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Chair: Mr. Ali Ehsassi



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• (1635)

[English]

The Chair (Mr. Ali Ehsassi (Willowdale, Lib.)): I call the meeting to order.

Welcome to meeting number 37 of the Standing Committee on Foreign Affairs and International Development.

Today's meeting is taking place in a hybrid format. Members are attending in person in the room, as well as remotely using the Zoom application.

I would like to take a few moments to provide some explanations for witnesses and members.

First, please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone icon to activate your mike, and please mute yourself when you are not speaking.

Interpretation for those on Zoom is at the bottom of your screen, and you have a choice of either floor, English or French. Those in the room can use the earpiece and select the desired channel.

In accordance with our routine motion, I'd like to inform members of the committee that all witnesses have completed the required connection tests in advance of our meeting.

Pursuant to the order of reference of Wednesday, May 18, 2022, the committee will commence consideration of Bill S-223, an act to amend the Criminal Code and the Immigration and Refugee Protection Act.

With regard to the drafting of amendments, I would like to remind members to contact Alexandra Schorah, the legislative counsel, should there be any amendments to the draft or should there be anything that they would like to bring to her attention and ask for her guidance on.

Now it is my pleasure to welcome our two witnesses on this specific bill. We have the Honourable Salma Ataullahjan, senator; as well as Mr. Garnett Genuis, who is well known to you all, the MP for Sherwood Park—Fort Saskatchewan. You will each be provided five minutes, after which we will proceed with questions from the members.

Senator, you have the floor. You have five minutes. When you only have 30 seconds left, I will put this up to provide you with some context. Please do proceed. The floor is yours.

Senator Salma Ataullahjan (Senator): Thank you.

Good afternoon, honourable members.

Thank you for giving me the opportunity to appear before this committee as a witness and as a sponsor of Bill S-223, an act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs).

Bill S-223 proposes to strengthen Canada's response to organ trafficking by creating additional Criminal Code offences in relation to such conduct and extends extraterritorial jurisdiction over the new offences. It also seeks to amend the Immigration and Refugee Protection Act to provide that a permanent resident or foreign national is inadmissible to Canada if the Minister of Citizenship and Immigration finds that they have engaged in trafficking of human organs.

Currently there are no laws in Canada banning Canadians from travelling abroad, purchasing organs for transplantation and returning to Canada. This is shameful, especially when we have joined most of the world in condemning the sale of organs and transplant tourism.

Over 100 countries, including the United Kingdom, Norway and Portugal, have passed legislation banning the trade of organs. Additionally, several countries have responded with legislation strengthening existing laws that ban organ trafficking and sales. There are a number of governmental and professional bodies with initiatives to regulate domestic and international organ transplantation and tackle organ trafficking, including, for example, the Council of Europe Convention against Trafficking in Human Organs.

In 2012, the World Health Organization claimed that an illegal organ was sold every hour. Overall, the number of illegal transplants worldwide is believed to be around 10,000 a year. It is important to note that this is a conservative number, as many illegal organ sales remain unreported.

Despite our inability to eradicate human rights violations around the world, we can enact change at home. It is entirely within our power to avoid complicity with transplant tourism within our own borders.

Sadly, an illegal organ transplant is not a lifeline for Canadians needing a vital organ. Instead, the recipient can often suffer from surgical complications, infections and poorer outcomes overall. These patients experience loss of the organ and death at higher rates than domestic organ transplant recipients.

Despite the growing body of information on the ramifications of transplant tourism, Canadians continue to travel abroad for commercial organ transplants. Doctors have reported that three to five people a year still arrive at St. Michael's Hospital having obtained a kidney in countries such as China, Pakistan or India. St. Paul's Hospital in Vancouver also reports seeing three to five returning organ tourists a year.

A study on the clinical outcomes of patients treated at an Ontario transplant centre after receiving organs through commercial transactions abroad found that most of the patients needed follow-up care on an urgent basis and some required lengthy hospital stays. This not only puts Canadian citizens at risk, but also contributes to burdening our already-struggling health care system.

To make matters worse, my entire allotted speaking time could be spent recounting story after story of victim organ donors, such as the missing six-year-old boy who was found alone in a field crying, with both of his eyes removed, presumably for their corneas. There was the young girl who was kidnapped and taken to another country for the sole purpose of harvesting her organs. There was the group of terrified women and men who were found locked inside an apartment, being held through deception and threats, waiting to be taken to a clinic to unwillingly have a kidney removed.

As a prosecutor in the Kosovo case said that organ trafficking is “the exploitation of the poor, the indigent, the vulnerable and the marginalized in our society”. He said that the recipients of those organs are wealthy, influential citizens from foreign countries and largely western countries, who should be held criminally responsible.

Trafficking in human organs is indeed a cruel harvest of the poor.

Thank you.

• (1640)

The Chair: Thank you, Senator.

We now go to MP Genuis for five minutes, please.

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): Thank you, Mr. Chair. Thank you, colleagues.

I want to salute Senator Ataullahjan's incredible work on this bill. She has explained very well the provisions of the bill and I won't repeat them. I wanted to speak more to the process and timing around this bill's life over the last 15 years.

This concept was originally proposed by a Liberal MP, Borys Wrzesnewskyj, and a similar bill was tabled by Irwin Cotler. Neither of those bills was able to be brought for a vote. The process started in 2008, so it was almost 15 years ago.

Senator Ataullahjan and I began working on this bill shortly after 2015. We were able to see a previous bill on organ harvesting and trafficking, Bill S-240, pass the Senate, come to the House, and come before the foreign affairs committee. It was amended by the foreign affairs committee, adopted, and sent back to the Senate, but unfortunately, before the Senate could consider the revised version, we went into an election.

Efforts have continued since. Exactly the same bill, in the same way it had been amended by the House of Commons foreign affairs

committee, was proposed and adopted by the Senate in the last Parliament, and again it didn't make it through the process.

This bill has now been adopted three times by the Senate, and twice in its present form. It's been adopted previously by the House of Commons in its present form, and this form is exactly as it was amended by this committee in that Parliament. At the time, I was here at the committee, as was Borys Wrzesnewskyj, who was the originator of this concept as legislation.

I'm normally the first person to say a bill should be studied in detail. The fact is that this bill has been studied extensively for 15 years. It's back before this committee in exactly the same form, and frankly, it's a no-brainer from a human rights perspective.

We had good cross-party co-operation to get it up to this committee. The bill collapsed after only one hour of debate at second reading, and I was very grateful to see that. Unfortunately, we are now only taking this bill up close to six months after it was referred to the committee.

My view is that it is valuable for committees to prioritize legislation, because although there's a range of important issues before any committee, legislation is where committees exercise their hard power. They can send recommendations as part of studies, but when it comes to legislation, that's where they exercise their hard law-making power. We would all accept that if it was a government bill, there would be an expectation to prioritize it.

I very much wish we could have moved this bill forward earlier. Nonetheless, we are where we are. As this bill is currently scheduled, we would go to clause-by-clause consideration of it next Wednesday. That is the last possible point before it would be automatically reported to the House anyway. At this point, frankly, it is better for this bill if it is not considered clause by clause and instead simply automatically reported.

If it is considered clause by clause and then reported to the House, then it has to go through report stage and third reading, whereas if we wait and simply allow it to be automatically reported on November 28, then it goes straight to third reading and is able to move more quickly.

I also think it would be very unfortunate if we had amendments adopted to this bill, because it goes back through the Senate. I don't want to have to wait another 15 years to pass a no-brainer piece of human rights legislation. This is the version as it was amended by the committee, with amendments initiated by the government at the time.

I really hope we're able to get to that point of it being automatically reported. If we were undertaking a study of this bill months ago, then there would be time to do clause-by-clause study and maybe even time for amendments, but there just isn't time at this point. I'm very hopeful that rather than seeing further delays, we will recognize the work that has already been done on this bill. We'll recognize the fact that this bill is in the form it was amended to by the government the last time it was before the House, the many times that it has passed the House and the Senate, and that every time it's been up for a vote, the vote was unanimous.

I'm hopeful that we would simply absorb and recognize the work that's been done and allow this bill to be automatically reported to the House so it can go to third reading and proceed to finally, after 15 years, become law.

• (1645)

I think that's the least we owe to the many victims of this horrific practice around the world.

Thank you, Chair.

The Chair: Thank you, MP Genuis. Your timing was perfect. It was exactly five minutes.

Now we will open it to questions by the members.

Mr. Hoback, you are first, and you'll be happy to know you have six minutes.

Mr. Randy Hoback (Prince Albert, CPC): I have six minutes, Chair. Does that mean I get seven minutes or nine minutes, because I'm—

The Chair: No. It's six minutes.

Mr. Randy Hoback: Are you sure it's not six or nine minutes? I am eating up my time.

I would like to welcome Mr. McKay here, too. It's great to see you here.

Mr. McKay has a lot of my respect. I know his work in the U.S. has been very honourable. I look forward to working with him down in the U.S. going forward, for sure, because he does great work.

Senator, I have one question. As Mr. Genuis has said, we've studied this bill. It's been in front of us on numerous occasions. You know this file inside out, and I think everybody in this room would recognize your strength on these types of issues.

Is there anything you see in this piece of legislation that should be added, amended or changed, or is it good enough the way it is? What should be the priority?

Senator Salma Atallahjan: Thank you for that question.

This is the bill that was sent to us, which this committee and the House approved. I've tabled it, I think, four times, and I tabled it the first day we were back. We didn't even take it back to committee, because we had already looked at it in the committee and the senators on every side were all satisfied. There was unanimous consent that this is a good bill and we needed to pass it.

We accepted the changes you made, so basically this is what you sent us and we have brought it back to you. We accepted your changes. I can't think of anything we could add to it.

• (1650)

Mr. Randy Hoback: I thank you and the Senate for doing the work you've done.

As Mr. Genuis has said, this has been talked about and talked about. It's time to move forward, so I don't know if there is any value in talking about this issue anymore. As Mr. Genuis has said, let's get it out of the committee, get it voted on and get it into legislation. I think that's the goal here.

In light of that, Chair, our committee has quite a few things that aren't finished. It seems like we have different reports. We have some motions that haven't been read, so I suggest that we continue.

What I would suggest is that the debate be resumed on the motion that Garnett Genuis moved on Monday, November 14, and that a vote on the motion take place by the end of this meeting. Let's try to finish that debate and get it done today, and then we can continue checking that box and getting things done before Christmas.

I move that we move to that work.

The Chair: Mr. Hoback, surely you recognize that the particular issue is not relevant to the issue that is before us today, and this was agreed well in advance.

Is it...?

Mr. Randy Hoback: I have the motion, so I think it's something.... I don't see anybody objecting to that. I think they are all very comfortable with what we've seen already as far as the witnesses and their testimony are concerned.

Hon. Robert Oliphant (Don Valley West, Lib.): I have a point of order.

We haven't had any chance to debate this bill. This is not the same foreign affairs committee. This is a new committee in a new Parliament, and we absolutely have the responsibility to ask the witnesses who have come here for both this panel and the next panel—perhaps also future panels—questions about this bill.

We are not the same Parliament. We are not the Senate. We are the House of Commons and we're a different Parliament. We've been elected with a different mandate from the previous Parliament, so I would strenuously object to saying that we fast-track anything on the basis that something was done somewhere else.

It could have been done in another country for all that matters. We are in this Parliament, at this time, in this place, with this committee and with a new membership. I have never been on a committee in this House that has debated this bill. It is my first time, so I would like the opportunity to get into it, as I think many members of the committee would.

The Chair: Mr. Angus, you are next, sir.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Chair.

It's our duty as lawmakers to study the laws that are being implemented. I appreciate that the member for Sherwood Park—Fort Saskatchewan is eager about this. [*Technical difficulty—Editor*] tell me that it's a great bill. Other people have looked at it and just passed it.

I'm talking about a very serious issue, so either this issue is a serious issue or it's inconsequential. If it's inconsequential, then sure, let's debate whatever the Conservatives want to talk about. If it is as serious as we've been told, then questions need to be asked about this bill, about how it's going to be implemented, about who it's going to impact and whether or not it will do the job we've been told it's going to do.

I have no reason to believe, right now, that we can simply rubber-stamp something based on something that another Parliament did at another time with other people. I am here to represent the people of my region and my party, and to make sure that I do the work as a parliamentarian that people expect of me, because we're talking about changing laws.

I would strenuously oppose shutting down debate on this bill. We need to finish this. If the member takes this bill seriously, he would obviously want us to look at this.

I take it seriously. I've taken the time to be here and I am ready to ask questions, so I would say we should continue.

Hon. Robert Oliphant: On a point of order, I wasn't debating the motion, because I wasn't sure it was a motion. I wasn't quite sure of what the member said. If it was a motion, I think it was dilatory and I think it's not debatable, but I don't know whether he was making a suggestion or a motion.

Mr. Randy Hoback: I was making a motion.

Hon. Robert Oliphant: You were making a motion.

I think it's not debatable, but I would need the chair's—

Mr. Randy Hoback: There's a condition in it.

Hon. Robert Oliphant: There's a condition in it.

Mr. Randy Hoback: Yes.

Hon. Robert Oliphant: Could I have it reread, then?

Mr. Randy Hoback: Sure: That the debate be resumed on the motion Garnett Genuis moved on Monday, November 14, and that a vote on the motion take place by the end of this meeting.

Again, the goal is to try to finish this. I want to make sure that people understand that we're not shortchanging any of the work that the senator has done or that the Senate has done or that the House has done before them—and Parliaments before them. There has been a lot of work done on this file. I think there's an expectation, though, by Canadians that we actually move on and actually get this file onto the legislative agenda and back into the House.

There are items that are crucial. The Gazprom issue is a crucial issue at this point in time. We've been talking about it for a while. We need to have a message sent to the Ukrainians that we're there to support them. Why wouldn't we take advantage of the time today?

I think we're all in agreement in regard to the senator and her comments and the legislation moving forward, so why wouldn't we just get to work on doing some stuff that we know also has to be done? Why don't we try to complete some things for a change, instead of leaving things hanging in the air?

• (1655)

The Chair: Thank you.

We go next to Mr. Epp.

Mr. Dave Epp (Chatham-Kent—Leamington, CPC): Mr. Chair, my understanding of process is that we do have a motion on the floor on Gazprom. If we're talking about anything, with all due respect to the motion or the bill that's been studied and studied and studied, should our discussion not revolve around the importance of the Gazprom motion? That's what's on the floor.

Hon. Robert Oliphant: On a point of order, I'm confused. The motion that Mr. Hoback made refers to a motion that... I don't know what we're talking about. I need to know what motion he is actually asking us to resume debate on.

Garnett Genuis makes motions on many things, on many days, that are unrelated to the topic of the day. I can't even look at the topic of the day to know whether or not the motion was what it was about. What was the motion?

A voice: Perhaps the clerk could read the motion in order to clarify that.

The Clerk of the Committee (Ms. Ariane Gagné-Frégeau): The motion that was debated on November 14 is the following:

That the committee report to the House that it calls on the Government of Canada to immediately revoke the waiver to Russian sanctions granted for the export of Gazprom turbines.

Hon. Robert Oliphant: On a point of order, that means we have a motion on the floor to resume debate on that. I don't understand the condition that's been attached to it. Are we debating the motion to resume that debate? Has it now been ruled that we can actually debate that motion? Is that where we're at?

The Chair: Those are two separate issues that you subsequently brought up. Actually, he is now asking for a debate on this motion to go back to what we were debating last time.

Hon. Robert Oliphant: Okay. For me to understand this, then—and I guess we're into debate now—I would need to understand the logic of saying that this is an important piece of legislation, but he wants to stop debate on it and have no vote on it, and instead resume debate on something else we've dealt with that actually has no impact, because there's a turbine sitting around not being used anywhere. It is not an urgent debate to get the turbine going.

I am really missing something. It may be jet lag, because I've been travelling, but I am simply not understanding. This would suspend debate on this whole bill that we're dealing with.

Ms. Rachel Bendayan (Outremont, Lib.): I have a point of order, Mr. Chair.

The Chair: One second, please; I'm sorry.

Actually, right now the clerk is telling me that because there was a condition in the motion that you're putting up for debate, this is not actually allowed. You could have had the opportunity and the prerogative to actually bring a dilatory motion, but not one that has a condition.

Mr. Randy Hoback: Would this not be a dilatory motion?

The Chair: No, because it has a condition.

Mr. Randy Hoback: Then I would have to change the motion to something that would be dilatory in nature. Okay.

Then my motion would be changed to—

Ms. Rachel Bendayan: I'm sorry, Mr. Chair. I had a point of order prior to this intervention.

The Chair: Yes.

Mr. Randy Hoback: I have the floor.

A voice: [*Inaudible—Editor*]

Mr. Randy Hoback: I have the floor.

A voice: A point of order supersedes.

The Chair: Yes, of course it does.

Mr. Randy Hoback: I make the motion that the committee proceed to consideration—

The Chair: Mr. Hoback, there's a point of order.

Mr. Charlie Angus: There's a point of order, and my hand was up, so he has to wait and then he gets the floor.

Hon. Hedy Fry (Vancouver Centre, Lib.): The point of order takes precedence.

The Chair: Please proceed, Ms. Bendayan.

Ms. Rachel Bendayan: At the time of my point of order, which was a few minutes ago now, Mr. Chair, the witness who was before us to testify on the matter had joined the ranks of the Conservative members of the committee. I believe that is not only inappropriate, but contrary to the rules.

The Chair: Yes, that is a behaviour I have never seen before myself. Allow me to check with the clerk.

• (1700)

Ms. Rachel Bendayan: The witness had sat down in the member of the committee's chair, which I understand is contrary to the rules. The witness is not a member for the time that he is testifying.

The Chair: He didn't speak, so let's just allow for everything else to proceed.

Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.): I have a point of order.

The Chair: Mr. Zuberi, Mr. Angus had one first.

Go ahead, Mr. Angus.

Mr. Charlie Angus: Thank you.

My concern is that if we suspend the date on this, the Conservatives are asking us to just pass this piece of legislation that would

change a law without criminal intent based on the fact that Mr. Genuis says it's a good bill. I don't see how we can go to clause-by-clause study if we haven't finished our work on this.

Are they willing to suspend clause-by-clause consideration to get to this motion? If they're not, I am in no position to go to clause-by-clause study, based on the fact that I haven't even been able to ask questions of the witness who brought the bill.

I just want clarification from them. Are they saying we're going to suspend this legislation because they have other things they'd rather talk about? I understand that. They're Conservatives. They can talk about whatever they want, but if this legislation is so important and if I can't do due diligence, I am not willing say that I'm willing to suspend questions and at the next meeting move to clause-by-clause study. That would be a ridiculous undermining of our work as parliamentarians.

Are they suspending the legislation and putting it to the side for some future date in order to debate the motion they have?

That has to be clarified now, because if we are not going to finish this bill, it cannot be brought forward for clause-by-clause study unless we vote on whether or not we're ready to send it to clause-by-clause study. At this point, we have not had a chance to ask the questions or to say we're ready to go to clause-by-clause study.

I'm asking the Conservatives this question: Will this motion that they're going to bring supersede and erase the work that's been done on this bill, and will this bill be set aside for a future date when we can then vote on whether or not we accept it and are ready to go to clause-by-clause study?

Hon. Robert Oliphant: Is that a new point of order or is it on this point of order?

I think if you raise a point of order, you're allowed to debate that point of order. Is that not correct? If a point of order has been raised, you're allowed to comment on that before the new points of order are brought up.

I think what Mr. Angus is pointing to is exactly what the Conservatives are trying to do. They're trying to suspend debate on this to allow the time to elapse where it is deemed reported to the House and would then go for a third reading without consideration by the committee, truly. This is odd when we have an agenda that has hours dedicated to witnesses, when we had an agreement on a calendar by which we would take witnesses and have clause-by-clause study to finish our work on time before it goes back to the House, reported as deemed accepted.

Mr. Angus may want to comment on his point of order, but I think that's what they're doing. It's to just suspend the whole democratic process and push it back to the House.

The Chair: That seems like it's more debate than a point of order, Mr. Oliphant.

We now go to Mr. Zuberi—

Mr. Hoback has a point of order.

Mr. Randy Hoback: I just want to clarify. Yes, that's exactly what we're doing. We're actually saying that it's in the best interest of Canadians. It's in the best interest of the people who are impacted by not having legislation in place to get this bill through—

The Chair: That's not a point of order either, Mr. Hoback.

Mr. Randy Hoback: But Mr. Angus had asked for a Conservative member to explain to him what was going on. I just want to do that, if you'll let me, Mr. Chair. If not, then I'm sorry, Mr. Angus; the chair won't let me.

If you will, just give me a minute, and I'll try to explain—

The Chair: We just interrupted someone's point of order as well.

Mr. Randy Hoback: Yes, but it was unrelated to what Mr. Angus had said.

The Chair: Okay.

Mr. Randy Hoback: That's why I'm doing it now. It was in that stream.

The Chair: Okay.

Mr. Randy Hoback: Mr. Angus, the idea is to get this into legislation as quickly as possible. If this was a new bill that hadn't been properly studied in previous Parliaments or in the Senate or in any other location, in fact, if it had been severely debated in the House or there were concerns in the House before it went to the Senate, then I'd probably be agreeing with you 100%, saying, "You know what? You're right. We need to take a step back. We need to do clause-by-clause study. We need to make sure we properly vet this," but this is a unique situation.

This bill has actually been taken to task over and over again, and due to situations beyond its control, it has never gotten to the point of legislation even though every party agrees with it and every party has had input into it. There have been no amendments other than what the House wanted to see in amendments when it was originally brought forward. The Senate approved all those amendments, so it has gone through a very strong vetting process.

I do recognize that you're new to the committee in regard to this file, so it would be new to you and new to a lot of people, but in the same breath, we've seen it in the House before. You probably even debated it in the House before, and you probably debated in favour of it before.

We're trying to get it into the House as quickly as possible and to get the legislation passed as quickly as possible, in light of the fact that the committee didn't give it the time at the start of the time clock. If they had said three weeks ago, "Okay, this is a priority, and we're going to actually deal with it", we could actually have spent a little more time getting a lot more witnesses.

The reality is that we're at the end of the time clock, and now we're trying to ram it through, and we're not going to be able to do anything except possibly delay it or make it even worse and end up in the situation of not getting this legislation through in a timely manner, seeing it end up in a minority Parliament going into the next year and possibly not passing.

The quickest path to get it back into Parliament is to let it time out and then actually let it come back to the House.

• (1705)

Mr. Sameer Zuberi: On a point of order, this mini-speech here has nothing to do with the motion in front of us. We are debating a motion that Mr. Hoback brought in front of us. I am now speaking to a point of order, which I have not been able to get to, and you have admitted that you are subverting the democratic right of members to be questioning the witnesses here.

Mr. Randy Hoback: Mr. Chair, who has the floor?

Mr. Sameer Zuberi: I do.

Mr. Randy Hoback: No, you don't. I haven't ceded the floor to anybody yet. You have no right to take the microphone. In fact, your microphone should be turned off.

Mr. Sameer Zuberi: You just admitted that you—

Mr. Randy Hoback: No, I did not—

Mr. Sameer Zuberi: —want to fast-track this bill to stop any form of debate or conversation or questioning of the witnesses who just arrived here—

Mr. Randy Hoback: I don't know why your microphone is even on, because you haven't even been acknowledged as having the floor.

Hon. Hedy Fry: Do we have order in this meeting?

Mr. Randy Hoback: No, we don't, Ms. Fry, and that's really frustrating, because I'm just trying to work through here.

The Chair: Mr. Hoback, you do not have the floor right now. You have not been recognized, Mr. Hoback.

Mr. Randy Hoback: You have not recognized anybody else, so I still have the floor until you—

The Chair: Yes, I have recognized other people.

Mr. Randy Hoback: Who?

The Chair: I just recognized him for his point of order, Mr. Hoback.

Hon. Hedy Fry: Yes, a point of order supersedes everything.

Mr. Sameer Zuberi: Mr. Hoback just admitted that he was trying to—

Mr. Randy Hoback: No, I did not.

Mr. Sameer Zuberi: Yes, you did. Look at the minutes that will emerge from this meeting.

You've just admitted that you want to.... After about two minutes of questioning of this witness from your own party, a Conservative member of the Senate, you want to stop her from speaking to this piece of legislation that has been winding its way through this House for the last 15 years because you want to discuss the issue of a turbine that is not even being used right now.

We've discussed this turbine issue at length. It's unbelievable and shocking. On the one hand you filibuster us, this committee, for weeks on end, and then, on the other hand, you want to give us two minutes to discuss this issue.

The Chair: Mr. Zuberi, I think now you are getting into debate.

Mr. Sameer Zuberi: I am? Okay. On my point of order, I'm sorry; I got lost because of all these weird points of order that came about.

My point of order is that there was a motion in front of us that is to be debated, and it cannot be withdrawn. Now we are debating that motion that Mr. Hoback brought to us, which must be debated and cannot be withdrawn despite the fact that he would like to have presented it as a non-debatable motion. The fact of the matter is that we must debate this, so let's get into it.

Mr. Randy Hoback: I have a point of order on that.

The Chair: Actually, before we get to your point of order, what I would like to say is that at the very start, I did say that this motion is inadmissible, in my opinion, because it's not relevant to what is before us today for consideration. Now the clerk says that you're absolutely right that this is a motion that is inadmissible.

Mr. Randy Hoback: The original motion is, but I've added a second motion to that in light of your ruling.

The Chair: The motion that you....

I'm sorry...?

Mr. Randy Hoback: I've added a second motion in light of your ruling. We're dealing with the second motion. You ruled that the original motion was not in order.

The Chair: Clerk, could you speak on that? I'm not sure, but if it's....

Mr. Randy Hoback: I read it. I'll read it again.

• (1710)

The Chair: Is it a substantive motion?

Mr. Randy Hoback: Yes, it is.

No. I'm sorry. It's a dilatory motion.

The Chair: You're not allowed to move a substantive motion. That's the issue.

Mr. Randy Hoback: It's a dilatory motion. I'm sorry.

The Chair: Okay. Well....

Mr. Bergeron, you have a point of order.

[*Translation*]

Mr. Stéphane Bergeron (Montarville, BQ): Mr. Chair, I have put myself on the list of people who wish to speak. However, I feel that the only way to speak in this debate is on a point of order. Can I, too, raise a point of order to speak, or is that reserved for the other members of this committee, Mr. Chair?

[*English*]

The Chair: Yes, you can intervene.

[*Translation*]

Mr. Stéphane Bergeron: I must admit I expected that today we would continue the debate on turbines, which we had begun at the previous committee meeting. Instead, we have started to look at something else, which I am quite happy with, but will we have an opportunity to discuss things with the witnesses following their testimony, or will committee members continue to raise points of or-

der, allegedly, when it is a matter of taking a position on what is happening at the moment?

If that is the case, we will all raise points of order to have the right to speak. There is an order for people who wish to speak, so let's follow it, Mr. Chair.

[*English*]

Hon. Robert Oliphant: I believe this is a point of order. I believe it is, because Mr. Bergeron has suggested that we should, by the Standing Orders, continue with the debate that we ended with in our last meeting.

However, my understanding is that the meeting was adjourned. It was not suspended. Therefore, no, we can't continue with that debate.

This is truly a point of order. Maybe it's my only one, but it truly is a point of order to suggest to the chair to rule on whether or not Mr. Bergeron is right.

However, in my mind, the meeting was adjourned. Therefore, the agenda of today's meeting is as it was in the calendar and approved by this committee, as opposed to the continuation of a debate.

[*Translation*]

I think what I just said is correct.

[*English*]

The Chair: That is absolutely correct, Mr. Oliphant. The last meeting was adjourned and all the members....

Mr. Genuis, you can't move a point of order when you're sitting there as a witness, as you're fully aware.

That being the case, Mr. Oliphant, you are absolutely correct, and the motion that was first brought is inadmissible.

Mr. Randy Hoback: That's fair enough. I accept your decision on that, but I read a second motion in place of the [*Inaudible—Editor*].

The Chair: It doesn't matter.

Mr. Randy Hoback: Sure it does. It's a different motion.

The motion is to proceed to the consideration of the motion of Garnett Genuis moved on Monday, November 14—

The Chair: Mr. Hoback, nobody heard your second motion, so—

Mr. Randy Hoback: I said it on the mike. It's probably in the blues. If you want to go check it, go ahead.

The Chair: No. If no one's heard it, you can't now change the rules and say, "I had another motion that no one has heard here", and say on that basis, we're allowed to—

Mr. Garnett Genuis: On a point of order—

The Chair: Mr. Genuis, you have not been recognized to speak. You are a witness today.

Mr. Garnett Genuis: I'm trying to be helpful.

The Chair: It's not very helpful.

Thank you. I appreciate your....

Mr. Randy Hoback: It comes back to me, and I move that motion.

The Chair: Okay. What is your motion, Mr. Hoback?

Mr. Randy Hoback: I move that the committee proceed to consideration of the motion that Garnett Genuis moved on Monday, November 14.

For Mr. Oliphant, that's the Gazprom motion.

The Chair: Fine. We'll go to a vote.

(Motion negatived: nays 6; yeas 5)

The Chair: Thank you very much.

We will now resume with our—

Mr. Randy Hoback: How much time do I have, Chair?

The Chair: You will have a minute, Mr. Hoback.

• (1715)

Mr. Randy Hoback: It's a minute? Not seven minutes?

The Chair: No.

Mr. Randy Hoback: Thank you, Chair, and I indulge the committee. It's always good to have a healthy debate. That's what makes our democracy so great.

Senator—

Hon. Hedy Fry: Try to follow the rules, though.

Mr. Randy Hoback: Exactly right, Ms. Fry. What they're here to do is follow the rules, and I'm glad to do that. Win or lose, we follow the rules, and that's something that makes our democracy great.

Senator, with regard to this piece of legislation, can you give a few examples of people who are impacted, as you did in your testimony, and how that impact reflects back into tourism coming out of Canada for harvesting of organs?

Senator Salma Atallahjan: Initially, we were seeing that transplant tourism was taking place in Asia, but recently with the migrant crisis, we're seeing that a lot of it is taking place in North Africa. We heard testimony about people who were trying to become refugees, trying to flee to Europe. They would get to some point, and they would be asked for extra money. If they weren't able to give the money, there was a certain doctor who would come and harvest their organs.

This trade has started flourishing, There is a certain country—Egypt, namely—that comes to mind, and this is an issue that I did raise with the Egyptians. There was a human rights person visiting from Egypt, and I raised this issue with her. I said that Egypt comes to mind because there is an Egyptian doctor who goes in a helicopter and harvests the organs, and these organs are sold. It's truly preying on the vulnerable, and sometimes people will sell their kidneys because they are poor and they have no other means of support, and in many cases they will not even be paid.

Mr. Randy Hoback: In what kind of conditions are these operations taking place?

Senator Salma Atallahjan: The conditions are terrible, and we've heard that a lot of these people whose organs are taken do not

survive because the operations are done in backrooms and alleys and there is no aftercare. Some of them are threatened. They're told they are being followed and that if they even tell anyone that their organ was harvested, they will be killed. They are just left to their own devices. A lot of them don't even know. They are kidnapped, and their organ is harvested. Then they wake up and realize they don't have a kidney.

It's been going on, and a lot of our allies have strengthened legislation, and we haven't.

The Senate of Canada is not a foreign country; we're just a few blocks down. This is the legislation that we looked at, and the senators on every side.... We have four different groups there, and everyone agreed. This is not a partisan bill. We heard that this legislation was started by the Liberals 15 years ago, and we did have Mr. Cotler as a witness. We looked at it and we looked at it, and the reason it didn't go before the committee.... The leadership of the Senate sat and said that this is something that we looked at and we should have passed it a long time ago. We accepted the changes that you made. We're sending you the bill that you sent to us. We did not change anything.

I don't know what else to say. As I said, it's the harvest of the poor. A lot of those people don't even get paid, and a lot of them don't survive.

For me, this is not a partisan bill. It's about doing the right thing.

Mr. Randy Hoback: Thank you, Senator. I hope we'll see this committee get it through really quickly and get it to legislation really quickly. I think everybody around this room agrees with you. This needs to happen quite fast. I think there is lots of goodwill around this table to see that happen, and I hope it will.

Chair, I'll turn it back to you.

The Chair: Thank you.

We now go to Mr. Zuberi. You have six minutes, Mr. Zuberi.

Mr. Sameer Zuberi: Thank you, Mr. Chair.

I'd like to thank the witnesses for being here, from both the Senate and the House of Commons.

To underscore that this is a non-partisan bill, I'd like to also highlight that I was happy to second this when it was introduced in the House. To underscore that this is a non-partisan issue, the issue of human rights is always non-partisan.

I'm happy that we are actually able to thoroughly discuss and debate this important piece of legislation, which the government does support. I would say that any fair-minded person should support it. The job of this committee, and committees in general, is to study the legislation at hand and then to suggest improvements, if there are any to be had. That is the exact normal and appropriate process of each and every committee.

I have happily worked with Mr. Genuis on the issue of the Uighur. We both co-chair a friendship group on the Uighur. We have learned about organ harvesting in relation to this specific, deep and serious human rights issue. We know that they are facing very serious human rights challenges, which may rise to crimes against humanity, according to the past UN high commissioner for human rights. Many countries, including our Parliament here, have said that it amounts to genocide.

We know that David Kilgour and David Matas, as experts in this space, have also done extensive research work on the organ harvesting of Falun Gong or Falun Dafa practitioners. That is well documented.

I know that this is an issue that migrates. As you've said, it has migrated from one region of the world to other regions of the world.

To Mr. Genuis, first, why are we creating a second point of inadmissibility for a criminal act when this is already in IRPA? Why are we creating two elements of inadmissibility when this is already in the Immigration and Refugee Protection Act? Why are we duplicating it?

Don't you think that this can lead to wiggle room and ambiguity for defence lawyers, for example, to argue a way out of inadmissibility to Canada?

• (1720)

Mr. Garnett Genuis: Thank you, Mr. Zuberi. That's a good question. It's question that was raised previously when this bill was studied. Let me say two points on that.

The substantive distinction between those provisions is that inadmissibility on the basis of criminality could not apply in a case if being involved in organ harvesting or trafficking was not actually deemed a criminal offence in the country where it was taking place. The sad reality is that in the People's Republic of China, there is forced organ harvesting happening that is coordinated by the state. It would not be a violation of the law in China for an official to be involved in forced organ harvesting or trafficking.

Mr. Sameer Zuberi: Thank you. I'll take back my time. Thank you for that.

I'll ask that same question to other witnesses later on as they sit in the exact chair where you're sitting.

Senator Ataullahjan, I really appreciate your coming here and being patient with everything you've just seen from your own colleagues in your own party, to be honest. They tried to stifle this exact conversation and debate that we're having right now. I find it shocking and problematic.

That said, I'd like to ask you a question. This is an important piece of legislation. It sends a very important signal. In terms of the threshold when it comes to prosecution and gathering of evidence, if these crimes are happening outside of Canada, how will we be able to gather the evidence in order to prosecute at the threshold of criminal law, which is beyond a reasonable doubt?

Can you explain that, please?

Senator Salma Ataullahjan: What we put into this was that we wanted the doctors to report. If somebody's shot and they go to a doctor, then the doctor has to report that they had a patient come in who had a gunshot wound. We had put that in, but it was taken out by this committee, if I'm correct.

Mr. Sameer Zuberi: That was for Senator Ataullahjan, but I'll hear you, Mr. Genuis.

Mr. Garnett Genuis: Thank you for your generosity in allowing me back in.

I had more to say on the previous response, but be that as it may, it was a government amendment to remove the mandatory reporting provisions. It was members of the government who said they didn't want those provisions in.

In an ideal world—

Mr. Sameer Zuberi: To take back my time, I'm speaking specifically about the evidence gathering to prosecute. We're dealing with potential crimes outside of Canada. We need to have the evidence to prosecute people to the criminal standard.

How do we do that?

Mr. Garnett Genuis: I'll—

Mr. Sameer Zuberi: I'd like to hear from Senator Ataullahjan, please.

Senator Salma Ataullahjan: As I said, we put the onus on the medical doctors. If you have a patient who's on a transplant list and all of a sudden the patient is not on the transplant list because he's taken his name off, something has happened. If you have someone who comes in who is having health issues and you see the patient has had a transplant, the authorities should be told.

That clause was taken out, because it was felt it put too much responsibility on the doctors.

• (1725)

Mr. Sameer Zuberi: Thank you. My time is up. I'm sure we'll dive into this more with other witnesses.

Thank you, Mr. Chair.

The Chair: Thank you very much.

We next go to Mr. Bergeron. You have six minutes.

[*Translation*]

Mr. Stéphane Bergeron: Thank you, Mr. Chair. I was wondering if my turn would come at some point today.

I am very happy to be part of this exchange.

I thank the witnesses for joining us today to discuss this bill.

I would like, first of all, to discuss the procedural aspect that Mr. Genuis mentioned. I must say that I am sensitive to the point he made that it was already 15 years ago that this Parliament, and not just this legislature, was considering a law to prohibit organ trafficking.

In light of what we have seen in relation to what is happening in Xinjiang, it is clear that we cannot stand by and do nothing.

On the other hand, I must say that I feel a certain discomfort at the idea of assuming that, in this Parliament, we are at exactly the same point as we were in the previous Parliament and that, consequently, we must eliminate the clause-by-clause study of Bill S-223, on the pretext that the exercise has already been carried out in a previous Parliament. I confess to some discomfort with this idea, especially as it is not entirely accurate to say that the bill is 100% identical to the previous one and that there is no difference between the two.

I'll give you an example, and it was our analysts who submitted it. The summary of Bill S-204 stated that the proposed amendments to the Immigration and Refugee Protection Act gave the Minister of Citizenship and Immigration the power to remove and declare inadmissible to Canada a permanent resident or foreign national who engaged in activities related to human organ trafficking. According to the summary of the current bill, Bill S-223, this power is now vested in the appropriate minister.

Why did we go from a power vested in the Minister of Citizenship and Immigration in Bill S-204 to a power vested in the appropriate minister in Bill S-223, if the two bills are identical?

[English]

Mr. Garnett Genuis: Thank you, Chair.

Excuse me for the delay. It was the translation catching up.

Mr. Stéphane Bergeron: I hope the chair will take it into consideration with my time.

Mr. Garnett Genuis: I hope so also.

Let me answer your direct question and then, if I can, comment on your preamble as well.

My understanding of this bill is that there have been multiple versions of this bill at different points in time. There were amendments to Bill S-240 that passed this committee two Parliaments ago, and then it was sent to the Senate. My understanding is that this bill is identical to the version that passed at the House of Commons committee. There were previous versions, but it's identical to the version of the bill that passed at the House committee at that time.

I agree with you, by the way, that it would have been very reasonable for the committee to look at this bill and hear from witnesses earlier on in the process. My point was that we are way too late. The clause-by-clause study next week is three sitting days before the automatic reporting deadline, which means that the committee has not left itself time.

If we were having this conversation even two or three months ago, people could have said, "We want to hear from a few witnesses, and if we decide no amendments are needed, that's fine, but we want to hear from the witnesses." It's just that we're in a minority Parliament. Anything can happen.

This bill has sat before the committee for almost the full 60 sitting days. Do I think it's reasonable for committees in a new Parliament to say that they want to take a fresh look at this? Absolutely.

Do I think it's reasonable to wait the full 60 days without talking about the bill and then say at that point that now we need to have a extensive, detailed study? I don't really think that's reasonable.

I'm certainly not blaming you for that, but I personally have expressed the view before this committee, as members know, that we should prioritize legislation, not because it's my bill, but because legislation, as opposed to studies, is the way that committees exercise their hard power.

It is just too late. Doing clause-by-clause study next week will only have the effect of delaying the bill. If we adopt it with amendments, it will significantly delay the bill. If we adopt it without amendments, it will still delay the bill, because it will require report stage, when otherwise there would be automatic reporting.

I'm sympathetic, but we are where we are.

● (1730)

[Translation]

Mr. Stéphane Bergeron: I understand what you are saying, Mr. Genuis, but the fact is that we have called witnesses, by mutual agreement, and it would seem to me to be quite improper to turn them away, again. We have been turning away a few witnesses lately, and it always makes me somewhat uncomfortable.

I have to say that there is no indication or suggestion that clause-by-clause would necessarily result in amendments; maybe it would, maybe it would not—

[English]

The Chair: Could I ask that you respond in less than 10 seconds, please? We're well over the six minutes. Thank you.

[Translation]

Mr. Stéphane Bergeron: Did you interrupt me, Mr. Chair?

[English]

The Chair: Yes, you're over six minutes, and we also want to hear the answer, Mr. Bergeron.

[Translation]

Mr. Stéphane Bergeron: All right. We should just make sure the other members have six minutes of speaking time as well.

[English]

Mr. Garnett Genuis: Mr. Bergeron, I think that originally when we considered a prospective calendar for this month, it was that we would have clause-by-clause consideration today. If we had had clause-by-clause today, that would have given us a little bit of extra time, but again, I don't think it's a reasonable practice for committees to wait until the last possible day before the automatic reporting deadline and then have clause-by-clause. It looks like a tactic to delay the bill, frankly, to say that at the last possible minute we'll have clause-by-clause—

The Chair: I'm afraid I'm going to have to cut you off, as I said, within 10 seconds—

Mr. Garnett Genuis: At that point—

The Chair: Mr. Genuis, I'm afraid I'm going to have to cut you off. We're well over, and I did warn you at the very start that you had 10 seconds to respond to that, because we were over already.

Thank you.

We now go to Mr. Angus. Mr. Angus, you have six minutes.

Mr. Charlie Angus: Thank you so much, Chair.

Thank you for inviting me to your committee.

Senator, I hope you would agree that one of the important points about having witness testimony is so that we can put on the record—and so people know—why legislation is passed and why it is important. It is our job: to ask these questions and not simply to rubber-stamp. Whether or not someone else has looked at this and whether or not this has been around for a long time, I think it is a basic role, so I'll ask you a number of questions, because I think it's important to get this important legislation clarified for the Canadian people. I'm hoping that we can have that conversation.

Senator, under subsection 279.04(3) of the Criminal Code, the exploitation for purposes of trafficking in persons includes removal of organ and tissue by means of deception, threats, force or coercion. Subsection 279.02(1) criminalizes the receiving of “financial or other material benefit” if it was derived directly or indirectly from trafficking of a person for the purpose of exploitation. Subsection 7(4.11) of the Criminal Code sets out extraterritorial jurisdiction for these offences.

How many cases have been prosecuted in Canada for organ trafficking?

Mr. Garnett Genuis: Thank you for the question—

Mr. Charlie Angus: I'm sorry, but I didn't ask you, Mr. Genuis. You're not a senator, not yet. I'm asking the senator.

Thank you. When you're a senator, I will be more than happy to listen.

Senator Salma Ataullahjan: I agree with you. I should have had witnesses.

The bill had been looked at earlier, so you could have had witnesses. I'm not a lawyer. When we looked at this bill and we travelled, we were asked why Canada doesn't have laws against organ harvesting. To my knowledge—and I might be wrong—I don't think there have been any cases prosecuted under this law.

• (1735)

Mr. Charlie Angus: You're saying we haven't had any cases prosecuted.

You mentioned, I think, five cases in Vancouver and five cases at St. Mike's. Were they reported to the police? How did you become aware of those cases?

Senator Salma Ataullahjan: I would have to get back to you on that. I don't know if they were reported to the police. That's what we heard when we had testimony and we did research. That's when it showed that there were a few cases. St. Mike's said they had cases, and the hospital in Vancouver said that they had cases that came through.

At this stage, I don't know if the police were involved. I guess it's something that I could look into and get back to you on. I wish there had been time for you to hear from the legal community and maybe hear from the police. If this bill had been....

Mr. Charlie Angus: No, no; it's fine.

One of the questions we ask when we're adding to laws or bringing in new laws is whether existing laws are being utilized. I think it's important for us to get a sense of whether we've had any prosecutions or, if we have not, why we haven't. If there have been cases, say at St. Michael's Hospital or in Vancouver, why were those not reported to the police?

I notice that this legislation is focused on refugees. Is there no legislation that can ensure that doctors report? Would that have been a better avenue to make sure we actually cut this practice down if people are coming back to Canada having engaged in illegal practices? Why are we focusing on the refugee act and giving this power to the minister as opposed to obliging professionals to report and having that dealt with as a police matter? This is really terrible, awful, criminal activity.

Senator, what do you think about that?

Senator Salma Ataullahjan: Thank you for that question.

I couldn't agree with you more. That's why when we had the original bill, we did suggest that if a doctor sees one of their patients who was on the list for an organ transplant all of a sudden take their name off, the doctor should be reporting it. If somebody comes into the hospital who has obviously had an organ transplant, they should be reporting it.

This committee, the House, decided they didn't want that. I think it was important, because we were told it put too much responsibility on the doctors, but as I said when I gave my remarks initially, the doctors do report every time there's a victim who's been shot who comes to them for treatment. For whatever reason, the House did not want that responsibility placed on the doctors.

I feel that this is the starting point for us. We need to have some sort of legislation in place. We know that Canadians are going abroad for organ harvesting. When there was a raid in Kosovo and they caught people who had come to have organ transplantation, there was a Canadian there. We know that Canadians are going abroad.

Mr. Charlie Angus: Do we have numbers on where Canadians are going? Have there been any prosecutions of Canadians going abroad? This is an international crime. It's very important.... This is why I go back to this. We have protections in the Criminal Code. In that Kosovo case or any other case, has there been a Canadian prosecuted for going abroad to engage in such deplorable activity?

Senator Salma Atallahjan: Currently, there is no law that bars people from going abroad to get an organ. I think it's happening in different parts of the world. Canadians are going. They are going to China. They are going to India. They are going to Pakistan. They are going to other countries to get organs.

Mr. Charlie Angus: But doesn't subsection 7(4.11) of the code set out—

The Chair: Mr. Angus, I'm afraid your over time.

Mr. Charlie Angus: —extraterritorial jurisdiction of these offences?

Thank you.

The Chair: Thank you.

At this point, given that we are well over the period that we had allotted for questions, I'm afraid that we're going to have to keep it at one round of questioning, because we now have to go to the witnesses.

Allow me to thank you immeasurably, Senator.

Allow me to thank MP Genuis for having been here with us and having allowed us to develop a more sophisticated understanding of this very important bill. We are very grateful indeed.

Now we will suspend for a couple of minutes.

Could the two members who are online remain? You don't have to do anything, but we want to make sure that we get the next witnesses connected.

Thanks.

• (1735) _____ (Pause) _____

• (1745)

The Chair: Welcome back, everyone.

I'd like to make a few comments for the benefit of the new witnesses who are joining us by video conference today.

Please wait until your name has been recognized before speaking. Click on the microphone icon to activate your mike. Please mute yourself when you are not speaking. Interpretation is at the bottom of your screen. You have a choice of either floor, English or French. All comments should be addressed through the chair.

It is now my great pleasure to welcome our three witnesses, all of whom are here virtually: Dr. Miriam Cohen, associate professor,

faculty of law, Université de Montréal; Dr. Lindsey McKay, assistant teaching professor, faculty of arts, Thompson Rivers University; and Dr. Jagbir Gill, vice-president, Canadian Society of Transplantation.

You will each be provided five minutes for your opening remarks before we proceed to questions from the members.

Go ahead, Mr. Bergeron.

[*Translation*]

Mr. Stéphane Bergeron: Mr. Chair, I just want to make sure that the sound tests with the witnesses have been successfully completed.

[*English*]

The Chair: Yes. I did look to our technical adviser here, and to the clerk, to confirm that this is the case.

[*Translation*]

Mr. Stéphane Bergeron: Thank you, Mr. Chair.

[*English*]

The Chair: Thank you, Mr. Bergeron.

We will now proceed with Dr. Cohen.

You have five minutes. When you're approximately 30 seconds short of your five minutes, I will put this up just so that you're fully aware that you should be wrapping up.

Dr. Cohen, the floor is yours.

Dr. Miriam Cohen (Associate Professor, Faculty of Law, Université de Montréal, As an Individual): Mr. Chair and members of the Standing Committee on Foreign Affairs and International Development, it is an honour and a privilege to appear before you today as part of a panel of witnesses in view of the consideration of Bill S-223, an act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs). Thank you for inviting me to appear before you today.

I'm an associate professor at the Faculty of Law at Université de Montréal, where I hold the Canada research chair on human rights and international reparative justice. My areas of teaching and research are international criminal law and human rights.

I will focus my remarks today on legal questions and more precisely on international law frameworks relating to the trafficking in human organs.

My opening statement will be in English, but I will be pleased to answer questions in both languages.

As for the context, as noted by various international reports, the commercial trade in human organs has developed into a global concern. Human organ trafficking causes grave human rights violations. It often involves transnational criminal activities committed by an organized complex network of criminal groups. Trafficking in human organs has become a highly profitable industry and, according to the United Nations Office on Drugs and Crime, organ trafficking remains among the most difficult crimes to detect.

The trafficking of human organs often involves the trafficking of human beings for the purpose of harvesting their organs. The United Nations Office on Drugs and Crime has recently deemed human trafficking for the purpose of organ removal one of the fastest-growing forms of human trafficking.

The flagship 2020 “Global Report on Trafficking Persons” indicated increasing reported cases of trafficking for the purpose of organ removal. Very recently, the United Nations Office on Drugs and Crime launched the toolkit on the investigation and prosecution of trafficking persons for organ removal.

Turning to the international legal framework of trafficking human organs, in considering the global impact of trafficking organs, there have been several initiatives under international law to combat organ trafficking. I will briefly review the most relevant ones.

The first is the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”, also known as the Palermo protocol, with a September 29, 2003, entry into force.

Trafficking in persons for the purpose of organ removal is clearly defined in the Palermo protocol. Article 3a states:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons...for the purpose of exploitation. ...Exploitation shall include, at a minimum, the exploitation of the prostitution of others [and] other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

Canada ratified this protocol in May 2020. It is the first binding instrument under international law that defines trafficking of human beings and includes trafficking in persons for the purpose of removing organs. Canada changed its laws after the ratification of the protocol, a point to which I will refer later in my presentation.

Adopted in 2008, the “Declaration of Istanbul on Organ Trafficking and Transplant Tourism” is not a legally binding instrument under international law, but it does, however, provide some guidelines to states concerning organ transplantation. In 2010, the Declaration of Istanbul Custodian Group was formed, with the task of overseeing the dissemination of the declaration.

The preamble of the declaration refers to “exploitative practices that have harmed poor and powerless persons around the world”. The declaration has been endorsed by various national and international medical societies, including from within Canada.

I now turn to the World Health Organization's “Guiding Principles on Human Cell Tissue and Organ Transplantation”, the WHO guiding principles. The WHO has expressed concern with the commercialization of organs and adopted 11 guiding principles concerning transplantation programs. They aim to provide “an orderly, ethical and acceptable framework for the acquisition and transplantation of human...organs”. The guiding principles mention “informed” consent and the “prohibition” of monetary payment.

There also have been United Nations General Assembly resolutions that have referred to trafficking in organs.

• (1750)

UN resolution 71-322 is entitled “Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs”. Dated September 8, 2017, it “Urges Member States to prevent and combat trafficking in persons for the purpose of organ removal”. It further urges member states to consider adopting “Strengthening legislative frameworks, including by reviewing, developing or amending them, as appropriate, to prevent and combat trafficking in persons for the purpose of organ removal” and “Adopting appropriate legislative measures necessary to guarantee that the donation of organs is guided by clinical criteria and ethical norms”.

In the interest of time, I will move on to the Council of Europe Convention against Trafficking in Human Organs, which was entered into force on March 1, 2018. It is the first international legally binding instrument that is specifically dedicated to trafficking in human organs. As of this date, it has received 14 ratifications. The treaty is open to Canada for ratification, which has not yet occurred.

As per article 1, the purposes of the convention are as follows:

- (a) to prevent and combat the trafficking in human organs by providing for the criminalisation of certain acts;
- (b) to protect the rights of victims of the offences established in accordance with this Convention;
- (c) to facilitate co-operation at national and international levels on action against the trafficking in human organs.

Within the legal framework in Canada, the Criminal Code criminalizes trafficking in persons and trafficking in persons for the purpose of organ removal—

• (1755)

The Chair: Professor Cohen, could I ask you to wrap it up? You're a minute and half over your five minutes, so perhaps you could wrap it up in the next 10 to 15 seconds. We will then have the opportunity to ask you questions, and you can incorporate what you were about to say in your responses.

Thank you.

Dr. Miriam Cohen: Thank you.

The rest of my intervention today was to address specific points on the need to tackle organ trafficking specifically, in addition to the provisions that already exist in the Criminal Code concerning the trafficking in persons for the purpose of organ removal. I would be glad to answer questions from members of the committee.

Thank you very much for your consideration.

The Chair: Thank you very much, Dr. Cohen.

We now go to Dr. McKay.

You similarly have five minutes. The floor is yours.

Dr. Lindsey McKay (Assistant Teaching Professor, Faculty of Arts, Thompson Rivers University , As an Individual): Thank you, Mr. Chair, and thank you to members of the committee for inviting me to appear.

I am a sociologist. In brief, I support this bill. I think it's an important piece of potential law that we could pass in Canada to tackle this problem.

I'm going to focus my remarks on my 2016 publication called "Generating Ambivalence: Media Representations of Canadian Transplant Tourism". This is in an open-access journal called *Studies in Social Justice*. There's a link to it on page 6 of your legislative summary.

In this research project, I sought to understand why there was not more public pressure to stop Canadian participation in the organ trade despite a robust anti-transplant-abuse movement.

What I did was analyze mainstream Canadian media. I found that the media generate ambivalence towards the issue of transplant tourism, first by absolving Canadians of responsibility and second by consistently orienting public attention away from knowing and thinking about health outcomes and human rights, especially for organ providers. The anti-transplant-abuse movement has had to overcome that kind of mainstream public messaging that we find in the mainstream media.

In my study, I included print and online newspaper, films, TV documentaries and books. The earliest mention I found was in 1988 and sources went to 2015.

This is secondary research. The premise of the study is that the mainstream media shape public attitudes and thus public policy. I used a post-colonial theoretical lens to analyze the data.

My findings were from 233 articles over this 27-year period, most from 2004 to 2009. The articles tended to be sensationalist.

Then I did a deeper qualitative analysis of 74 articles, they included those on six Canadian transplant tourists, with mention of two brokers operating out of Canada. The pattern in the dataset, based on mainstream media, was one of gross imbalance.

Organ transplant providers are invisible in these stories. The public learns very little to nothing about live organ sellers or potentially coerced deceased donors. We are not invited to stand in their shoes and think about their journey. When health outcomes and human rights were mentioned, it tended to be in an isolated passage within a sentence with an overall narrative of sensationalism, one that was oriented around the buyer.

Transplant tourists are centre stage in the narratives of what Canadians learn about this practice. We hear about them and read about them as heroes in a survival story narrative of a dangerous journey, which is presented with empathy. Their actions are cast as morally wrong but understandable, difficult, relatable and even rational and necessary. Buyers are compelled to take radical action.

The public are invited to stand in those shoes and to gain that knowledge about what it's like to be that potential recipient with the challenges they face. Transplant tourists are presented in the mainstream media as innocent victims, compelled to travel and take risks, innocent because they are ignorant and "don't know" why or how the organ provider is able to give that organ. They are also sometimes presented with this narrative of reciprocity and how it's a fair exchange, as if an organ and money are commensurable objects.

Buying an organ is also presented as being understandable because of the narrative of organ scarcity, so transport tourism is presented in mainstream media as a symptom of another problem for which Canada is to blame and is also the solution. We must solve the larger national organ scarcity problem, and then that would solve the transplant tourism problem. This is another way of constructing transport tourists as victims of long wait-lists.

I argue, having studied this topic for 20 years, that there's no evidence that the shortage will ever end and that this is a deflection from the concerns around human rights and health outcomes, especially for organ providers. The mainstream media eclipse public discussion of whether and how to stop Canadians from buying organs in other countries. Imbalanced narratives generate one-sided knowledge and empathy and absolve responsibility for health outcomes and human rights.

• (1800)

That is the messaging the transplant abuse movement has had to overcome.

One notable exception from that movement that does this very well is Rama Rau's 2010 independent film called *The Market*. It's unlike every other mainstream media piece. In this story, a B.C. woman on dialysis travelled to India.

What's unique is that she actually met the kidney seller. She saw the radically unequal standard of living between them, and the life chances, and after getting to know the seller said no. She did not proceed with the transplant. She returned home to dialysis. The only challenge, though, is that the public does not have access generally to that film.

Thank you.

The Chair: Thank you very much, Dr. McKay.

We will now go to Dr. Gill.

Dr. Gill, you have five minutes.

Dr. Jagbir Gill (Vice-President, Canadian Society of Transplantation): Thank you very much, Mr. Chair and members of the committee, for the opportunity to speak with you today on this very important issue.

As a point of clarification and disclosure, I am a transplant physician who works at St. Paul's Hospital in Vancouver. I have nearly 15 years' experience dealing with the ramifications of transplant tourism. I also sit as the Canadian representative and councillor with the Declaration of Istanbul Custodian Group, which was mentioned earlier. This is an international organization whose mandate is to end organ trafficking.

Today I'm speaking in my capacity as a representative of the Canadian Society of Transplantation. I have also been asked to speak on behalf of the Canadian Society of Nephrology. These organizations represent health care professionals in Canada in the field of organ transplantation as well as kidney disease.

In the interest of time, I'll limit my comments today to a few key areas pertaining to the proposed bill. I'll make myself available for any further questions even after this session, if that's the will of the committee members.

First, I would like to highlight the status of this issue in Canada from a frontline perspective. The side of the practice I'll focus on is what we encounter as transplant professionals in Canada, which is really the patients who return after having engaged in the presumed purchase of an organ. It goes without saying that the issues from the donor side that we've heard already today are abhorrent. The transplant community feels strongly that these issues need to be addressed.

There are some key details that I think are worth sharing in terms of what happens and what we see. Typically, patients who are engaging in this practice have indeed been waiting for a transplant for many years. The median wait time in Canada is about five years for a kidney transplant. This is anecdotal, but typically what we see is that at some point, someone within their social network will give them advice and say, "Why don't you look outside of Canada for options?" That then leads to this act. I think a key issue that needs to be acknowledged is that there is almost always a broker involved. The act of travelling overseas to purchase an organ is being coordinated by a third party. Someone is profiting financially from this.

It's also notable, and I think important, to reflect on the fact that when we look at the demographics of who the individuals are who have engaged in this practice—I've done a number of research studies on this issue myself—we do see that it's often individuals from populations in whom there is documented reduced access to transplantation in Canada. In terms of access to transplant, that does appear to be a driving factor in some of these cases.

In terms of what happens when people come back to Canada, many require urgent or emergency care for infectious complications. To make matters more complicated for clinicians, we have very little, if any, documentation provided to us. We've had to guess whether the organ was purchased, what the donor situation was and what the matching was. That really does compromise our ability to care for these individuals when they return. We are relying solely on the knowledge, and hopefully the forthrightness, of these individuals who have come back so that we can provide care for them and do our jobs.

Importantly, in the long run these people do worse. Outcomes are much poorer for people who engage in transplant tourism compared with those who got a transplant locally. Some research I've done recently has shown that when we've looked at factors to try to deter individuals from engaging in this practice, we see that education seems to be the key issue. In particular, educating people around the dangers to them is potentially more effective than punitive measures. That is an important issue.

In terms of the current status, we do not have accurate numbers in Canada, but it does appear that, compared with 10 years ago anyway, the practice has reduced a bit, presumably on the basis of global efforts and in terms of education that we've done on the clinical side warning people of the risks.

In terms of the legislation, first of all, I'd like to express our support for legislation that aims to curb this practice, although there are a few issues that are important in terms of the details of this bill that we'd like to address.

First, our overriding priority is to advocate for our patients and their care [*Technical difficulty—Editor*] is within the transplantation and medical community, some [*Technical difficulty—Editor*] in a bad way and have resorted to this terrible act, particularly when, at least in part, this is driven by a reduced access to transplantation in our country.

- (1805)

This is accentuated in terms of the bill by the magnitude of the sentence and the fact that the culpability appears to be equally shared between patients and those who are coordinating the practice. The feeling generally is that it should be weighed heavier on those who are third parties who are coordinating it, versus the patients who are partaking in it.

We'd also like to distinguish between the notion of transplant commercialism and organ trafficking. They are both issues that currently are illegal within the Canadian context, but there are discussions in other countries, including the United States, that have been going on for many years about a regulated system that would be legislated to allow for transplant commercialism. Thinking about the future state of that and how this legislation would impact something like that is also worth considering.

Finally, there are some practical considerations that we're concerned about.

The proposed legislation may deter patients, if they're concerned about being penalized legally, from sharing some of the details that we rely on to know that this has occurred and to be able to care for them. Last, I would like to humbly advocate an increased investment on education on this issue, in addition to this legislation.

Thank you very much. I'll stop there.

The Chair: Is there no translation...?

Is it okay?

Are you almost done, Dr. Gill? You are over five minutes.

Dr. Jagbir Gill: Yes. I'm okay. I can wrap up now. Thank you.

The Chair: Thank you very much, Dr. Gill.

[*Translation*]

Mr. Stéphane Bergeron: Mr. Chair, can you ask the witness to repeat the last words he said, so that we can have the interpretation?

[*English*]

The Chair: I'm sorry, Dr. Gill. We had problems with translation.

Could you kindly repeat the last concluding sentences you used in your presentation? We'd be grateful to have the full benefit of understanding.

Dr. Jagbir Gill: Yes, certainly.

I had requested that the importance of education go along with the legislation, as that does appear to be the most effective piece in making sure that people are aware of the legislation. That does appear to be the most effective piece: making sure that people are aware of the legislation. Having a mechanism towards that would be critical.

I also raised concerns that legislation may make it more challenging for us to ascertain that these cases have occurred, as patients may not be as forthright about the details.

• (1810)

The Chair: Thank you very much, Dr. Gill. We're very grateful for that.

We will now go into questions by the members. The first person is MP Genuis. You have four minutes, Mr. Genuis.

Mr. Garnett Genuis: Thank you, Mr. Chair.

I want to thank the witnesses for their excellent testimony and underline the fact that although witnesses certainly had excellent suggestions about more that can be done besides passing this bill, none of the witnesses raised any problems with the bill as written or suggested that its passage should be delayed. My view, our view, has been that we should expedite consideration of this bill and try to move it forward quickly.

I support not doing clause-by-clause consideration so that the bill can be automatically reported to the House and proceed more quickly and directly to third reading. We've been working on this for 15 years. It's been too long. I think that's what we owe to the victims of this horrific practice.

In that light, I want to share a notice of motion: "That the Chair be instructed to schedule an in public committee business meeting on Wednesday, November 23, and that the first order of business during that meeting be the resumption of debate on the motion of Garnett Genuis moved on Monday, November 14."

Now that the notice of motion is out of the way, I want to say on a personal note, Dr. Gill, that my brother practises at the same hospital that you do, so maybe you recognize the name, or maybe not, but thank you for your service on the front lines on many important issues.

There were a number of witnesses who ran out of time in their opening remarks. I would like to invite any witnesses who had additional points that they weren't able to make in their opening remarks to feel free to add those to the record now.

Dr. Jagbir Gill: Yes, if I may, very briefly, I do have a point of clarification.

I wanted to reiterate that the one area of the legislation where there was some trepidation was around the fact that it appears that culpability is equally shared between the patients and those who are coordinating the practice. The suggestion—certainly from the professional organizations—is that it be shifted such that the primary culpability would go towards those who are coordinating the practice and secondarily towards the patient population.

Thank you.

Mr. Garnett Genuis: Thank you for that.

My one reflection on that is that in many cases the coordination is done by people who would be, to a greater extent, beyond the reach of Canadian law, whereas this law is aimed primarily at those who are from Canada going abroad to receive the organ. It would seem less likely, although not impossible, that someone in Canada would be coordinating the process of organ harvesting.

I'm sorry, but I don't have the names in front of me. Our first witness had some comments in her opening statement—it's Dr. Cohen, yes.

Do you want to finish your opening statement? I think maybe you ran out of time.

Dr. Miriam Cohen: Mr. Chair, I would add then to my initial comments the need to tackle organ trafficking specifically, and the criminalization of trafficking an organ. That is a different crime from the trafficking of a person for the purpose of harvesting or removing their organs, which is already criminalized in the Criminal Code. This proposed legislation disconnects organ trafficking from human trafficking, making it a separate offence. It also focuses on consent and informed consent, which addresses the situation of children who are victims of forcible organ removal.

Also, the text of Bill S-223 seems to apply solely to organs, exclusive of tissues and cells.

These are the main points that I did not address in my opening remarks.

Thank you very much.

The Chair: Thank you.

We will now go to Ms. Bendayan.

You have four minutes.

[*Translation*]

Ms. Rachel Bendayan: Thank you very much, Mr. Chair.

Let me begin by saying how proud I always am when we welcome experts from the Université de Montréal, an institution located in Outremont, which I represent with great humility and pride. It is still a source of pride for me today to welcome a witness from this university.

I would also like to say that I once had the pleasure of being Professor Cohen's co-worker. I hope there is no objection to my asking her questions.

Mr. Stéphane Bergeron: There is a conflict of interest, ha, ha!

Ms. Rachel Bendayan: That's precisely why I mention it. Do you have any objection to that, Mr. Bergeron?

Mr. Stéphane Bergeron: Not at all.

Ms. Rachel Bendayan: Thank you.

• (1815)

[*English*]

Dr. Cohen, thank you again for being here. You touched on a number of issues, including international conventions, in your introduction, but I also understand from the senator's presentation just a few moments ago that other countries have strengthened domestic legislation in order to combat organ trafficking.

I'm wondering if you can enlighten us on best practices that you have seen around the world and how the bill before us perhaps compares to what our allies are doing.

Dr. Miriam Cohen: Mr. Chair, I would like to start by saying I did not conduct a thorough, exhaustive study of all countries, but there is a tendency, especially with the convention that I mentioned—the Council of Europe Convention against Trafficking in Human Organs—to dissociate human trafficking for the removal of organs from the actual trafficking of human organs, and some countries—

Ms. Rachel Bendayan: I'm sorry, but to be more specific, I understand the international convention framework, and it's fine if you don't have that on the tip of your tongue, but in terms of domestic legislation, is there anything you would like to point the committee to in terms of what other countries are doing domestically?

Dr. Miriam Cohen: There is no specific legislation that I would refer you to, other than the international legislation I mentioned.

Perhaps one additional point is that for the countries that have ratified the Council of Europe Convention, there is generally the obligation to enact legislation that would make the convention applicable internally, so there is this tendency of criminalizing or suppressing the practice of organ transplant—

Ms. Rachel Bendayan: —which would be implementing legislation of an international convention.

Would Canada, in fact, become a leader then in proposing to do this, as Bill S-223 does?

Dr. Miriam Cohen: Mr. Chair, in my view, yes.

As I mentioned, I think there is a tendency to tackle organ trafficking specifically in domestic legislation. With this bill, Canada would be at the forefront of dealing with this horrific practice and also, specifically with the extraterritorial nature of the bill, would be able to tackle a global concern and not just specifically territorially.

Ms. Rachel Bendayan: Thank you. I believe that is a very good thing.

Can you elaborate on some of the mechanisms that are in place in Bill S-223 to track and monitor—

The Chair: Sorry. You have 10 seconds remaining.

Ms. Rachel Bendayan: I apologize, Dr. Cohen. It is a complex question to which you will not be able to respond in 10 seconds, so I thank you again for your testimony and for appearing before our committee. It's a pleasure to see you again.

The Chair: Thank you, MP Bendayan.

We now go to MP Bergeron, please. You have four minutes, Mr. Bergeron.

[*Translation*]

Mr. Stéphane Bergeron: Thank you, Mr. Chair.

I will follow up on Ms. Bendayan's lead with questions for Ms. Cohen.

Ms. Cohen, I must say that I was looking forward to hearing one of the witnesses say a few words in the language of Molière. It's not something that happens very often at this committee. I imagine that if I ask you questions in the language of Molière, we will have the pleasure of hearing you answer us in that language.

Bill S-223 contains the following provision:

Everyone commits an offence who [...] obtains an organ to be transplanted [...] carries out, participates in or facilitates the removal of an organ [...] knowing that the person from whom it was removed or a person lawfully authorized to consent on behalf of the person from whom it was removed did not give informed consent to the removal, or being reckless as to whether or not such consent was given.

How will it be established that the persons involved knew or did not care that the removal was done without the informed consent of the donor?

• (1820)

Dr. Miriam Cohen: I thank the member for his question and for his invitation to speak in French.

What we have here, when it comes to whether consent has been given or caring about it, is the level of intent. It's something that's already found in other offences in the Canadian Criminal Code. It is a question of proof. It must be proven, in criminal terms, that the person in question knew that it was done without consent or did not care to know. That evidence can be by testimony or it can be written evidence. I suppose it will depend on the situation.

The concept of level of intent, knowledge or recklessness is not unique or novel in the Canadian Criminal Code.

Mr. Stéphane Bergeron: I understand that this provision could pose a number of difficulties with regard to the burden of proof.

We see that a number of nations have legislated in such a way that there is upstream assurance that things have been done ethically. Take Taiwan, for example. They require patients who have received transplants overseas to provide certain information in writing about the transplant they received in order to receive care in Taiwan, following that transplant, I imagine.

Is this the kind of measure that would make things easier? Rather than having to act downstream, we can act upstream to make sure things have been done ethically.

Dr. Miriam Cohen: What is proposed could be a way to act upstream. However, I imagine there are also other ways to show that the person knew or did not care that the collection was made without informed consent.

There could be other levels of intent, but what the legislator has chosen to include in this bill are the concepts of knowledge and recklessness. According to what is proposed, there are no other clauses that could help. It would really be a matter of establishing the evidence based on the circumstances of each case.

Mr. Stéphane Bergeron: In light of what Taiwan is doing, do you think it would be a good idea to consider a change along these lines?

Dr. Miriam Cohen: From a legal perspective, this might help with the burden of proof. On the other hand, I couldn't tell you whether it would create any logistical complications or complexities. Of course, if it were possible to know upstream whether or not the person had knowledge of the lack of consent, that might help with the burden of proof.

[English]

The Chair: Thank you, Mr. Bergeron.

We will now go to MP McPherson. You have four minutes.

Ms. Heather McPherson (Edmonton Strathcona, NDP): Thank you, Mr. Chair.

Thank you to our witnesses.

I also wanted to take a moment to thank all of you for coming on Monday as well and to acknowledge that the committee did not hear your testimony then. The work you do is vitally important and, Dr. Gill, I know that you are in fact a surgeon. For us to have wasted your time that way is inexcusable. I want to apologize on my own behalf and, I'm sure, on behalf of many of my colleagues.

To start with, Dr. Gill, I want to ask you a few questions.

I understand what you were saying earlier about wanting to see that culpability apportioned more fairly, I guess. I think what we recognize here is that people who are looking for an organ are in fact very often desperate, and there should be some of that there, but you did talk about the idea that education is a key, that educational activities are key.

What would that look like? How could the Government of Canada and the provinces engage with Canadians on education activities that would help us reach that goal of having Canadians more aware of the impacts of organ harvesting?

• (1825)

Dr. Jagbir Gill: Thank you very much for the question.

Mr. Chair, if I may, we practise a lot of that on the patient-to-patient level currently. I know that at our centre we have posters. We have big signs that have come from the Declaration of Istanbul Custodian Group, which essentially stamps out organ trafficking. We make it part of our standard counselling for patients when they're going through their transplant process to very overtly mention and state that this is an unacceptable practice and outline the reasons why. That's how we do it on the front lines.

If you took a public-based approach, as was outlined earlier, to combat what the current media perception is, I think there certainly are opportunities to highlight the issues. It's not only why this is bad from all perspectives and from an ethical standpoint, but the piece that's resonated in my experience with patients happens when you tell them, "This is not good for you."

I tell my patients: "If you're going to buy a television, you're going to buy it from a reputable place. This is a big deal, and if you're going to go somewhere where there are no standards, you will have bad outcomes, because this is an illicit practice and that will give you bad outcomes."

That does seem to be very effective at deterring people who are considering this practice.

Ms. Heather McPherson: I wonder, then, about a national strategy or a provincial strategy. While I'm sure the work you do to inform your patients of the impacts on their outcomes.... It would probably be more appropriate to have this as a national strategy implemented across the country so we could ensure that every clinician—every clinician—is providing the same information. Is that accurate?

Dr. Jagbir Gill: Yes. I would agree with that.

Ms. Heather McPherson: Thank you.

The other thing you talked about a bit was the idea that there is a risk of legislation like this deterring patients from coming forward. I wonder if you could talk about any strategies we could employ to prevent that from happening, any ways that we could address that.

Dr. Jagbir Gill: I think that's a very difficult question in terms of what the most appropriate strategies are to deter this practice.

On the one hand, if legislation is in place, we do need to increase awareness so that people are aware of the potential consequences. There is a significant risk on the clinical side: We may have individuals who are going to have worse outcomes because they won't come forward in a timely fashion for fear of prosecution.

I think a lot of the upfront work we'd need to do would be important. That's partly why I personally am in agreement with a structure wherein there isn't mandated reporting. I think that maintains the confidentiality we have with patients. It would allow us to capture it, but you'd need another mechanism in addition to that to make sure you're identifying these cases.

Ms. Heather McPherson: Thank you very much.

The Chair: Thank you, MP McPherson.

Now we go to the second round of questions. We have four spots left.

Mr. Genuis, you have three minutes.

Mr. Garnett Genuis: Thank you, Mr. Chair.

This legislation in front of us does not have the mandatory reporting provisions that were in an earlier draft. I think it's really important for us to discuss and consider some of these questions and whether they should be part of a future piece of legislation. Certainly the goal with this bill is to pass the parts that everybody agrees on, and then we can sort of see and explore what maybe should or should not be added. I think we got great feedback today to the effect that we may even want to provide a report independently of this legislation or study other ways to combat this issue.

Dr. Gill, because it's sort of related to the broader issue, I do want to probe the question of mandatory reporting a bit.

Right now there are certain situations for which mandatory reporting is required. Gunshot wounds are the most obvious example, but I think it would apply to sexual abuse as well. I wonder if you can speak to the dynamics around the currently mandatory reporting in those cases and what we can learn from those situations that might or might not be applicable to mandatory reporting in this case.

Dr. Jagbir Gill: I think I should start by saying that I'm certainly not an expert in the field of mandatory reporting and the logistics of it. In general, the current mandatory reporting is typically in a scenario of trying to prevent harm. A concern that an individual is going to cause harm to someone is the most classic scenario in which we would be obliged to breach confidentiality. In this instance, the distinguishing feature is that the harm has already been done. I think it's a bit different knowing that someone is about to embark on the act of transplant tourism as opposed to knowing that somebody has already done that act.

That would be the primary distinction I would come up with at this point.

• (1830)

Mr. Garnett Genuis: Yes. That's interesting, but I suppose in the case of gunshot wounds, that is a case in which the harm has been done, right? In the case of ongoing abuse to a person, yes, that's a case in which you're preventing harm. You can also imagine cases in which someone had been shot, maybe in the context of gang violence, and they didn't want the reporting to be involved, so they were less likely to come forward to the hospital.

There are some risks, I suppose, but on balance, society has decided to have that mandatory reporting in that case. It's an interesting moral question and dilemma not tackled by this bill, but I think it's worth considering.

Do any of the other witnesses want to weigh in on the question of possible reporting requirements?

If that's a no, that's okay. I'll cede the rest of my time. Thank you.

The Chair: Thank you, Mr. Genuis.

We now go to Mr. Sarai for three minutes.

Mr. Randeep Sarai (Surrey Centre, Lib.): Thank you, Chair.

My question will go to Dr. Gill, but first I want to add that another important thing to tell patients who might be contemplating going abroad is the fact that the organ matches done abroad are probably not done as thoroughly as they are here. They can shove any-

thing into you, and there's no accountability. That should scare people when they're taking an organ.

My question is actually a follow-up to the question from Mr. Genuis in regard to mandatory reporting. I'm wondering what kind of dilemma a doctor would have if he's reporting a patient who has come in with an organ transplant, because on the other hand, it might impose a problem because people may not report medical complications arising out of a transplant abroad, and therefore they may die. They may not take treatment, fearing they're going to go to jail if they go there.

How does a doctor deal with that dilemma?

Dr. Jagbir Gill: I think you've articulated the issues very well. That is the primary concern. When we're looking after the patients in front of us, our primary priority at that moment is to ensure their well-being. Anything that is going to compromise my ability to look after my patient is a concern. That is the crux of it. If faced with that dilemma, unless there is a compelling reason to do so, you're going to err on the side of ensuring what's in the best interest of your patient.

That's typically how I think it would unfold.

Mr. Randeep Sarai: Then how would you think we would be able to catch perpetrators? Really, if they're foreign nationals in a foreign country, we won't be able to get them. The only link to them is usually the Canadian person, who is the patient, unless there is a broker in Canada who's doing it.

How do you foresee the enforceability of such legislation? I'm in favour of the legislation. I'm just trying to figure out how we can enforce it if a doctor is about the only person who's going to know where this organ came from.

Dr. Jagbir Gill: I'll humbly recommend something, acknowledging that this is not my area of expertise, but I think there are mechanisms you could justify from a public health standpoint to report if someone has been in a medical facility when outside of the country. That may potentially be an avenue to identify if someone has engaged in any sort of medical tourism, whether it's a transplant or otherwise. That would be my only consideration, but obviously that's a whole separate ball of wax to consider. That's one possibility.

Mr. Randeep Sarai: Dr. Cohen, would you be able to elaborate? Do you know of any jurisdiction that has done something with respect to reporting organ transplants and enforcing the legislation?

Dr. Miriam Cohen: Mr. Chair, at this point I wouldn't be able to provide any further information on the reporting, other than what I mentioned before and what Dr. Gill has already mentioned.

• (1835)

The Chair: Thank you.

Thank you, MP Sarai.

We now go to Mr. Bergeron for a minute and a half, please.

[Translation]

Mr. Stéphane Bergeron: I will try to be brief, Mr. Chair.

I would like to speak to an issue that Ms. Cohen mentioned a few moments ago.

Section 279.04(3) of the Criminal Code defines exploitation for the purpose of trafficking in persons as including the removal of organs and tissue “by means of deception or the use or threat of force or any other form of coercion [...]”.

In addition, section 279.02(1) makes it a crime for an individual to receive “a financial or other material benefit knowing that it is obtained by or derived directly or indirectly from the commission of an offence”, which is trafficking in persons for the purpose of exploitation.

To be clear, what actions does Bill S-223 wish to prohibit that are not already prohibited under the Criminal Code?

Dr. Miriam Cohen: In fact, Bill S-223 would establish a separate criminal act. Trafficking in human organs would be established as a criminal act in itself, without necessarily being a consequence of human trafficking. What is already a criminal act is trafficking in persons. That is my answer.

As I said, the study I conducted recently outlined the current trend in international law: according to the reports, these crimes can be separated. There was concern expressed about treating trafficking in human organs as part of trafficking in persons, without seeing the distinctions that can exist when trafficking in persons is not present.

This would therefore follow the trend of the convention I mentioned, but also other trends that trafficking in human organs should be treated as a separate and distinct crime from the crime of trafficking in persons for the purpose of removing organs.

Mr. Stéphane Bergeron: Thank you very much indeed, Ms. Cohen.

[*English*]

The Chair: For the last question, we go to Madam McPherson for a minute and a half.

Ms. Heather McPherson: Thank you, Mr. Chair.

Thank you again to our witnesses for their testimony.

Dr. Cohen, I have a quick question for you. I think we all agree that what is in this bill includes some very good things. Can you tell me, from your perspective, what countries have done things better? Also, what could be strengthened, what could be done in subsequent bills and what other things need to be undertaken by the Canadian government legislatively?

Dr. Miriam Cohen: Mr. Chair, one thing that I would say strikes me is what I mentioned very briefly in my opening statement concerning definitions.

What I have done as a study, more on the international framework, is that often there are definitions of what trafficking is, of what is understood by “trafficking of organs”. I mentioned, for example, that it seems from a textual reading that it does not include—and, again, I'm not a physician—tissues or cells, because it says “obtains an organ”. That could be something to be clarified.

Additionally, there are the forms of participation in “carries out, participates in or facilitates the removal” in proposed paragraph 240.1(1)(b). It mentions participation. Is participation included in the other paragraphs as well?

Essentially, these are the two key aspects that I have noticed that other pieces of international instruments include that go to the question of clarification of definition.

Ms. Heather McPherson: Thank you very much.

The Chair: On that note, given that we are out of time, allow me to thank our three witnesses.

Dr. Cohen, Dr. McKay and Dr. Gill, we are very grateful for your expertise and for your time. Again our apologies for some of the challenges we had a couple of days ago. We certainly understand this complex issue a whole lot better thanks to all of the guidance you have provided us today. Thank you.

This meeting now stands adjourned.

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