saying earlier. None of the witnesses who appeared before us came to talk about systemic discrimination or systemic racism.

Again, we're talking about training for judges on sexual assault. Unfortunately, victims of sexual assault who must testify in court after filing a complaint don't always receive the full attention required in light of the crime against them. This is what we wanted to fix. We wanted to make sure that judges understand that a sexual assault victim, male or female, who must testify should be given special consideration in light of the crime committed.

Racism is a broad topic. I'm not saying that it's unworthy. Racism exists and discrimination exists. Should it be addressed? I think so. However, we can't combine this topic with training on sexual assault. We're moving beyond the scope of the bill.

If we want to do this, then we'll reopen the discussion, hear from new witnesses and gather more briefs. Personally, I'll put forward much more specific arguments on the topic.

Today, I'm here to talk about training for judges when it comes to sexual assault trials.

• (1150)

[English]

The Chair: Thank you, Mr. Fortin.

I have Mr. Moore, and then I will call the question.

Go ahead, Mr. Moore.

Hon. Rob Moore: Thank you, Madam Chair.

With regard to addressing some of the comments made, I'm going to be supporting Mr. Fergus's amendment.

The concern I have is that it is important for us, I believe, in the future, if we're going to be bringing in amendments.... It's not enough to just hear witness testimony on the generality of what we're trying to deal with, but it's important to hear testimony on the specifics of the amendment. There are going to be diverse groups that could comment specifically on amendments that are being proposed, and what the other parties have done is to limit the witness testimony we can have.

I would love to hear some testimony on this, but we're not going to do that, so I will make that point and then carry on, Madam Chair.

I want to ask a question on the issue of admissibility of various amendments coming up. Will you be advising us in advance of your views on admissibility? Normally that would be the case. I just want to check, as we proceed, if you'll be advising us in advance on whether various amendments are within the scope of the bill.

The Chair: Thanks, Mr. Moore.

Just for clarity, I do consult with our clerk and the legislative team with respect to whether something is procedurally within the scope of what is being proposed. Also, substantially, it is up to the person who is questioning the admissibility of a certain thing to make their argument, and I will make a ruling after the fact. That is kind of how it's been worked out in the past, and I had my conversations with the clerk as well. I hope that clarifies it for you.

I will put LIB-1 to a recorded vote. Can I see thumbs-up if you want to do a recorded vote?

Mr. Clerk, please do the recorded vote by alphabetical order by member.

(Amendment agreed to: yeas 10; nays 1 [See *Minutes of Proceedings*])

(Clause 1 as amended agreed to: yeas 10; nays 1)

(On clause 2)

The Chair: Thank you, Mr. Clerk.

Now we move to clause 2, and we'll first go to PV-1.

Just to clarify for everybody, if PV-1 is adopted, LIB-2 cannot be moved, and that is as stated in *House of Commons Procedure and Practice*: "Amendments must be proposed following the order of the text to be amended. Once a line of a clause has been amended by the committee, it cannot be further amended by a subsequent amendment as a given line may be amended only once.

We'll go on to PV-1.

• (1155)

Hon. Rob Moore: I have a point of order.

The Chair: Yes, Mr. Moore.

Hon. Rob Moore: Are we voting in alphabetical order?

The Chair: Yes.

Hon. Rob Moore: How is Fergus last to vote? Am I missing something?

The Chair: I didn't even realize.

Mr. Clerk.

The Clerk: It's a good question.

Mr. Fergus is last because he's replacing Mr. Zuberi, who is usually last. If it's okay with the committee, with substitutes, I usually have them voting for the person they are substituting for.

The Chair: Thank you, Mr. Clerk.

Is that okay with everybody?

Mr. Moore, are you comfortable with that?

Hon. Rob Moore: Yes, for sure. I just thought that's the way we did it, but that makes sense. That's fine.

The Chair: Mr. Lewis.

Mr. Chris Lewis: Thank you, Madam Chair.

I'm sorry. I do believe either Mr. MacGregor or Mr. Maloney voted before I did. I think L comes before M.

Could you check that, please?

The Chair: It's the same logic that the clerk has provided. These members are replacing permanent members of the committee, so they are voting in the specific order of those names, not their own.

Mr. Chris Lewis: Thank you, Madam Chair.

The Chair: Thank you, Mr. Lewis.

Mr. Virani, is your hand raised on this specific question?

Mr. Arif Virani: No. It's on PV-1.

The Chair: Okay. I will go to you, Mr. Virani, to talk about PV-1.

Mr. Arif Virani: From my experience in the last Parliament, whenever there were amendments proposed by a party without official status, we usually proceeded on unanimous consent as to whether we would let that person speak to their amendment. I know we afforded Ms. May that appropriate gesture on many occasions in the last Parliament.

I would propose that Mrs. Atwin be able to speak to her own amendment.

The Chair: Thank you, Mr. Virani.

Do I have the consent of the committee to proceed with that?

Mrs. Atwin, please go ahead and speak to PV-1.

Mrs. Jenica Atwin (Fredericton, GP): Thank you very much, Madam Chair.

I wish to thank the committee today for allowing me the opportunity to speak. It's my first time proposing amendments and learning the whole process as well. I'm certainly not here to slow anything down. I will be very brief.

I also wish to say that I do not come from a legal background, but from education. In either case, context is everything. It's very important to me that we get this bill right. It's a wonderful initiative on behalf of members of Parliament.

Within the amendment, I speak about social context and expanding that to include, as we understand, a variety of subjects. We deem it essential that the preamble clearly state that it's essential to understand the intersection of systemic oppression and gender identity and the dynamic it plays in the perpetuation of sexual violence. The specific thing there is on the inclusion of systemic oppression in relation to gender identity.

Of course, the amendments that I proposed are similar to ones proposed by the Black caucus and indigenous caucus. I wish to support their work and in no way undermine or overlap.

I will leave it at that.

● (1200)

The Chair: Thank you, Mrs. Atwin.

I have Mr. Virani next. Before I go to you, Mr. Virani, I'll say that PV-1 amends clause 2, page 2, line 28.

Mr. Virani, go ahead.

Mr. Arif Virani: I thank Mrs. Atwin for her participation in the first-ever virtual clause-by-clause, as we muddle our way through it in this Parliament.

I think these are important suggestions being made by the Green Party through Mrs. Atwin. I would reiterate that, from my perspective and that of many of my Liberal colleagues, we are very keen on ensuring that the language that talks about social context covers off and clarifies what social context is meant to include. From our perspective, that is systemic racism and systemic discrimination.

There are other Liberal amendments that follow this that refer to those concepts with exactly that language. That was very deliberate in terms of drafting. It was meant to be as encompassing as possible without going down the path of enumerating certain concepts, classes, groups or demographics, which could open us up to the possibility of having unwittingly or inadvertently excluded some. Rather than enumerate specific categories, we elected to—through some drafting creativity—entrench concepts such as systemic racism and systemic discrimination, which would, hopefully, be large enough to encompass many of the things that have been proposed by many parliamentarians, including Mrs. Atwin.

On that basis, my support would be in favour of LIB-2 rather than in favour of PV-1, so I will be voting against PV-1.

Thank you very much for the floor.

Thank you, Mrs. Atwin, for this helpful suggestion.

The Chair: Thank you, Mr. Virani.

I don't see any more members on the speakers list.

Mr. Moore.

Hon. Rob Moore: Sorry, Chair, just to be clear, you've already raised the conflict between PV-1 and LIB-2. Those are mutually exclusive amendments. They can't both pass.

What about NDP-1? Do you have a ruling on that?

The Chair: My understanding is that NDP-1 does not conflict with the specific lines that are proposed to be amended by PV-1 or LIB-2, and therefore it stands, but I will defer to you, Mr. Clerk, to confirm whether that is correct.

Mr. Philippe Méla (Legislative Clerk): It is.

The Chair: Thank you.

If that answers your question, Mr. Moore, I'll go to Mr. Virani and then Mr. MacGregor.

Hon. Rob Moore: It actually doesn't, Madam Chair. To me, we have here two definitions of social context, using different words. It's making a muddle of this legislation.

LIB-2 says "social context, which includes systemic racism and systemic discrimination". NDP-1 adds "social context means the social factors that contribute to systemic inequality in Canadian society, including colonialism, systemic racism, ableism, classism, homophobia and transphobia." It doesn't include systemic discrimination.

It doesn't seem to make any sense. It seems that the two would be mutually exclusive.

The Chair: Give me one second as I speak to the clerk about this and clarify what you're saying, Mr. Moore.

Hon. Rob Moore: I want to be clear on it, because how we treat those impacts how we treat PV-1. We can't consider them one at a time; we have to consider them together, because we're not going to adopt all of them.

● (1205)

The Chair: Mr. Clerk, may I ask you for reference, please?

Mr. Philippe Méla: PV-1 indicates “which includes”, so it's not limited to the list that follows. It includes the list plus whatever needs to be added to the list.

The same goes for LIB-2, which indicates “assault law and social context, which includes systemic racism and systemic discrimination”. That could possibly be understood to include—but it's not excluding—what's proposed by NDP-1.

If the committee wants to have a more comprehensive definition, I suggest they do it in NDP-1, put aside PV-1 and LIB-2 and try to come to an agreement on what the definition could be, but that's up to the committee to decide.

The way we see it, the three are not mutually exclusive, but if there is a will to have a definition at one place in the bill, that's up to the committee to decide.

The Chair: Okay. Thank you for that.

In that case, just to take the advice of the experts here, is it the will of the committee to go to NDP-1 before we discuss PV-1 and then LIB-2?

Mr. MacGregor, your hand is raised.

Mr. Alistair MacGregor: Thank you, Chair.

I take Mr. Moore's point. That's the problem when we all submit amendments at once and we try to figure our way through them.

I take what Mr. Virani argued before. If we start making a list of all the different types of discrimination that can exist in our society, we will run into the very real danger of excluding some. Therefore, in the interest of keeping this bill, when we report it back to the House, with some continuity and some consistency, I will ask the committee for unanimous consent to withdraw NDP-1 and just proceed with the existing amendments that we have before us.

The Chair: Thank you, Mr. MacGregor.

Is there unanimous consent of the committee?

Monsieur Fortin, you need to either raise your hand or give a thumbs-up, please.

I'm going to assume that if he's not intervening, he consents. Is everybody okay with that?

Some hon. members: Agreed.

(Amendment withdrawn)

The Chair: That's wonderful. Mr. MacGregor, thank you very much for that.

We'll go on to PV-1.

Mr. Virani, are you trying to speak to PV-1 at this time?

Mr. Arif Virani: No. I think we should call the question.

The Chair: Thank you. I appreciate that.

Mr. Clerk, perhaps we could have a recorded vote on PV-1, please.

(Amendment negated: nays 11; yeas 0 [See Minutes of Proceedings])

The Chair: Thank you, Mr. Clerk.

We will move to amendment LIB-2.

Mr. MacGregor, did you forget to lower your hand? Yes, okay.

Mr. Virani, you're next. I see your hand to speak to LIB-2.

• (1210)

Mr. Arif Virani: I had just forgotten to lower it. I apologize, Madam Chair.

I believe it was moved by Mr. Fergus.

The Chair: Mr. Virani, thank you for that.

Mr. Fergus, can you speak to LIB-2, please?

[Translation]

Mr. Greg Fergus: Yes, Madam Chair.

My arguments are similar to the points that I made regarding amendment LIB-1. We must ensure consistency in the use of terms.

I want to acknowledge Mr. MacGregor's generosity. I also want to acknowledge Ms. Atwin's work. That said, it's better to have general categories than to have very specific items. That way, we take into account the possibility that things may change over time. That's why I'm using the same terms in this section, which are “systemic racism and discrimination”.

[English]

The Chair: Mr. Fergus, thank you for that.

Mr. Fortin, I see your hand raised to speak to LIB-2.

[Translation]

Mr. Rhéal Fortin: Madam Chair, I listened to my colleague Mr. Fergus—

[English]

The Chair: Mr. Fortin, can you please move your microphone down so that the interpreter can hear you? Thank you.

[Translation]

Mr. Rhéal Fortin: Sorry, Madam Chair.

I was saying that I listened to Mr. Fergus' comments. Based on the same logic, I'm against this proposal.

I want to say again that this has nothing to do with the topic. Madam Chair, I wonder whether I should rise on a point of order. This has nothing to do with the purpose of the bill, which is to provide training to judges on the issue of victims of sexual assault. Here, the proposal is to provide training to judges on racism, discrimination, oppression, systemic oppression, systemic racism and systemic discrimination.

Judges already receive training on a variety of topics. We're not here to train judges. They're already trained. The bill talks about training judges on the specific characteristics of sexual assault victims. The proposal is off topic and has nothing to do with what was announced. In my opinion, it's out of order. I'm not even sure whether this committee has the legal right to rule on this matter without having heard from witnesses or having announced its work on these issues.

For all these reasons, I'm against the proposal.

[*English*]

The Chair: Thank you, Mr. Fortin—

[*Translation*]

Mr. Rhéal Fortin: I'd even urge caution. If we want to be credible as a committee, we must be careful about what we do.

Everyone likes apple pie. That isn't the issue. However, this isn't what Bill C-3 is about.

[*English*]

The Chair: Thank you, Mr. Fortin, for raising your concerns. For clarity's sake, the bill before us also speaks to “social context”. My understanding is that these amendments that are being proposed are seeking to further clarify what social context is, and are therefore within the scope of what this bill is proposing.

I don't see any more hands raised to speak to LIB-2. I will call the question on the amendment. We will have a recorded vote.

(Amendment agreed to: yeas 10; nays 1 [*See Minutes of Proceedings*])

The Chair: Thank you, Mr. Clerk.

LIB-2 is carried. NDP-1 is withdrawn.

At this time, I will ask the clerk whether we are approaching the amendments that Mr. Fortin had emailed earlier.

Mr. Fortin, I'm just seeking some clarity from our clerk on whether we'll be going to you first or PV-2 first.

• (1215)

Ms. Émilie Thivierge: We should go to Mr. Fortin's amendment, but if I'm correct, I think Mr. Maloney had some amendments that would go there as well, before PV-2.

The Chair: Mr. Maloney or Mr. Fortin—

Mr. James Maloney: Madam Chair, I believe my amendment is identical to the one Mr. Fortin is proposing. I'll let him go ahead.

The Chair: Okay. Thank you, Mr. Maloney.

Mr. Fortin, please go ahead and speak to your amendment. Could you please read out the language so that everybody can follow it?

[*Translation*]

Mr. Rhéal Fortin: Madam Chair, before I move my amendment, I want to make sure of one thing. I know that amendment LIB-1 was adopted. Amendment PV-1 concerned the same issue as amendment LIB-2. I gather that amendment PV-1 was defeated. Is that right?

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Rhéal Fortin: At this point, shouldn't we move on to amendment LIB-2?

[*English*]

The Chair: We just voted on LIB-2, Mr. Fortin, and it carried. You voted against LIB-2 just now as well.

[*Translation*]

Mr. Rhéal Fortin: Okay, that was my intention. You've reassured me, Madam Chair.

I gather that I didn't vote on amendment PV-1. Is that right?

[*English*]

The Chair: No, you've voted on everything.

[*Translation*]

Mr. Rhéal Fortin: Okay, perfect.

Are we at amendment NDP-1, which proposes subsection 60(2.1), or my first amendment?

[*English*]

The Chair: NDP-1 was withdrawn by Mr. MacGregor. We are now looking at your amendment that you sent in emails to everybody at the beginning of the meeting today.

[*Translation*]

Mr. Rhéal Fortin: Okay.

My amendment concerns subsection 2(2) of Bill C-3, which amends section 60 of the Judges Act.

Here's what the bill proposes to add to the legislation:

(3) The Council shall ensure that seminars on matters related to sexual assault law ...

I propose that “shall ensure” be replaced by “should ensure”.

All the amendments that I proposed stem from the testimony of the two judges who appeared before the committee and whose names I can't find. One judge is a former chief justice of Nova Scotia. These judges urged us to be careful when wording proposals and to not be overly directive with regard to the judges and the Canadian Judicial Council. Instead, they encouraged us to include in the text an invitation to the council to consider certain items regarding the content of the seminars. I think that it makes sense to show restraint. That's why I'm proposing these changes.

Here, “The Council shall ensure that” would be replaced by “The Council should ensure that”.

[*English*]

The Chair: Thank you, Mr. Fortin.

I'm going to quickly turn to Philippe to guide us on what the impact of these amendments would be, and also to see if they're in order.

Mr. Philippe Méla: I won't comment on the impact; that would be more of a legal question that the department may weigh in on. In terms of procedural admissibility, they're fine.

• (1220)

The Chair: Thank you for that.

Mr. Maloney, I see your hand raised.

Mr. James Maloney: Thank you, Chair.

I support the amendment that Mr. Fortin has proposed and agree with everything he has said. One of the things that we need to consider in the backs of our minds in every amendment we're discussing today is the concept of judicial independence. This amendment Mr. Fortin has proposed, as he pointed out, was encouraged by the Canadian Judicial Council and other representative groups, as it goes some way to preserving that very important concept. I agree with him wholeheartedly.

The Chair: Thank you very much.

Not seeing any more hands raised, I will call the question.

Shall the amendment moved by Mr. Fortin pass? It seeks to amend clause 2 on page 2, line 32, replacing “the Council shall” with “the Council should”.

Mr. Clerk, I'll ask you to please record the vote.

The Clerk: Thank you, Madam Chair.

(Amendment agreed to: yeas 10; nays 1 [*See Minutes of Proceedings*])

The Chair: Thank you for that, Mr. Clerk. The amendment proposed by Mr. Fortin carries.

We will move on to amendment PV-2.

I will turn to Mrs. Atwin to speak to amendment PV-2 at this time.

Mrs. Jenica Atwin: Thank you again, Madam Chair.

This amendment would propose a change to include:

persons, groups and organizations that support them, including Indigenous leaders and representatives of Indigenous communities;

We cannot ignore the prevalence of sexual violence and its impacts on indigenous, Métis and Inuit women. We believe it essential that the section explicitly mention the need for involvement of indigenous leaders and representatives in the development of these seminars.

The proposed amendment is also consistent with the spirit of the calls to action emanating from the Truth and Reconciliation Commission and the report from the National Inquiry into Missing and Murdered Indigenous Women and Girls.

Once again, I do not wish to hold things up in any way. I appreciate your consideration of this amendment. Thank you.

The Chair: Thank you.

I don't see any hands raised to speak to amendment PV-2, so I'll call the question.

(Amendment agreed to: yeas, 6; nays 5)

The Chair: The amendment is carried.

We'll now go to amendment PV-3.

Ms. Atwin, would you like to speak to PV-3?

• (1225)

Mrs. Jenica Atwin: It is similar to an amendment that was already voted down, but it does include the concept of gender identity, and I still wish to be on the record for advocating that this be included.

Thank you very much for your time.

The Chair: Thank you.

I see the hand raised by the legislative clerk.

Mr. Philippe Méla: Mr. Fortin has an amendment just before amendment PV-3.

The Chair: Yes, you are right. Thank you for that.

Mr. Virani, is that why you have your hand raised? Are you speaking to anything specific?

Mr. Arif Virani: No, it was to speak to the amendment PV-2 or PV-3 at this point, but I'll defer to the clerk.

The Chair: Thank you, Mr. Virani.

We are now moving to an amendment from the floor by Mr. Fortin, which seeks to amend clause 2, page 3, line 3, and it seeks to add “where the Council finds appropriate”.

Mr. Fortin, do you want to speak to that, please?

[*Translation*]

Mr. Rhéal Fortin: This follows the same logic that I outlined earlier, Madam Chair. The idea is to not be overly directive in this regard, in order to maintain judicial independence.

I don't want to talk about this for 10 minutes. In any event, the amendment is clear. I propose that “where the Council finds appropriate” be added.

If you have any questions, I'll be happy to answer them. I just don't want to take time for nothing.

Thank you.

[*English*]

The Chair: Thank you, Monsieur Fortin.

Mr. Maloney, I see your hand is raised.

Mr. James Maloney: Mr. Fortin said virtually the same thing that I was going to say, so I am fully in support. This amendment is consistent with the amendment we just adopted that he put forward a minute ago for reasons that he explained.

Thank you.

The Chair: Thank you, Mr. Maloney

I don't see any more hands raised, so I'll call the question.

Shall the amendment proposed by Mr. Fortin carry?

Mr. Clerk, would you please record the vote?

(Amendment agreed to: yeas 10; nays 1 [*See Minutes of Proceedings*])

The Chair: Thank you, Mr. Clerk. The amendment as proposed by Monsieur Fortin is carried.

We now move to PV-3.

Mrs. Atwin, would you like to speak to PV-3?

Mrs. Jenica Atwin: Just in relation to social context, which includes systemic racism and systemic discrimination, including seminars established, I ask that it include systemic oppression and intersectionality as a dynamic that plays in the perpetuation of sexual violence.

Thank you.

The Chair: Thank you, Mrs. Atwin.

I don't see any hands raised to speak to—oh, go ahead, Mr. Virani.

Mr. Arif Virani: Madam Chair, I appreciate Mrs. Atwin's involvement here.

In terms of this specific enumeration, in terms of what she has listed here, I think I'd raise a few points.

One is that the seminars in question relate specifically to the sexual assault seminars provision of the bill. I think it's important that we have the legislation and the flexibility that's provided to the judges in order to shape the seminars as they see fit, and I think introducing this kind of language would not be appropriate in this context.

It is also pretty apparent that various different provinces approach this with different resources and with different approaches, and given that a lot of these eventual adjudications will occur at the provincial bench, that is something we should keep in mind, so I think leaving it open would be more prudent than enumerating this particular language in this context.

Thank you.

• (1230)

The Chair: Thank you, Mr. Virani.

Not seeing any more hands raised, I'll call the question.

Shall PV-3 carry?

Mr. Clerk, would you please go ahead and record the vote?

(Amendment negated: nays 11; yeas 0)

The Chair: Thank you, Mr. Clerk. PV-3 stands defeated.

Not seeing any more amendments to clause 2, we'll now vote on clause 2 as amended.

Mr. Clerk, would you please record the vote?

(Clause 2 as amended agreed to: yeas 10; nays 1 [*See Minutes of Proceedings*])

The Chair: Thank you, Mr. Clerk, and so clause 2 carries.

(On clause 3)

The Chair: Now moving on to clause 3, before we go to LIB-3, my understanding is that Monsieur Fortin's proposed amendment comes before it in the order by line. Mr. Fortin's amendment for clause 3 seeks to amend page 3, line 11, replacing “shall” with “should” on that line.

Monsieur Fortin, the floor is yours to speak to your amendment.

[*Translation*]

Mr. Rhéal Fortin: My amendment follows the same logic as my earlier proposal. We don't want to be directive with regard to the council by ordering it to submit a report in a systematic manner. We simply want to say that “the Council should submit to the Minister”. There will then be a report from the council. This is out of deference to the judiciary.

• (1235)

[*English*]

The Chair: Thank you, Monsieur Fortin. I'm not seeing any hands raised to speak to this—oh, go ahead, Mr. Virani.

Mr. Arif Virani: Just so I'm crystal clear, Madam Chair, the amendment would be just to line 11, which now reads “...the Council shall submit to the Minister...” It would read instead, “...the Council should submit to the Minister...”

That's what we're voting on, correct?

The Chair: That is my understanding. Can I just get confirmation from the clerk on this? Philippe, is that correct?

Mr. Philippe Méla: Yes, indeed, you are right.

The Chair: Thank you for that.

Mr. MacGregor, did you want to speak to this amendment also?

Mr. Alistair MacGregor: Yes, sorry. It was the same question. It's just replacing “shall” with “should”.

The Chair: It's just the one word, yes. Thank you. In that case, I'll call the question.

[*Translation*]

Mr. Rhéal Fortin: Madam Chair, I want to clarify something.

I realize that, in the version that I sent you, the English version doesn't match the French version. The English version says “the Council should submit”, whereas the French version says “*le ministre demande au Conseil*”. These are two different things.

Personally, this English version works for me. I don't know whether my colleague Mr. Virani agreed with this version. He's the person who worked with me on this issue. I agree with the use of the word "should".

[*English*]

The Chair: Thank you, Monsieur Fortin.

Just for clarity, Mr. Clerk, and to the analyst, can we make that requisite translation into French and change the "shall" to "should"?

I'll call the question at this time.

Shall the amendment proposed by Monsieur Fortin carry?

Mr. Clerk, I'll ask you to record the vote, please.

(Amendment agreed to: yeas 10; nays 1 [*See Minutes of Proceedings*])

The Chair: Thank you, Mr. Clerk. The amendment proposed by Monsieur Fortin carries.

We'll now go to amendment LIB-3, which has been proposed by Mr. Battiste.

Mr. Battiste, could you speak to it, please?

Mr. Jaime Battiste: Thank you, Madam Chair.

I'll start off by saying that this amendment is very similar to the amendment raised by my colleague Greg Fergus in his advocacy on behalf of the Black caucus. I very much appreciate in our deliberations between the Black caucus and the indigenous caucus that there's an opportunity here with this amendment. Canadians expect that judges have the necessary training to understand the complex nature of unconscious bias and how intercultural competency can impact judicial rulings, much like they expect judges to understand how myths around sexual assault and consent can impact their rulings. While we all understand that justice is blind, it's no secret that racialized Canadians face systemic racism in our judicial system.

We need equally systemic solutions to change that. Education is key in combatting unconscious bias. It's something that was spoken to in the TRC calls to action, as well as the missing and murdered indigenous women and girls group.

Just a few days ago, The Globe and Mail published an in-depth investigation on Black and indigenous Canadians in the justice system, where according to the most recent census, indigenous and Black people accounted for 4.8% and 3.5% of the Canadian population, but according to Statistics Canada, they made up 25% and 8.7% of those in federal prisons. Ensuring that judges have training related to systemic racism and discrimination is important, and I think Bill C-3 provides us with an opportunity for jurisdictions to do their part in our country's effort to respond to those studies.

When we talked about social context, this is what I felt was Mr. Fergus' intervention, and the amendment gave clarity to what that social context is. We have an opportunity in this committee to take those important steps on reconciliation and on our commitment to addressing systemic racism as well, and while respecting the origi-

nal intent of the bill, to make it clear what is meant by social context.

Thank you.

• (1240)

The Chair: Thank you very much, Mr. Battiste.

I don't see anybody on the speakers' list, so I will call the question at this time.

Mr. Clerk, could you please record the vote?

(Amendment agreed to: yeas 10, nays 1 [*See Minutes of Proceedings*])

The Chair: Thank you, Mr. Clerk.

From the floor, Monsieur Fortin seeks to amend clause 3, on page 3, at line 14, by replacing the word "must" in that line with the word "should".

Monsieur Fortin, would you like to speak to that?

[*Translation*]

Mr. Rhéal Fortin: Yes

The French version says "*Le ministre fait déposer un exemplaire du rapport devant chaque chambre du Parlement*", whereas the English version says "The Minister shall cause a copy of the report". The idea is to replace the word "the" with the word "any" in the English version.

[*English*]

The Chair: Monsieur Fortin, just to seek clarity, are you talking about line 14 at this time?

[*Translation*]

Mr. Rhéal Fortin: No, I'm on line...Oh yes, sorry. On line 14, it's about the word "should". It's the same thing as earlier. The word "must" is replaced by "should".

Sorry. I thought that we were at the next amendment.

[*English*]

The Chair: Okay, thank you.

Mr. Virani, is your hand raised to speak on this amendment?

Mr. Arif Virani: Yes. It's effectively the same issue as before, and perhaps Mr. Fortin or *peut-être le greffier* could assist us. The change that's being asked for on the English side is very clear.

Perhaps we could just clarify the change that would then be made on the French side, because I don't see the directive language as clearly written *en français*, but it's not my *langue maternelle*, so maybe I'm just not reading it correctly.

Maybe the clerk could advise us what language needs to be put on the French side to make it discretionary rather than directive.

[Translation]

Thank you.

[English]

The Chair: Thank you, Mr. Virani.

Mr. Clerk or the analyst, if you can...?

[Translation]

Mr. Philippe Méla: I can answer this question, Madam Chair.

[English]

In the French version, there is no need to have a change to replace the second “should”, because it’s already included in the first one. In French it says, “*dans lequel il précise*”. It’s the report that we’re talking about, the one that is being submitted. That’s a loose translation of it, if you want.

[Translation]

Mr. Rhéal Fortin: This is also my understanding.

[English]

The Chair: Thank you, Mr. Fortin. Thank you, Mr. Clerk, for that clarity.

I will call the question now at this time for Monsieur Fortin’s proposed amendment to amend clause 3, page 3, line 14, to replace “must” with “should” in that line.

Mr. Clerk, please record the vote.

(Amendment agreed to: yeas 10; nays 1 [See *Minutes of Proceedings*])

The Chair: The amendment as proposed by Monsieur Fortin is carried.

Monsieur Fortin, you have the next amendment as well. You can discuss it before we go to vote on the whole clause. Your next amendment, in my understanding, is to clause 3, page 3, line 20. You had inadvertently spoken to it earlier, so I will ask you to continue. What you are proposing is to replace the word “the” with “any” in the context of speaking about a report.

Go ahead, Monsieur Fortin.

• (1245)

[Translation]

Mr. Rhéal Fortin: Thank you, Madam Chair.

As far as I’m concerned, the French version seems correct. The English version may create some confusion. Again, I spoke with Mr. Virani earlier about the topic. He can provide clarification if necessary.

The idea is simple. If a report is tabled, the minister must table it in each House. This is said correctly in French, but perhaps not in English. Since my English isn’t as good as the English of my honourable colleagues on the committee, they can decide for themselves. The idea is that, if a report is submitted to the minister, it must be tabled in Parliament.

[English]

The Chair: Thank you.

I see the legislative clerk’s hand is up.

Mr. Philippe Méla: Thank you, Madam Chair.

To understand exactly how paragraph 2 would read after the amendments, I’m going to read it to make sure I understand it properly.

It would be for proposed subsection 62.1(2), “Tabling of report”:

The Minister shall cause a copy of any report received to be tabled in each House of Parliament on any of the first 10 days on which that House is sitting after the Minister receives the report.

Is that correct?

The Chair: That is my understanding.

Monsieur Fortin, can you confirm that, please?

[Translation]

Mr. Rhéal Fortin: I can confirm that this is also my understanding. This seems consistent with the idea behind this provision.

Mr. Philippe Méla: Thank you, Mr. Fortin.

[English]

The Chair: Thank you very much.

I don’t see anybody else wanting to speak to it, so I will call the question on Monsieur Fortin’s amendment.

Mr. Clerk, would you record the vote, please?

(Amendment agreed to: yeas 11; nays 0)

The Chair: The amendment proposed by Monsieur Fortin carries. Now I call the question on clause 3. Shall clause 3 as amended carry?

Mr. Clerk, can you please record the vote?

(Clause 3 as amended agreed to: yeas 10; nays 1 [See *Minutes of Proceedings*])

• (1250)

The Chair: We have limited time left as we go into the last bits of the clauses. I ask the committee if it’s okay with everybody that we carry on a little bit further so we can get through the complete clause-by-clause review for Bill C-3.

I see thumbs up. Thank you. I appreciate that.

(On clause 4)

The Chair: Going into clause 4, NDP-2 is being proposed.

Mr. MacGregor, would you like to speak to that? Anybody else who would like to speak to it can raise their hands also.

Mr. MacGregor, go ahead.

Mr. Alistair MacGregor: Thank you, Chair.

It's just a slight change here to line 8 on page 4 of the bill. This comes from the testimony of Ms. Rosel Kim, who is the staff lawyer at the Women's Legal Education and Action Fund. In her opening statement, she talked specifically about clause 4 as it relates to the reasons. She suggested directly in her opening statement that "where written reasons are not available in a sexual assault trial, the transcripts of the decision only, and not a transcript of the entire trial, should be...available on publicly accessible domains."

Following her recommendation, I have decided to come up with an amendment to that final line to change it to "provided in writing and made publicly available."

The Chair: Thank you, Mr. MacGregor.

Ms. Damoff is next, unless, Mr. Virani, your hand is not up by error. Do you want to speak? No.

Ms. Damoff, the floor is yours.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you, Madam Chair.

I appreciate being able to speak to this at committee.

I was the vice-chair of the status of women committee when we studied Bill C-337 when it came to Parliament. I have a signed copy of that bill in my office.

I want to give a shout-out to Ms. Ambrose and to the members of the status of women committee, because we really did a lot of work collaboratively across party lines.

Whether to include written reasons was an issue we discussed at length. When the bill first came to us, we amended it to say that reasons, if they were not recorded, should be provided in writing. I wonder, Madam Chair, if I could read some of the submissions that we received in April of 2017.

Justice Kent, whom I know, appeared before the justice committee. In 2017, she said that if it "allows for audio recordings to be available, that makes a lot more sense."

In 2017, we had the Office of the Federal Ombudsman for Victims of Crime saying, "ensuring that new legislation does not cause further delays in the criminal justice system is important – something that should be considered with respect to the requirement for a written decision."

Finally, in a submission from the Native Women's Association of Canada in 2017, they said, "While justice needs to be served as expeditiously as possible, judges should not unreasonably extend the incarceration of Aboriginal offenders while they await the conclusion of trials due to the necessity of written reasons. ... [Generally] Aboriginal offenders fail to be granted bail and are left incarcerated during their trials."

Madam Chair, the Supreme Court, in *R. v. Jordan*, set time limits for the courts to give their decisions. While the spirit behind the member's amendment is worthy—and one that I know caused us a great deal of discussion when we were at the status of women committee—at the end of the day, I think it puts an undue burden on the judiciary and in fact could have a negative impact for survivors of sexual assault who want to see the reasons. The recordings are

available. That was a concession that we made previously to ensure that there was something available for survivors to have access to.

I just wanted to give that context. While I can't vote, I would not be supporting it if I had the ability to vote. I think it isn't the right thing to be doing.

Thank you, Madam Chair.

• (1255)

The Chair: Thank you so much for that, Ms. Damoff. Thank you for all of your efforts over the past number of years on this very important topic.

Mr. Moore, I have you next on the list.

Hon. Rob Moore: Thanks, Madam Chair.

Thanks to Mr. MacGregor for bringing this forward.

I don't want to put them on the spot, but I know we have lawyers here from the Department of Justice.

Is there any unintended consequence, perhaps, of this amendment, or any flags that this amendment would raise in the administration of justice?

The Chair: I will turn to our witnesses. Could you please respond to Mr. Moore's inquiry?

Ms. Gillian Blackell (Senior Counsel and Team Lead, Criminal Law Policy Section, Department of Justice): This certainly is a well-intended proposal. The thing is that it might not really be necessary, given that the open court principle is already a fundamental principle in the Canadian criminal justice system and in the justice system as a whole. That is already covered by the ability to attend and to have access to reasons, which is part of the changes in this particular bill, including that the reasons be on the record or written.

Including "made publicly available" is a form of codifying the open court principle, which is not necessary and in fact could cause some confusion, given the maxim that the legislator does not speak in vain. It could, as a result, give interpretation that its exclusion elsewhere in the code means that the principle does not necessarily apply in other contexts.

In addition, the requirement for reasons relates directly to the federal head of power in terms of the criminal law, as these reasons are necessary for the purpose of appeal. However, it's quite different to then move into an issue of how these reasons become publicly accessible, which is a matter of administration of justice, which falls within the jurisdictions of the provinces and territories, so it may be straying beyond federal jurisdiction to some degree.

The Chair: Thank you very much for that, Ms. Blackell.

I have Mr. Virani next on the list.

Mr. Arif Virani: I want to reiterate some of the points that Ms. Damoff made and also the points just made by the departmental officials, which were very helpful.

To my mind, the open court principle is sufficient to address this baseline proposition about the accessibility of the reasons. The text of the bill as it's currently drafted indicates that where the matter is not an open proceeding and where there is no record, the reasons would need to be provided in writing, so my view would be to oppose this well-intended idea and to stick with the current bill in its current format.

The Chair: Thank you, Mr. Virani.

Mr. MacGregor, you can speak to it, and then I'll call the question.

Mr. Alistair MacGregor: I have a question for our legislative officials.

When Ms. Kim was suggesting this, she said that: "As the bill currently stands, any oral judgment entered into the record will still require someone to pay for and order the trial transcript, which is costly and can be time-consuming."

Are officials able to speak to the point she made there? What she was stating in her opening statement seems to go against the open court concept, because some people will still have a monetary burden in accessing these records.

The Chair: Thank you, Mr. MacGregor.

Ms. Blackell, would you like to speak to that?

• (1300)

Ms. Gillian Blackell: It is true that the courts have different ways in which they make their information available. Most judgments will be posted either on the court websites or through CanLII, which is a free, accessible, web-based database with Canadian judgments on it. However, short of an actual decision—and not all decisions will necessarily be published—the courts can make their reasons and other aspects of the court record available through the court registry office.

How the courts do this is really within their jurisdiction, and they vary. Some have a fair bit available. Three others use services for transcribing the testimony, so the transcripts may be costly, depending on the services available. However, this is not a matter for the federal Parliament in this particular context. That's really a matter for the administration of justice.

Certainly courts are aware and do their best to try to make as much available as possible, but there are associated costs in doing so.

The Chair: Thank you so much for that, Ms. Blackell.

Having exhausted the speakers list, I'll call the question on NDP-2. Shall NDP-2 carry?

Mr. Clerk, please record the vote.

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

The Chair: Thank you very much, Mr. Clerk.

NDP-2 is defeated. The question is now on clause 4.

There are no amendments to clause 4 at this time. Shall clause 4 carry?

(Clause 4 agreed to: yeas 11; nays 0)

The Chair: I have one amendment, PV-4, regarding the preamble. However, because PV-1 was defeated, PV-4 is inadmissible, as there is no amendment to the bill to justify amending the preamble.

Shall the preamble carry?

Mr. Clerk, please record the vote.

(Preamble agreed to: yeas 11; nays 0)

The Chair: Shall the title carry? Do we have unanimous consent?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

(Bill C-3 as amended agreed to [*See Minutes of Proceedings*])

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

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: Congratulations, committee. We have now gone through our first hybrid clause-by-clause study. You guys have been wonderful. I really appreciate that.

Before we adjourn, I have a few quick things. The witness list for Bill C-7, as discussed in our steering committee, is due today, so make note of that to be sent to the clerk. Next week we'll be having the minister appear on main estimates and supplementary estimates, as we had agreed at the beginning of this meeting.

If there's no other committee business—

• (1305)

Mr. Arif Virani: Sorry, Madam Chair; I believe it's this week on Thursday.

The Chair: Yes, it's this coming Thursday, at the next meeting.

The meeting adjourned.

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