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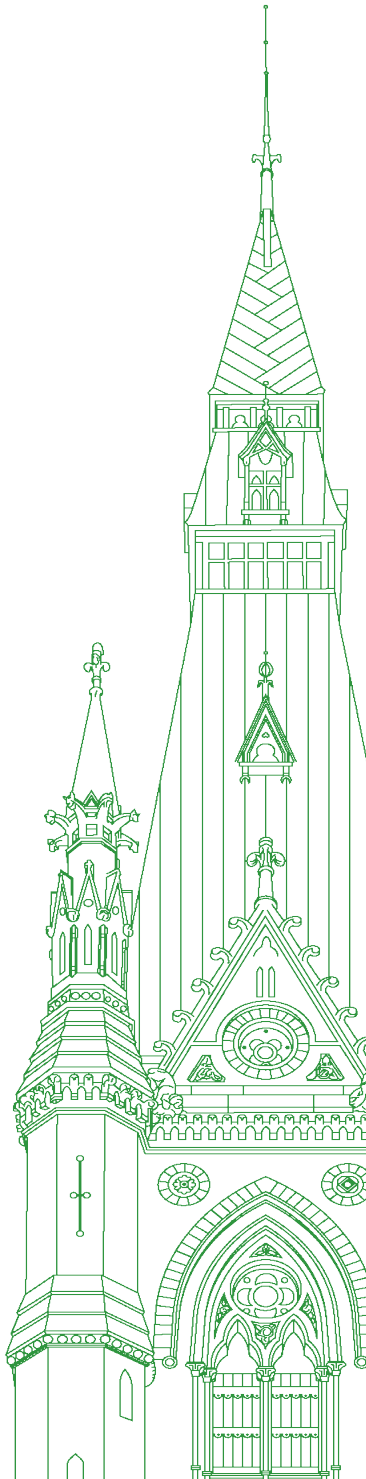

Chair: James Maloney

Standing Committee on Justice and Human Rights

Wednesday, April 29, 2026

● (1635)

[*English*]

The Chair (James Maloney (Etobicoke—Lakeshore, Lib.)): Good afternoon, everybody. I call this meeting to order.

Before I get started, I want to welcome our two new members, Ms. Gladu and Ms. Khalid. Welcome to the justice committee. We're a friendly bunch here. We get along really well. Everybody is always in a good mood, and I don't see that changing any time in the near or distant future. Thank you for joining us.

I also want to say thank you to Mr. Brock, who sat in this chair last week while I was out of town. I appreciate that.

Mr. Fortin, I understand you stepped in at one point as well.

I want to thank you both. I heard no news, so obviously everything ran incredibly smoothly. I'm very grateful.

Welcome to meeting number 27 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to the order of reference of February 2, 2026, the committee is meeting to proceed with the clause-by-clause study of Bill C-16, an act to amend certain acts in relation to criminal and correctional matters regarding child protection, gender-based violence, delays and other measures.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room, and no one is attending remotely on Zoom today.

I have a few comments for the benefit of witnesses and members.

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

As a reminder, all comments should be directed through the chair.

For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the “raise hand” function. The clerk and I will manage the speaking order as best we can. We appreciate your patience in this regard.

Welcome to our witnesses. They are here to answer any technical questions that anyone may have. They are familiar faces to all of us.

From the Department of Justice, we have Matthew Taylor, senior general counsel and director general, criminal law policy section; Nathalie Levman, senior counsel, criminal law policy section; and Leah Burt. It's very nice to see you.

From the Department of National Defence, we have Lieutenant-Colonel Matt MacMillan, director of military justice implementation, office of the judge advocate general, Canadian Armed Forces.

From the Department of Public Safety and Emergency Preparedness, we have Amy Johnson, director general, firearms policy, and Stacey Ault, director, corrections and criminal justice division. They will be switching in and out.

Before we begin clause-by-clause, I would like to provide members of the committee with a few comments on how committees proceed with the clause-by-clause consideration of a bill.

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

In addition, to be properly drafted in the legal sense, amendments must be procedurally admissible. The chair may be called upon to rule amendments inadmissible if they go against the principle of the bill or are beyond the scope of the bill—both of which were adopted by the House when it agreed to the bill at second reading—or if they offend the financial prerogative of the Crown.

During debate on an amendment, members are permitted to move subamendments. Only one subamendment may be considered at a time, and that subamendment cannot be amended.

Once every clause has been voted on, the committee will vote on the title and the bill itself. An order to reprint the bill may be required if amendments are adopted so that the House has a proper copy for use at report stage.

Thank you to all members. I look forward to a productive meeting this evening as we go through the clause-by-clause of Bill C-16.

We will start at the beginning.

Pursuant to Standing Order 75(1), consideration of clause 1, the short title, is postponed.

(On clause 2)

The Chair: NDP-1 is deemed moved pursuant to the routine motion adopted by the committee on June 17, 2025.

Ms. Gazan, technically, I think I need consent to have you speak.

● (1640)

Elizabeth May (Saanich—Gulf Islands, GP): No, you don't, actually, Mr. Chair.

If I may, I have a point of order.

The Chair: You do too.

Elizabeth May: No, I don't, Mr. Chair.

I want to explain the terms on which Ms. Gazan and I are here, because it seems that other members may be unfamiliar with them. I'll ask for your consent to do it now, or I'll do it when my first amendment comes up. It's up to you.

The Chair: I've just asked the room for consent from the voting members of the committee for Ms. Gazan to speak. I have it, so I'm going to let her speak.

Go ahead, Ms. Gazan.

Leah Gazan (Winnipeg Centre, NDP): Thank you so much, Chair.

This amendment was brought forward by NAWL. It is about ensuring that survivors of intimate partner violence receive legal supports and protection while testifying against an abuser and ensuring that they are not revictimized and denied their right to speak up against violence and injustice.

This amendment would extend protections for women experiencing violence and abuse, including testimonial aids and prohibitions on cross-examination, ensuring these are in place for all offences committed against an intimate partner. What matters for vital protections like these is the context of domestic violence, not the type of offence committed.

This is a suggestion supported by leading women's organizations, and I urge my colleagues to vote in favour of it to ensure victims' rights are upheld in this bill.

The Chair: Thank you.

Are there any other interventions on this?

Shall NDP-1 carry?

(Amendment negatived [*See Minutes of Proceedings*])

The Chair: Now we'll go to G-1.

Ms. Lattanzio.

Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.): This is a technical amendment. It's necessary because we are broadening the scope of offences to which testimonial aids and no contact orders may be ordered. This motion proposes an amendment to the interpretive provision in clause 2, which would be required if motions to amend clauses 38 and 40—testimonial aids—and clause 59—no contact orders—are passed. This would remove the testimonial aids provision listed in proposed paragraphs 3.01(2)(c), (d) and (e).

For those reasons, I move this amendment.

The Chair: Thank you, Ms. Lattanzio.

Mr. Lawton.

Andrew Lawton (Elgin—St. Thomas—London South, CPC): If I may, I have a question for the officials on this.

With the scope of it, would this exclude the use of testimonial aids in intimate partner violence cases?

Nathalie Levman (Senior Counsel, Criminal Law Policy Section, Department of Justice): It would include that, but it would make them apply to all offences against intimate partners.

Andrew Lawton: Thank you.

The Chair: Are there any other comments?

Shall G-1 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: We're moving on to PV-1.

Elizabeth May: Mr. Chair—

The Chair: Just bear with me.

● (1645)

Elizabeth May: I'm sorry. I'd like to remind the chair—

The Chair: I have to read something procedurally, if you'd just bear with me.

Elizabeth May: Thank you, Mr. Chair.

The Chair: Thank you.

PV-1 is deemed moved pursuant to the routine motion adopted by the committee on June 17. Also, the amendment to PV-4 extends the concept of coercive or controlling conduct to apply to a relative in addition to an intimate partner. The committee might want to deal with PV-4 before dealing with PV-1, PV-2 and PV-3.

Ms. May.

Elizabeth May: Mr. Chair, you know that personally I show you grace and respect, but the motion of June 17 was not routine. I'd like to put on the record that if it were not for the committee's choosing to pass that motion of its own volition, Ms. Gazan and I would have, as members of parties that are not “recognized”, the right to bring forward substantive amendments at report stage. This motion was a device to avoid our rights, initially instigated by the Prime Minister's Office when Stephen Harper was in power, and it has since been carried into every committee.

As a result, we are more or less required, if we want to put forward amendments, to come to committee. It's not our choice. It's rather coercive, but the motion has been carried, and that's why I object to the notion that Ms. Gazan needed anyone's permission to speak.

We are here because the motion that was carried on June 17 in this committee says that if we want to present an amendment, this is the fashion in which we must do it. Our motions are deemed moved. We are, under the motion, permitted to speak to our amendments—

The Chair: I'm going to interrupt you, in the interests of time.

We are allowing you to speak—

Elizabeth May: You don't have a choice. That's your motion. It carried.

The Chair: There's no issue, Ms. May. Why don't we proceed to the amendments? We can then save ourselves a lot of time.

Elizabeth May: Thank you, Mr. Chair.

I go to a lot of trouble to prepare amendments for committees, and I just want it on the record that this is not my choice. I'd have had more rights if you hadn't passed the motion.

I'll now move to my amendment.

As the committee knows, many representatives from groups that represent seniors, the elders of this country—Dementia Justice Canada, Elder Abuse Prevention Ontario, the Canadian Network for the Prevention of Elder Abuse and others—have seen in this bill, Bill C-16, which I support because it is important to end coercive control over intimate partners.... There's also an issue of coercive control over seniors who are relatives. In that context, all of my amendments speak to the same issue: extending the prevention of coercive control over intimate partners to include, throughout the legislation, those who are seniors, those who are family members and those who experience coercive control through other methods.

PV-1 is very simple. This is the simplest style of motion. You're right that PV-4 is longer and more complete in its attempt. It is to add “or relative” after “intimate partner”. As you see, it would replace line 15 on page 2.

The Chair: Thank you, Ms. May.

Mr. Housefather.

Anthony Housefather (Mount Royal, Lib.): Thank you very much.

I want to thank my dear friend from the Green Party for her amendment. I also listened to witnesses with a great deal of sympathy, particularly those representing seniors who came to the committee and talked about the vulnerabilities of seniors to other members of their family and others who take advantage of them. However, we also heard from police that they need time to get their hands around and get a handle on the type of intimate partner violence that the bill was originally constructed for.

What amendment G-35 later in the package does with respect to adding to the concept of coercive control is to say that in five years there will be a review. One of the things that obligatorily must happen is a review of broadening the concept of coercive control to others who indeed might be impacted, such as family members. Given that there's a two-year coming-into-force date for the provisions on coercive control, precisely because people need to be trained and need to have the opportunity for police to learn how to deal with those provisions, I think we're better off adding a second round.

After we've had a few years to deal with intimate partner coercive control, we will get a handle on how to draft coercive control for other types of people. We know that this has happened in other jurisdictions, such as the state of Victoria in Australia and Ireland. People have started with one and then moved on to the other.

I appreciate very much my colleague's amendment. I think she'll see G-35 as at least a step forward in making sure this concept is included in the bill.

The Chair: Thank you.

Ms. Khalid.

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

Really quickly, I want to echo the voice of Mr. Housefather. I've been working on this issue since 2018. We have heard from communities that it needs to be nuanced. When we're talking about coercive control versus one group of people and then another and another, I think our laws need to be a little more nuanced. Just adding that to this legislation will not do justice to what Ms. May is trying to achieve.

I can't support this amendment.

● (1650)

The Chair: Thank you.

Ms. Gazan.

Leah Gazan: I have a question on that. We know that family violence impacts all family members—for example, children. Sometimes children are used in coercive control to control a partner. I know that we're talking about seniors, but I'm wondering how you can protect a spouse who's experiencing intimate partner violence if you don't look at the whole family and how it affects the partner—for example, gaslighting kids in custody battles.

The Chair: Ms. Khalid.

Iqra Khalid: I think there's a difference between being a victim and having support around that victimhood as opposed to the context of what you're experiencing and who is part of that experience. What this bill is doing is providing support for the victims specifically, and then leveraging who can provide experience for outlining what the individual Criminal Code violations are. There needs to be a distinction between the two.

That's why I think there needs to be a little more thought and perhaps a broader consultation around who else can be part of the coercive control family, if you will.

The Chair: Shall PV-1 carry?

(Amendment negatived [*See Minutes of Proceedings*])

(Clause 2 as amended agreed to)

(Clause 3 agreed to)

The Chair: We're on new clause 3.1, which is G-2.

Ms. Lattanzio.

Patricia Lattanzio: G-2 would add more clarity with a new clause in Bill C-16. It would clarify that non-disclosure agreements may not prevent or restrict a person from discussing information about the commission of an offence to a police officer.

The Chair: Is there anybody else? No.

Shall G-2 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: The next proposed amendment is CPC-1, which I have reviewed. It's out of scope. It purports to amend something that is not part of what we are doing in this bill. That's the bottom line. I can read you the ruling if you want.

Larry Brock (Brantford—Brant South—Six Nations, CPC): Can we make submissions on that?

The Chair: I'd be happy to hear from you, Mr. Brock.

Larry Brock: Thank you, Chair, for telegraphing your intent.

I take exception to what I anticipate your ruling will be, because of what we heard from the Minister of Justice on at least one occasion, and also when he attended the Standing Committee on the Status of Women. I had the opportunity of questioning him on both occasions with respect to why the government chose not to reinstate all the mandatory minimum penalties that were removed in Bill C-5.

I said that with a view to being cognizant of the minister's approach in Bill C-16 of providing the safety valve. He has essentially indicated, on numerous occasions inside and outside the House, that the intent was to allow all mandatory minimum penalty offences that had been ruled unconstitutional by various courts, including the Supreme Court of Canada, to be resurrected. The intent was to reinstate mandatory minimum penalties and to allow trial judges to determine whether or not they can deviate from a mandatory minimum penalty if there's a finding that the application of a mandatory minimum penalty would constitute cruel and unusual punishment.

If the government was prepared to bring back mandatory minimum penalties that had been ruled unconstitutional, my question was—and I did not receive a cogent, proper answer to this point from the minister on two occasions—why did he specifically exclude Bill C-5 offences?

I also brought to his attention—and I bring it to this committee's attention—that literally within 30 days after the passage of Bill C-5, the Supreme Court of Canada ruled on two gun offences in the Hills and Hilbach decisions, going back to January 27, 2023. This was after Bill C-5 received royal assent.

In the Hills decision, the Supreme Court held that the mandatory minimum penalty of four years for intentionally discharging a firearm violated section 12 of the charter. In Hilbach, in a 7-2 judgment, the court ruled that the four- and five-year mandatory minimum penalties for robbery with a firearm and robbery with a restricted or prohibited firearm did not violate section 12 of the charter, but it was moot, given the passage of Bill C-5. I brought that issue and that particular case to the House and to the attention of the then justice minister, David Lametti, who completely disagreed with me and in sheer arrogance told me to reread the decision.

Well, I have the decision, and I've reread it numerous times. The Supreme Court of Canada upheld a mandatory minimum penalty that the government chose to include in Bill C-5. The language surrounding Bill C-5 during the debate was that these were all offences that were routinely ruled unconstitutional by various courts.

The bill was also designed to address the overincarceration of marginalized members of Canadian society, including Black Canadians, indigenous Canadians and indigenous youth, given the overincarceration rate of both of those classes of individuals. I have been tracking the incarceration rate of those classes of individuals since the royal assent of Bill C-5. Bill C-5 has been an abject failure, because the incarceration rate has not decreased. If anything, it has increased.

● (1655)

I don't view this as being completely out of scope, Mr. Chair, with all due respect. If the government is prepared to resurrect mandatory minimum penalties that were ruled unconstitutional, and if they telegraphed that type of language through the creation of Bill C-5, it is completely relevant to this discussion that those offences—all six Controlled Drugs and Substances Act offences and all 14 offences under the Criminal Code of Canada—be reintroduced for consideration by a particular sentencing judge, in terms of whether or not a safety valve is appropriate in those circumstances.

The Chair: Thank you, Mr. Brock.

I'm now going to give my ruling.

When I was a young lawyer, I once appeared before a judge. She dismissed my motion. I said, “Your Honour, I usually like to argue my case before I lose it.” That's why I wanted to hear from you, which I think is fair. Now I'm going to explain why I'm ruling this out of scope. This will help, because it's not the last time we'll encounter this issue today.

Bill C-16 amends the Criminal Code to create new offences and expand existing ones, most notably to criminalize coercive and controlling conduct, strengthen sexual and child protection offences, reclassify certain killings as first-degree murder, broaden evidentiary and victim protection rules for those offences, and reform sentencing, delay and restorative justice frameworks. The amendment seeks to amend subsection 85(3) of the Criminal Code.

House of Commons Procedure and Practice, fourth edition, states in section 16.75:

> an amendment is generally inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent act, unless the latter is specifically amended by a clause of the bill.

Subsection 85(3) of the act is not being amended by Bill C-16. Furthermore, the amendment seeks to create a new offence for offences that are not directly connected to the scope of this bill. It is therefore my opinion that the amendment is inadmissible.

That is my ruling.

● (1700)

Larry Brock: I challenge it.

The Chair: You're free to challenge it.

Mr. Clerk.

The Clerk of the Committee (Jean-François Lafleur): Thank you, Mr. Chair.

The question is, shall the chair's ruling be sustained?

(Ruling of the chair sustained: yeas 6; nays 4 [*See Minutes of Proceedings*])

The Chair: Now we'll move to new CPC-2.

I've also reviewed and considered this. I am ruling that it is out of scope as well, for—

Roman Baber (York Centre, CPC): May I ask for clarification from the officials?

The Chair: Not until I'm finished speaking, Mr. Baber....

For reasons similar—if not identical—to the ones in the ruling I just made, I am ruling that CPC-2 is out of scope.

Mr. Baber, I will hear from you, but I don't want to hear arguments on appeal, because I'm ruling right now.

Roman Baber: I'd like to pose a question to our officials.

The Chair: Hold on.

Is the question about my ruling? If it is, I'm not allowing it, because—

Roman Baber: Well—

The Chair: —the ruling has been made. You have the right to challenge it.

Roman Baber: Listen, we're—

The Chair: No. It's a yes-or-no question, Mr. Baber.

Is your question to the officials about the ruling I just made, yes or no?

Roman Baber: It may be interpreted as related. I was about to bring—

The Chair: That's a yes. I'm not going to allow the question.

Roman Baber: —that clarification up before you made your ruling.

The Chair: I made my ruling, Mr. Baber. Your procedural rights are these: You can challenge my ruling, or we can move on. It's entirely up to you.

Roman Baber: Mr. Chair, I want to seek that clarification. I'd like to, genuinely and in good faith, seek from the officials.... Before you made your ruling—

The Chair: I know exactly what—

Roman Baber: I have a—

The Chair: I have already made my ruling, so it's too late. Your only option is to challenge my ruling.

Do you wish to challenge my ruling, yes or no?

Roman Baber: Yes.

The Chair: Okay.

Mr. Clerk.

The Clerk: The question is, shall the chair's ruling be sustained?

(Ruling of the chair sustained [*See Minutes of Proceedings*])

The Chair: This takes us to CPC-3. I'm afraid I'm also ruling this out of scope for reasons identical to the ones in the two previous rulings.

Andrew Lawton: I have a point of order. I understand where you're going with this, Chair.

Because it is very germane to this, I want to refer to what the minister himself said regarding the intent of Bill C-16.

He said:

> ...this bill also takes significant steps to restore mandatory minimum penalties for a wide variety of crimes where a mandatory minimum penalty either has been struck down or maintains its place within the Criminal Code today but carries with it constitutional vulnerability as a result of the treatment by the court of mandatory minimums....

In keeping with the intent of Bill C-16, as stated by the minister, this is entirely within scope, because it seeks to preserve mandatory minimums in a way that is constitutionally valid.

The Chair: Rulings, by their nature, are required, because there are differing opinions on whether it's admissible or not. I appreciate your comments and I appreciate that you were referring to the comments of the minister, but it doesn't change my ruling.

Roman Baber: Mr. Chair—

Larry Brock: [*Technical difficulty—Editor*] disagree with the Attorney General of Canada.

The Chair: Mr. Baber.

Roman Baber: Yes. Perhaps—

The Chair: Are you challenging my ruling?

Roman Baber: Wait a minute. I don't want to challenge your ruling.

Larry Brock: Not on that statement, we don't.

The Chair: All right, people—

Roman Baber: I have a question of privilege now.

The Chair: Mr. Baber, what's your question of privilege?

● (1705)

Roman Baber: I am a member of the justice committee, studying a bill. I have a genuine question for the officials on criminal law before we proceed. Will you not allow me to pose my question?

The Chair: No.

Roman Baber: Thank you.

The Chair: Okay.

We're moving on to CPC-4.

Patricia Lattanzio: CPC-3 is out of order.

The Chair: CPC-3 is out of order, yes.

Patricia Lattanzio: It's out of order. Okay.

Andrew Lawton: I challenge that.

The Chair: You're challenging it.

Mr. Clerk.

Roman Baber: If I may, I've already heard your ruling, but I have not been able to make any submissions. I'm not asking for submissions. I just want to understand clarifications.

The Chair: I'm not asking for submissions either, just so we're clear.

Roman Baber: Okay.

The Clerk: Shall the chair's ruling be sustained?

(Ruling of the chair sustained: yeas 6; nays 5)

The Chair: The ruling that CPC-3 is out of scope is sustained.

We're now moving on to CPC-4, which I am also ruling out of scope for the same reasons as the previous proposed amendments.

Roman Baber: May I raise a point of clarification?

The Chair: You may, Mr. Baber.

Roman Baber: Thank you.

I'd like the officials—

The Chair: No. Raise it with me. Are you asking the officials?

Roman Baber: I want them to clarify something about the legislation.

The Chair: Is it to do with the ruling and whether it is in scope or not?

Roman Baber: Maybe not. I don't know.

The Chair: You're the only one who knows the answer to that question, Mr. Baber.

Roman Baber: I cannot—

The Chair: Perhaps you can enlighten us.

Roman Baber: I don't think any of this is funny.

The Chair: There's nothing funny about any of this.

Roman Baber: Nothing is funny about this. I'm seeking clarification from the officials.

The Chair: Mr. Baber, nothing is funny about any of this.

I asked you a very simple question and you gave me a vague answer, so I'm asking for clarification. You said it might be. You're the only one who has that information.

Roman Baber: It depends on the answer.

The Chair: No, it doesn't work that way.

Do you have a submission to make on my ruling? I'll give you that much.

Roman Baber: Yes. I appreciate that. My submission would involve a question for the officials.

The Chair: No. The ruling has already been made, Mr. Baber.

Roman Baber: You have not given me an opportunity to speak or clarify in advance of your ruling. You've heard from Mr. Brock—

The Chair: I said at the beginning, on the first one, that we're going to be doing this more than once, because I've gone through these proposed amendments and—

Roman Baber: Maybe I—

The Chair: —the rulings are all for the same reasons.

In deference to Mr. Brock and your entire team, I thought it would be appropriate to hear from him. I'm not going to sit here and listen to arguments over and over again on the same issue.

The ruling has been made. If you want to challenge the ruling, you're entitled to do so.

Okay. CPC-4 is out of scope.

Larry Brock: I challenge that.

The Chair: You're challenging it. Okay.

Larry Brock: Yes, I challenge the ruling.

The Chair: We have a challenge.

(Ruling of the chair sustained: yeas 6; nays 5)

The Chair: CPC-5 is also ruled out of scope for reasons that I already provided earlier.

Larry Brock: I challenge the ruling.

You know, it's really interesting how the tone of this justice committee has changed within two days with a majority. It's just ramming through this piece of legislation.

The Chair: It's a yes-or-no vote, Mr. Brock.

Larry Brock: The answer is absolutely no.

(Ruling of the chair sustained: yeas 6; nays 5)

The Chair: We have a few more of these.

I'm also ruling CPC-6 out of order for the same reason, that it is out of scope.

Larry Brock: I challenge the ruling.

The Chair: Thank you.

(Ruling of the chair sustained: yeas 6; nays 5)

● (1710)

The Chair: I'm also ruling CPC-7 out of scope.

Larry Brock: I challenge the ruling.

The Chair: Go ahead, Mr. Clerk.

(Ruling of the chair sustained: yeas 6; nays 5)

The Chair: CPC-8 is also out of scope. It's identical to CPC-6.

Larry Brock: I challenge that, Mr. Chair.

The Chair: Mr. Lawton.

Andrew Lawton: I'd like to comment on this.

I cited earlier the comments from the minister on this. May I ask whether you considered those in making your decision?

What's happening now is that you are making rulings that.... Our attempt is to do what the minister claims this bill is supposed to do, which is restore mandatory minimums to the Criminal Code. You're making that impossible by not even allowing debate or a vote on these. It would be helpful to know what you relied on in reaching this series of out-of-scope declarations.

The Chair: I read the amendment. I read the rules. I considered all information that I consider relevant, including listening to you and Mr. Brock today, Mr. Lawton.

Larry Brock: How about the minister? Did you rely upon the minister?

The Chair: I think that's encompassed in Mr. Lawton's comments, but thank you.

Larry Brock: Is that a yes or a no, Mr. Chair?

The Chair: I've made my ruling, so—

Larry Brock: Mr. Chair, did you take into consideration the Minister of Justice's comments?

The Chair: I just answered that question, Mr. Brock, in response to Mr. Lawton's question, so yes.

CPC-8 can't be moved at all because it's identical to CPC-6. That takes us to CPC-9, which is identical to CPC-5, which was also ruled out of scope.

(On clause 4)

The Chair: We're now on PV-2.

Ms. May.

Elizabeth May: Thank you, Mr. Chair. I hope this lightens the mood and makes your heart glad. If—

Andrew Lawton: I have a point of order.

I feel like we breezed past clause 3.1.

The Chair: No, we voted on clause 3. All of these proposed amendments that we just went through were proposing a new clause. Because they were ruled out of scope—

Andrew Lawton: Was G-2 not adopted as part of clause 3.1? Did G-2 not establish the creation of clause 3.1?

The Chair: The amendment itself created the new clause. We don't need to vote on it again, but thank you.

Ms. May, you had the floor.

Elizabeth May: I'm in an awkward position here, so I'm going to look to you for guidance.

Now that Mr. Housefather has again drawn my attention to G-35, I've been considering it before showing up here today. I am encouraged to see the government effort, as Mr. Housefather has put it, to study it and consider. I know I have a lot of amendments, 11 amendments, to one point only. Under the terms of the motion passed by this committee—not to belabour the point—I have no rights here to suggest that I'd like to withdraw my amendments, knowing that G-35 may actually solve the problem and mean that the voices of so many wonderful groups, like the seniors organizations, the Canadian Network for the Prevention of Elder Abuse and so on, have been heard. If I had the right, I would now say that I would like to withdraw my amendments to save the committee time, because I can confidently expect—I think, but I don't assume—that all my amendments will be defeated. There's no point in taking the committee's time for that, now that I'm particularly encouraged by G-35.

Mr. Chair, they are deemed moved. I'm not allowed to do anything about them at this stage.

The Chair: I believe that if I get unanimous consent from the voting members of the committee, it can be withdrawn.

● (1715)

Elizabeth May: That's correct. I request that the committee consider withdrawing all of my amendments. They all speak to the same point.

The Chair: Is everybody clear on that? Do I have unanimous consent from the committee to have all of the Green Party-proposed amendments withdrawn?

Some hon. members: Agreed.

(Amendments withdrawn)

The Chair: Thank you, Ms. May.

Shall clauses 4 and 5 carry?

(Clauses 4 and 5 agreed to)

(On clause 6)

The Chair: We're into clause 6.

We'll go to G-3, which is Ms. Lattanzio.

Patricia Lattanzio: Ms. Dhillon will speak to this.

Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): It's to amend the bill by replacing line 11 on page 3 with the following:

"sexual organs" includes genital organs

The Chair: Are there any comments on G-3?

Shall G-3 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

(Clause 6 as amended agreed to)

(Clauses 7 to 11 agreed to)

(On clause 12)

The Chair: We're on clause 12, which is NDP-2.

Ms. Gazan, I believe that's yours.

Leah Gazan: Can I speak to this, Chair?

The Chair: Yes, please.

Leah Gazan: This amendment relates to sexually explicit deepfake images, which is something that's of major concern to women and gender-diverse people across Canada. When sexual predators generate sexually explicit images of recognizable individuals, that is an act of violence. When someone creates a sexualized image of you without your consent where the intent of sexualization is to humiliate and silence you, that is a violation of your safety.

As an example of where this bill falls short, we've seen recently that X/Twitter has encouraged users to produce sexualized images using its Grok AI tool, including realistic human images resembling children and underaged girls.

As experts have told us, the legislation as it is currently drafted would not capture these offences, as it does not include the words "creation of images", only their distribution. Other countries have been tougher on big tech executives like Elon Musk, and have banned this platform. So far, even in this legislation, the government has failed to act to protect the safety of women and children.

I'm urging the government and all members of this committee to join me in improving this legislation by refusing to be soft on tech giants like Elon Musk and prohibiting the creation of sexually explicit deepfakes that violate the safety and well-being of women and gender-diverse people.

This was also echoed by Children First Canada, even in the new recommendations to prohibit children and young teens from going on social media. Although they're not opposed to having an age restriction, it does not deal with the root of the problem, which is holding big media and tech giants responsible for allowing these abuses to occur.

Thank you.

The Chair: Thank you.

Does anyone else want to comment?

Go ahead, Mr. Fortin.

[*Translation*]

Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Thank you, Mr. Chair.

I think our NDP colleague's concern is valid. In my opinion, the problem is that production as such is not defined in Bill C-16 and that could open the door to a distorted interpretation.

I am not the one who decides, but I think it is appropriate for the Minister of Justice to look into the matter so that, in a subsequent review, a definition of production can be introduced.

I'm sharing my concern with you, but, as I said, I'm going to have to vote against the amendment at this stage. In addition, it comes up in a number of other places in the NDP amendments and, unfortunately, the problem is the same: Production is not defined. It would therefore be problematic to support it.

Thank you.

[*English*]

The Chair: Thanks, Mr. Fortin.

Is there anybody else?

We have Mr. Housefather and then Mr. Lawton.

● (1720)

Anthony Housefather: Thank you, Mr. Chair.

[*Translation*]

I just want to say that I agree with Mr. Fortin. The Supreme Court has already created an exception for personal use, and it has been used in a number of cases. It seems to me that there would be a charter issue, because the Supreme Court has already defined a personal use exception, which is not included in the proposed wording. I completely agree that we should look at that in the future.

[*English*]

The Chair: Thanks.

Go ahead, Mr. Lawton.

Andrew Lawton: I was hoping to get some clarification from the officials on that point as well.

Again, I understand that we are—especially in this section of the bill—dealing with reprehensible content. There's no doubt about that, but the law as it stands does distinguish between publication and creation that stays on someone's computer and is never shared with anyone.

That is a fairly clear distinction in the law right now, isn't it? Anything you can add about why that is the case would be helpful.

Nathalie Levman: Certainly. Thank you for the question.

I'm sure you're all familiar with the Supreme Court of Canada's 2001 Sharpe decision. In that decision, they held that making and possessing fictional child sexual abuse and exploitation material doesn't cause sufficient harm to merit criminalization. In order to preserve its constitutionality, they read in a private use exception, and basically that exception exculpates a person who possesses or makes fictional child sexual abuse and exploitation material and keeps that material solely for their own use, unless there's evidence that the accused made the material with intent to distribute it.

I'd like to stress that officials are seized of this matter and are working on it, including with our provincial and territorial partners, who enforce the law and can help us gather the evidence that we need to justify a full ban.

Thank you very much.

Andrew Lawton: Ms. Levman, just to confirm, if someone makes it with the intent to distribute but is arrested under some circumstances before that distribution has happened, is that already captured by the law?

Nathalie Levman: You would have to prove it through the evidence. You would have to prove the person—

Andrew Lawton: There is already an offence there, assuming it's proved.

Nathalie Levman: The private use exception applies only to somebody who makes it and keeps it for their own use. The flip side of it is that if that person intended to distribute it, they don't have access to the private use exception. That makes sense.

Andrew Lawton: Thank you.

The Chair: Thanks, Mr. Lawton.

Is there anybody else? No?

Leah Gazan: I have a question.

The Chair: Sure. Go ahead, Ms. Gazan.

Leah Gazan: We're talking about child sexual abuse. What happens, then, if it's an adult and somebody takes a picture for their own personal use? What sort of protections do they get? I bring up that question because that's really what's being brought up by women's organizations. It's both. It's the distribution, but also the use of deepfakes for any purposes without permission by the victim.

I really do hope that there's swift action on this, because that's really the root of the problem. The people who are doing it are getting off scot-free. We are lessening the restraints on big tech giants that are being totally irresponsible around the dissemination of violence against women.

I want to leave it there. I'm not here often, so I'm going to use this time to defend....

Okay. Thanks.

The Chair: Shall NDP-2 carry?

(Amendment negatived)

(Clauses 12 and 13 agreed to)

(On clause 14)

The Chair: We're on CPC-10.

Mr. Lawton.

Andrew Lawton: This is an amendment that would replace line 30 on page 6 in clause 14 with the following:

> [rea]sonably be expected to be nude or nearly nude, to expose their sexual

The main change is the addition of “nearly nude” when we're talking about this sort of material. This was something that came out of the witness testimony we heard. As I shared when this came up, it actually came, not out of a personal experience that I encountered—no one would want to see that—but out of something that a friend of mine encountered on social media. With the advancement of technology, we are seeing these very sophisticated and in some cases quite traumatizing assaults taking place. This simply ensures that a small technicality is not excluding something that I think this law intends to capture. That's where that came from. I believe it was actually the NAWL that suggested it originally, and some other stakeholders we consulted were very supportive of this.

● (1725)

The Chair: Thank you, Mr. Lawton.

Ms. Lattanzio.

Patricia Lattanzio: I just want to say that I agree with Mr. Lawton, as it clarifies the scope of the offence, and it aligns with evolving case law and responds to the needs of the victims. I agree with you.

The Chair: Mr. Fortin.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Chair.

I have the same problem with this amendment as I do with the NDP one: It doesn't define production.

We in the Bloc Québécois have read the amendment proposed by Mr. Lawton. I understand the spirit of the amendment and I share our colleague's concern. However, the term “nearly nude” is a bit problematic. It's not defined. As it happens, anyone who goes to a beach meets people who are nearly nude, people in bathing suits. You know as well as I do that bathing suits are getting smaller and smaller. It is easier and easier to think that people are nearly nude. What are we really talking about when we use the term “nearly nude”? I don't think the idea is to stop people from wearing bathing suits. It's problematic.

The amendment is too vague and opens the door too much for us to support it, although I understand the concerns of our colleague Mr. Lawton.

[*English*]

The Chair: Thank you, Mr. Fortin.

Shall CPC-10 carry?

(Amendment agreed to on division)

(Clause 14 as amended agreed to)

(On clause 15)

The Chair: This takes us to NDP-3.

Ms. Gazan, it's back to you.

Leah Gazan: It follows the same suggestion as my previous amendment, and it was also submitted by LEAF.

We want to reiterate the importance of ensuring that this legislation does not remain soft on big tech giants that are profiting from the endangerment and sexual humiliation of women and gender-diverse people, and to include the creation of sexual deepfakes in this offence. We're not really dealing with the problem. We're not dealing with the actual source and the companies that are disseminating this information or these photographs. They're let totally off the hook, and there is concern within women's organizations that the root of it is not being dealt with.

I just reiterate what I said before.

The Chair: Thank you very much.

Shall NDP-3 carry?

(Amendment negatived)

The Chair: Next is CPC-11.

Mr. Lawton.

Andrew Lawton: I have to give partial credit for the work on this one to my colleague, Michelle Rempel Garner, who tackled a lot of the issues long before the government did in her Bill C-216. This was also something that came about through some testimony that we heard from witnesses.

It adds an escalating penalty for the material at issue here. If we're talking about material that depicts sexual assault, it increases the maximum penalty. It's putting in some graduated sentencing, which is making this very serious, as it deserves to be.

The Chair: Thank you, Mr. Lawton.

Ms. Lattanzio? No. Is there anybody else?

Shall CPC-11 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: We are on NDP-4.

I'll give you the floor in a moment, Ms. Gazan.

If NDP-4 is adopted, CPC-12 cannot be moved, due to a line conflict. Just bear that in mind.

Ms. Gazan.

Leah Gazan: Thank you.

Again, similar to my last amendments, this amendment concerns the urgent problem of sexually explicit deepfake images. Legal experts have shared with us that the bill as currently drafted does not capture all offences that are taking place on such online platforms as X. This was submitted by NAWL. It includes the depiction of women and children in contexts where they are not fully nude but are clearly in sexualized positions, including being depicted in sexualized or revealing clothing, such as transparent bathing suits, or in humiliating conditions, such as being covered in blood or bruises.

These acts of violence are meant to humiliate the images they depict. We cannot leave open loopholes in this legislation that perpetrators can exploit to evade justice. I urge my colleagues to vote in favour of this amendment to close this loophole.

In good faith, Mr. Chair, I don't see any sort of shift happening in terms of protecting victims of this crime unless we are dealing with the companies that are allowing the dissemination of this material. This was submitted by NAWL.

Thank you, Mr. Chair.

● (1730)

The Chair: Thank you, Ms. Gazan.

Andrew Lawton: I have a point of order.

If I could, Mr. Chair, would you agree that there is a line conflict between NDP-4 and CPC-12? The reason I say that—

The Chair: I don't want to interrupt, but I did say at the start that there was a line conflict.

Andrew Lawton: Oh, did you? I was already looking ahead, then. I apologize.

The Chair: We're on the same page here.

Andrew Lawton: I'll speak to it, then.

I have a great deal of appreciation for what Ms. Gazan has tried to do here, but I'm inclined to vote no, because I feel that CPC-12, which I will be moving right after, achieves the same things but actually goes a bit further. Specifically, it captures artificial intelligence. That's the only reason I'm inclined to say no to NDP-4.

If there is an opportunity, or if Ms. Gazan feels that a subamendment on CPC-12 might be necessary...but I think it captures what she's trying to do here and more.

The Chair: Thank you, Mr. Lawton.

Shall NDP-4 carry?

(Amendment negatived [*See Minutes of Proceedings*])

The Chair: That takes us to CPC-12.

Mr. Lawton, I assume that's you.

Andrew Lawton: Yes. Thank you very much.

Very briefly, with CPC-12 we're trying to ensure that we don't end up having to come back to the drawing board because this fails to capture the technologies we're dealing with here. We have to acknowledge the role that artificial intelligence is playing in a lot of the issues we're talking about, including deepfakes and deepnudes, as they're referred to.

My amendment specifically references it here:

> including by means of artificial intelligence software, and that shows an identifiable person who is depicted as nude, as nearly nude, as exposing

It's just making sure that we're fully aware of what we're incorporating. In here, it isn't just photographs; it's also meeting head-on the technological challenges that are being used increasingly to victimize women, girls and all people.

The Chair: Thank you, Mr. Lawton.

Is there anybody else?

Shall CPC-12 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

(Clause 15 as amended agreed to)

(Clause 16 agreed to)

(On clause 17)

The Chair: That takes us to CPC-13.

Mr. Baber.

Roman Baber: I move CPC-13.

First of all, I'll explain very briefly what it does. It essentially adds the notwithstanding language for child pornography possession offences under subsections 163.1(4) and (4.1), therefore shielding them from the application of sections 7 and 12 of the charter. This also applies to Bill C-16's MMPs.

I had a very interesting exchange with the Attorney General a couple of weeks ago. I subsequently learned that the Attorney General discussed with a reporter in the National Post that he had considered this very amendment. He actually considered invoking the notwithstanding clause in response to the Senneville and Naud decision. As we recall, Senneville and Naud's case struck down mandatory minimum sentences for possession and access and, in Naud's case, distribution of child pornography.

I had an intellectual exchange with the Attorney General, in which I put it to him that the reason for section 33, the reason for the notwithstanding clause, was to prevent absurdity. That's how former attorney general Jean Chrétien was able to seal the deal on the charter. The example that Jean Chrétien used was, what happens if the Supreme Court comes back and says that possession of child pornography, God forbid, is now constitutional by virtue of freedom of expression?

That's not what we had in Senneville. We had a similar decision where essentially the court, using a “reasonable hypothetical”, decided that a one-year sentence could be cruel and unusual in the case of Mr. Senneville and Mr. Naud. What's important is that the court did not consider the facts before them to amount to cruel and unusual. The court did not say, “You, Mr. Naud, holding 250 videos of children being raped, should qualify for the mandatory minimum of one year.” What the court did instead was abuse the reasonable hypothetical of two teenagers sending each other a picture, a case that no Crown and no police officer would ever prosecute.

I put it to Attorney General Sean Fraser that, if he's not going to use the notwithstanding clause on this scenario, where we maintain the one-year mandatory minimum sentence for possession of child pornography and distribution or accessing such material, then there will never be a scenario where this government will invoke the notwithstanding clause.

● (1735)

Anthony Housefather: Thank goodness.

Roman Baber: I hear my friend from Montreal saying, “Thank goodness.” I wish he would say, “Thank goodness,” in response to my amendment, which looks to protect these children. I wish he'd say thank goodness that this amendment allows this committee to take a necessary crack at this disgusting industry.

Of course we waive the rights of the accused. Can we for a second waive the rights of the 250 children who were raped in the videos that Naud was holding? The notwithstanding clause was inserted for a reason. I submit that this is the precise reason.

I would now like to go to the officials and seek clarification on something.

Let's take the Supreme Court in Senneville. The Supreme Court strikes down the mandatory minimum penalty. We heard reference to the Attorney General saying that what this bill might do is restore some of those minimums. We heard the member from Winnipeg, the deputy to the government House leader, suggest that Bill C-16 resurrect some of those mandatory minimum penalties. I would like to understand the legal framework from the officials.

Do you understand that the mandatory minimum penalty for accessing or possessing child pornography is now in effect, or has it been struck down by the Supreme Court? What would hypothetically happen if such a case were to be brought to trial next week?

Leah Burt (Counsel, Criminal Law Policy Section, Department of Justice): To answer your first question, the mandatory minimum penalty for accessing and possessing has been struck down. That's its status. Therefore, courts would not be able to apply those mandatory minimum penalties.

If Bill C-16 were to be enacted, it would permit courts to order a penalty below a mandatory minimum penalty because we have the new structured judicial discretion clause. We also have a “for greater certainty” clause that would essentially revive any mandatory minimum penalties that were previously struck down and that are still on the statute books. The result of those amendments would be that those two MMPs would once again be available to courts.

Roman Baber: Ms. Burt, I'm not sure I understood your answer. I understand that there is an attempt by the Liberal government to suggest that giving judges an out to consider every case before them to be cruel and unusual would somehow strengthen mandatory minimum penalties. I get it. I'm not sure that it would necessarily have the courts deviate from reasonable hypotheticals.

Your first answer was that the mandatory minimum penalty for accessing or possessing child pornography has been struck down. Therefore, it no longer applies. Am I correct?

● (1740)

Leah Burt: That's the state of the law now, yes.

Roman Baber: When Attorney General Sean Fraser sat exactly where you're sitting and said that this bill would resurrect those mandatory minimum penalties, he was wrong.

Leah Burt: My understanding would be the same as the minister's. We have a clause that states, for greater certainty, that all mandatory minimum penalties in federal statutes are once again in effect. We also have a new structured judicial discretion clause that would provide that courts can consider whether a mandatory minimum penalty would result in cruel and unusual punishment for the offender before the court, without resorting to reasonable hypotheticals. Therefore, our view is that it would mean those MMPs are once again available.

Roman Baber: I apologize, Ms. Burt, but you said two different things in your answer. If it has been struck down and is no longer applicable, simply because a court would be free to.... Perhaps, for other offences that have not been struck down, you'd be able to do that.

Mr. Taylor, you might have something to say. Clarify it, please.

Matthew Taylor (Senior General Counsel and Director General, Criminal Law Policy Section, Department of Justice): I'll try to build on what Ms. Burt said.

Regarding the MMPs we're talking about, and other MMPs that have been found unconstitutional by the courts but haven't been removed from the Criminal Code and are still on the statute book, those are not enforceable, as Ms. Burt said. With the enactment of Bill C-16, due to the rules of stare decisis, when and if Parliament enacted Bill C-16, there would be material changes in the state of the criminal law. One of those material changes, as Ms. Burt described, is that courts would be able to depart from the imposition of a mandatory minimum penalty where it would result in a grossly disproportionate outcome for the offender before the court.

Roman Baber: I apologize, Mr. Taylor. What you're saying is that the courts may refer, essentially, to the existing MMP, even though, by virtue of stare decisis, it's no longer binding. However, now you're saying that the court will have, potentially, some sort of a plank to look at and say that previously there was an MMP, but it was struck down. They might choose to guide themselves by virtue of the previous MMP, but they're not bound by the MMP. Is that correct?

In other words, before the Senneville decision, the court was bound by the MMP, subject to a charter application that would potentially find the penalty to be cruel and unusual. Are you saying—and please, maybe tell me yes or no—that this bill does not restore the MMP and that it does not make it binding on the court?

Matthew Taylor: It would restore the MMP, because of the rules of stare decisis.

Roman Baber: According to your view, the one-year MMP for accessing or possessing child pornography will be restored if Bill C-16 is passed by Parliament.

Matthew Taylor: That's correct.

Roman Baber: If you are correct, then every single CPC amendment that was brought forward and ruled by the chair as being out of scope would be in order. Those amendments sought to clarify the uncertainty that we're having now.

I'm not sure I agree with you. I think that we're living in a vacuum right now.

Iqra Khalid: On a point of order, Mr. Chair, I'm just wondering about the relevance of what Mr. Baber is talking about, whether it's relevant to exactly the amendment that we're talking about.

The Chair: It's a fair point, Ms. Khalid.

Mr. Baber, you have the answer to your question. You don't like it, so you're pursuing.... This isn't a cross-examination. The witnesses are here to provide technical answers to questions. You're not here to argue with them.

Roman Baber: That's fine. I can have a learned discussion with the officials. I actually think that this is an interesting theoretical. This is a discussion that's going to be had....

I see my Liberal colleagues on this committee are laughing again. Mr. Taylor and I have had—

● (1745)

Anju Dhillon: Nobody's laughing. Stop it.

The Chair: Hold on.

Mr. Baber, don't do that again. You have no idea what's going on at the other side of the table. You're welcome to—

Roman Baber: I can see members laughing.

The Chair: You don't know what they're talking about or what they're doing.

Roman Baber: It's not only that, but we're talking about [*Inaudible—Editor]*

Anju Dhillon: Nobody's laughing.

The Chair: Mr. Baber, stop talking right now, please. Ask your questions. Get your answers. We're not here to have an intellectual debate.

Roman Baber: This is a very important debate.

The Chair: You have your answer. Move on to your next question, please.

Anju Dhillon: Mr. Chair, this needs to stop. It's happened so many times before. It's intolerable to make accusations. We're all sitting here with straight faces. Everybody is off camera, and the person on camera cannot just make things up and report them to committee and the public.

Thank you very much.

Roman Baber: I have a question of privilege. I can say that my—

Anju Dhillon: No. It doesn't fly.

The Chair: It's one person at a time, Mr. Baber.

Ms. Dhillon, are you finished?

Anju Dhillon: Yes.

The Chair: Thank you.

Mr. Baber.

Roman Baber: I am free to continue to speak. I'm free to continue to characterize my friends' behaviour on the other side as laughter. It's basic privilege.

The Chair: This conversation is turning into a ridiculous discussion.

Roman Baber: That's right, so please let me continue.

The Chair: The point is you're characterizing something based on something you said, which is completely out of line. I agree with Ms. Dhillon.

Ask your questions to the witnesses. Let's move on.

Roman Baber: Okay.

Stare decisis means we have to abide by the court above in the previous decision. Here, we would be bound by Senneville.

If we have an arrest next week and a trial on a similar charge, the court would not say that it's bound. If I understand you correctly, the court would not say that it's bound, because of stare decisis. It would say it's instructive for us to avail ourselves of this new reality that Bill C-16 creates.

We might disagree.

I understand the intent of the safety valve. The intent of the safety valve is to say that you no longer need to worry about being subjected to the MMP, because you have a side door. You can escape the MMP using the safety valve. I get it. That in and of itself does not restore the court to being compelled by the section that was previously struck down.

Is that correct, Mr. Taylor?

Matthew Taylor: I'll try it a different way.

To pick up on the examples you just gave, our view is that next week, if a court was seized of a child sexual abuse, exploitation or possession offence, then as you said, Mr. Baber, the MMP would not apply in that case, because the Supreme Court has found it unconstitutional. It is of no force and effect. It remains in the Criminal Code, though. It is on the statute book.

When and if Bill C-16 were to receive royal assent and come into force, the law would change in respect of the way mandatory minimum penalties could be interpreted and applied by the courts.

Ms. Burt talked about the for greater certainty clause. Because the law is different at that point, courts would not be bound by the previous decisions that bound them with respect to MMPs. They would be required to impose the MMPs that were previously unavailable to them because of previous court decisions.

Fundamentally, the escape clause is about sentencing at this point. If the offender was of the view that the mandatory jail sentence was grossly disproportionate—not from a constitutional perspective, but from the escape clause perspective and its application—they would make those submissions at the sentencing stage. It would then be for the prosecutor to make their own submissions and ultimately for the court to decide whether or not that MMP would apply or would not apply.

One final point I might offer is that, as you rightly pointed out, in many of these cases the MMP is not really at issue for the purposes of sentencing for the specific offender. As you pointed out, in the Senneville decision the sentence imposed was in excess of the mandatory minimum penalty. For many of the other MMPs that have been found unconstitutional, as I think you know, they have been found unconstitutional not because of the specific offender before the courts but because of the reasonable hypothetical situations.

● (1750)

Roman Baber: Mr. Taylor, Naud in fact received nine months for possession and access, so that was below the mandatory minimum.

The reason I'm concerned is that the safety valve instructs the court to look at the individual circumstances before the court, whereas the stare decisis striking of the MMP has nothing to do with the individual circumstances but has to do with the entire statute as it is on the books.

I appreciate your optimism, but I think it will take many years of litigation to determine this question.

Iqra Khalid: I have a point of order, Mr. Chair, on relevance.

The Chair: I sensed he was just wrapping up.

Continue, Mr. Baber.

Roman Baber: I'm sorry, but I'm asking questions about the safety valve, which is the key piece of this legislation.

Not only do you have a lot of latitude on relevance, but I'm talking about the safety valve. I'm having a discussion with the official on the safety valve. I don't understand what the problem is.

The Chair: Are you almost finished?

Roman Baber: Yes.

Mr. Taylor, could you perhaps guide us?

We're discussing the safety valve here. Let's say I came to you and said that I wanted to do better. I want to make sure that we don't litigate the question that I'm asking right now for the next 10 years or maybe more.

What would you recommend?

Matthew Taylor: Mr. Baber, is the question whether, if Bill C-16 were to be enacted, there would be debate as to whether the MMPs that were previously found unconstitutional were, in fact, revived?

Is that the concern?

Roman Baber: Yes.

Leah Burt: I can try to answer that.

This may be repeating a bit of what Mr. Taylor has already said. The Supreme Court of Canada has made clear that, where a court issues a declaration that a law is inconsistent with the charter, the law becomes inoperative in the jurisdiction to which the court's order applies. Of course, when it's the Supreme Court of Canada, that means that the MMP becomes inoperative across Canada, unless or until it is amended or repealed by legislation. The declaration of invalidity operates in accordance with the normal rules of stare decisis.

The enactment of a general structural judicial discretion clause is a fundamental legal change that affects the application of the previous judgments declaring mandatory minimums unconstitutional. Because MMPs could no longer apply in circumstances that would violate the charter by virtue of this new clause, the basis for the previous findings of unconstitutionality have been removed.

In other words, the decisions that made the MMP inoperative, decisions like Senneville, would no longer apply. That's how we would see this playing out.

Roman Baber: We have a real opportunity here with my amendment. This is an amendment that the Attorney General himself said he had considered. Effectively, what the Liberal government would be telling all Canadians is the following. If we do not safeguard the mandatory minimum penalty for access and possession of child pornography—a one-year sentence—it might never happen again.

I plead with this committee to take a serious bite out of this industry by making sure the main principle of sentencing is a deterrent, and that is jail time.

Thank you.

The Chair: Thank you, Mr. Baber.

I was going to suspend at some point.

Would anybody object if we did it right now?

Some hon. members: No

The Chair: I didn't think so. I just wanted to make sure.

We'll suspend for a few minutes.

● (1750)

_____(Pause)_____

● (1805)

The Chair: We'll resume.

Next on the list is Ms. Lattanzio.

Patricia Lattanzio: Thank you, Mr. Chair.

I just want to be clear: Offences involving child sexual abuse material are amongst the most serious in the Criminal Code, and those who commit them must face serious consequences. That is why we've addressed this responsibly in Bill C-16.

CPC-13 is not responsible, and let me explain why. The amendment would invoke the notwithstanding clause to bring back mandatory minimum penalties that have already been struck down by the Supreme Court, and this would remove the judicial discretion mechanism proposed in this bill. That is not the right approach. Bill C-16 takes a more durable path by restoring mandatory minimum penalties in a way that is consistent with the charter and aligns with Supreme Court guidance.

The notwithstanding clause does not fix the problem. As you know, there's a term of five years, and it would only delay it. That's all it would do. It is temporary, and it would leave some of the same constitutional vulnerabilities in place.

We should also not create a patchwork by addressing only some offences while others remain subject to different rules. This bill gives us the opportunity to get this right, to protect victims and ensure accountability in a way that will stand up in court.

Yes, Mr. Baber, Bill C-16 does have mandatory minimums.

For those reasons, I will be opposing your amendment.

The Chair: Thank you, Ms. Lattanzio.

Mr. Lawton, go ahead.

Andrew Lawton: I am very pleased to be supporting Mr. Baber's amendment, which not only would reinstate mandatory minimum sentences for heinous offences, including the distribution and possession of child sexual abuse and exploitation material, but would do it in a way that would protect it from being overturned, as it was, so absurdly, by the Supreme Court in the Senneville decision.

Contrary to how members of the Liberal government have tried to frame the notwithstanding clause on criminal justice issues in the past, the notwithstanding clause is a part of the Charter of Rights and Freedoms. Using the notwithstanding clause is, by design, a charter-compliant mechanism, because it is using a tool provided to legislatures, including the federal Parliament, to preserve something that Canadians want and deserve and that victims want. They are, not just in these offences but in a broader set of offences, very strong signals from the government—from Parliament, which is accountable to the people—that there should be, just as we have maximum sentences in law, minimum sentences when something is so heinous.

We need to have a safeguard against an overly lenient sentence. The Senneville decision, by the way, triggered a robust discussion at this committee: My Conservative colleagues and I moved an amendment to denounce, in the strongest possible terms, the idea that even some paltry one-year sentence for these offences could ever be seen as cruel and unusual punishment. The catalyst for the Senneville decision was a pair of cases in which the trial judge went below mandatory minimum sentences, proving that judicial leniency is a problem.

This has come up in the past before. This is not an issue that started with the Senneville decision. I'm actually very glad that even Liberal members of Parliament have recognized this. This is from the debate on Bill C-75 a couple of years back. This is a quote:

> I do not think Canadians look at the decisions that judges have made and think that criminals are getting an adequate punishment for the crime. While not every single crime is identical, and I am not opposed to judges having some leeway, it looks to me that the leeway is so big that, in many cases, we are coming to the minimum sentence instead of something that is more standard.

Now, that was from Liberal member of Parliament Marilyn Gladu. I think she was actually very accurate in denouncing how judicial leeway is sometimes resulting in subpar decisions.

We also had a comment, again from Liberal MP Marilyn Gladu, back in November. The Liberal failure of this was put on full display:

> Then they had Bill C-5, which took away mandatory minimums and put house arrest in place. That made things even worse.

We have recognition, from MPs of multiple parties, that the Liberals have failed to send serious signals and messages through their criminal justice reforms over the past several years. I think, on something like this, we should be able to band together, representatives from all parties, and say that there is no tolerance for the type of leniency that would argue that a sentence of even just one year—which I think even then is too low—is cruel and unusual punishment for someone trafficking in child sexual abuse and exploitation material.

This is a mechanism that Mr. Baber has proposed in his amendment. I think it is a very strong one. It is a very important one. It is in line with what Canadians would expect, which is to not have people who have committed heinous and unthinkable acts sent off with 90-day sentences and nine-month conditional sentences, something that just flies in the face of what truly standing up for victims would look like in the justice system.

● (1810)

The Chair: Thank you, Mr. Lawton.

Mr. Housefather is next.

Anthony Housefather: Thank you, Mr. Chair.

I'm speaking because I almost find it sad that so cavalierly, in the middle of an amendment to a bill, we're throwing in the use of the notwithstanding clause.

This is a clause, I will remind everyone, that has not ever been used by the Parliament of Canada in the 44 years since the Canadian Charter of Rights and Freedoms came into effect.

The Canadian charter is different, Mr. Chair, from other charters. The Canadian charter has section 1. For those listening, it subjects rights to “reasonable limits”. Some rights under the Canadian charter are not impacted by the notwithstanding clause. The notwithstanding clause cannot be used for certain rights in the Canadian charter, and we have not had a catastrophe in 44 years as a result.

There are other rights that are subject to the notwithstanding clause, but they're also subject to reasonable limits that the Parliament of Canada may impose on those rights. It's not like the United States, where if a right is infringed under the Bill of Rights, the court strikes it down.

You have here section 1, which protects those rights. What we would be saying is that we believe a right will be infringed, and we believe we're not doing this in a reasonable way, so we're going to invoke the nuclear option. A responsible legislator will look at a court decision and will determine, as Bill C-16 does, how you can get around the Senneville decision. What do you do to ensure that minimum mandatory penalties are not struck down based on reasonable hypotheticals? This bill formulates a way to avoid the use of the notwithstanding clause.

Mr. Baber referred to a former prime minister, Jean Chrétien. Jean Chrétien was Prime Minister of Canada for almost 10 years. He never proposed to the Parliament of Canada to invoke the notwithstanding clause. Let me refer to another former prime minister, Brian Mulroney. Brian Mulroney said that the charter was not worth the paper it was written on because of the notwithstanding clause. He firmly opposed, throughout the years that he was leader of the Conservative Party and thereafter, ever using the notwithstanding clause, because he understood that you don't override fundamental rights in an unreasonable way.

However, time after time since I've been back on the justice committee.... I don't remember—Ms. Khalid will remember, as we sat on the justice committee for four years—any Conservative member at the justice committee between 2015 and 2019 proposing that we should invoke the notwithstanding clause, at any time. Since I've been here on this committee in the last several months, I've heard over and over again a demand that we use the notwithstanding clause on literally everything—

● (1815)

Andrew Lawton: No, it's just on this.

Anthony Housefather: I heard that you've brought forward....

I'm sorry. I shouldn't be responding, Mr. Chair.

The Conservatives brought forward a motion to say that we should invoke the notwithstanding clause on Senneville. The notwithstanding clause is not necessary in this case. The government is proposing and this committee is evaluating a different type of solution, because we all agree that we are disturbed by and find unacceptable the decision in Senneville where a minimum mandatory penalty was struck down based on a reasonable hypothetical that didn't tie whatsoever to the people who were the subject of the case. Now that won't be the case anymore.

Again, I wish that all of us would understand the very real impact. If you agree with the notwithstanding clause in one instance, then you cannot argue against it in other instances where it may be used to marginalize you. Having seen how the notwithstanding clause has been used pre-emptively and arbitrarily, I certainly do not support the Parliament of Canada using the notwithstanding clause at all. I certainly don't think that the appropriate way to do it is to just throw it into an amendment to a bill like this.

For me, this is a fundamental thing. I think rights are sacrosanct. I think “reasonable limits” under section 1 are sufficient. I certainly don't agree with using the notwithstanding clause, and certainly not in this way.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Housefather.

Mr. Brock is next.

Larry Brock: With all due respect to my colleague, Mr. Housefather, I could not disagree more with his analysis.

Members of the Liberal Party of Canada stand on their soapbox and claim that they're the party of the charter, yet they completely dismiss the utility and application of section 33, which is the notwithstanding clause.

Let us not forget that the charter would not be in existence but for section 33. That is a fact.

What we're dealing with here is not a simple, willy-nilly application of the notwithstanding clause. It reflects the abhorrence that I would think every parliamentarian should have with respect to child sexual abuse material.

I want to comment on my colleague Mr. Lawton's intervention, when he spoke briefly about the sentencing judges in the Senneville case, who essentially—I think this was Mr. Lawton's comment—undercut the mandatory minimum penalty.

He didn't provide specifics, but I have the actual decision before me. I want to remind all of my colleagues here what the nature of the collection was for both Senneville and Naud. Senneville admitted to possessing “475 files, including 317 images of children.... Of those images, 90 percent were of young girls between 3 and 6 years of age” having sexual relations with adults and minors. The sexual relations depicted involved “penetration and sodomy”. He admitted that he had possessed this filth for over a year.

● (1820)

Leah Gazan: I have a point of order.

The Chair: I'm sorry, but you don't have rights to raise a point of order here.

Leah Gazan: I'll just say that because this is live, it might be triggering for people who have experienced this violence. Maybe we should do a warning for people online whom this might be triggering.

The Chair: Thank you, Ms. Gazan.

Technically, you're able to speak only when you're introducing—

Leah Gazan: I apologize, but I'm just concerned.

The Chair: Thank you.

Larry Brock: Notwithstanding, Senneville pleaded guilty, cooperated with the authorities and had no previous criminal record and no outstanding charges.

The sentencing judge—and this reflects the problem we have with a lack of consistency across this country at all levels of court in every province and territory when it comes to the appropriate sentencing provisions for this type of filth—imposed a sentence on Senneville for the possession count of 90 days of imprisonment. Get this. They were not to be served consecutively but intermittently. He got a weekend sentence for possessing this vile filth. On the count of accessing, there was another 90-day sentence of imprisonment to be served intermittently, and the two sentences were to be served concurrently.

This animal got the benefit of a weekend sentence for this filth, followed by two years of probation. It is no small wonder that the Crown of jurisdiction decided to appeal it.

We all know that the Supreme Court of Canada issued a decision that found that the possession and accessing penalties of one year were contrary to section 12. It was a five-four split. That dissenting opinion was shared by Chief Justice Wagner, Justice Côté, Justice Rowe and Justice O'Bonsawin.

I want to read into the record various passages of that dissent. It reads:

> Child pornography has unquestionably become a scourge both nationally and internationally. It destroys countless innocent lives. Each pornographic photograph, video or audio recording that involves a child is an act of exploitation that will leave the child with deep and lasting scars.
>
> Whether it depicts real or fictional children, child pornography normalizes the exploitation of minors and trivializes their objectification. By promoting the dissemination and acceptance of sexualized representations of children, the consumption of child pornography—in all its forms—encourages attitudes and behaviour that lead to irreversible harm.
>
> The message sent by this Court’s decision in R. v. Friesen...could not be any clearer: the sentencing process must convey the profound wrongfulness and harmfulness of offences against children.

On Sheppard, again from the Supreme Court of Canada, they said:

> The censure of society and the law must be reflected consistently and rigorously in the sentences imposed on offenders who are guilty of sexual offences against minors...A fit and proportionate sentence is one that is consistent with the teachings of Friesen and that gives effect to Parliament’s intention that sexual offences against children be punished more heavily.

I wanted to bring that to everyone's attention because, to Mr. Baber's point and the use of hypotheticals, I want to hear from one of the Justice officials about whether or not they agree with one of the principles espoused in the dissent that talked about the use of hypotheticals. I'll quote this passage, and I'd like to know what the position of the Department of Justice is. It reads:

> When a constitutional challenge under s. 12 is based on a hypothetical scenario, as here, the hypothetical scenario chosen must still be “reasonable”.

This is reference to the Supreme Court's decision in Goltz from 1991. Although it is a dissenting opinion, is that a position that is shared by Canada's Department of Justice?

● (1825)

Leah Burt: The premise that a hypothetical needs to be reasonable is one we would share, yes.

Larry Brock: We all know the so-called “reasonable” hypothetical used by our learned justices just down the street had absolutely nothing remotely similar to the activities of Senneville and Naud.

The Supreme Court of Canada, in my opinion—and whether it's shared by colleagues at this table or not, this is my opinion—was not reasonable. It was completely remote. It had no factual nexus to the offending type of behaviour by Senneville and Naud. It involved two young men, one of whom took an intimate image of his girlfriend and shared that image with the other friend. In those circumstances, the Supreme Court of Canada in its majority opinion felt the application of a one-year MMP would be contrary to section 12. As a former justice participant, I couldn't agree more.

I want to ask the Justice officials this question. During the consultation phase of the creation of this particular bill—this has been a concern of mine for some time—did you get any feedback from any active police services, police associations, Crown attorney associations and/or provincial or territorial attorneys general with respect to the built-in discretion that currently exists between policing and the Crown's office, such that if this particular scenario were ever to find itself in a real-life situation...? I can't imagine any Crown in this country, in those circumstances, agreeing to take a criminal charge initiated by a police service, proceeding by indictment in those unique circumstances and asking for a one-year mandatory minimum penalty.

The reason I say that is that it is not only my opinion but the opinion of several Supreme Court justices, including the famous retired, learned Supreme Court justice—the dean of criminal law, in my view—Michael Moldaver. He often opined in many of his decisions about the built-in residual discretion that already exists so that these crazy, whacked out hypotheticals used by judges across this country never see the light of day.

To the Justice officials, did you receive that input?

Matthew Taylor: We would be happy to provide a list of the partners and stakeholders we had an opportunity to speak with in the development of the legislation. I think we may have provided that previously, but if not, we're happy to do so.

Offhand, I cannot remember Crown associations specifically, but there were certainly provincial prosecutors, law enforcement and civil society organizations, like the Canadian Civil Liberties Association. We had an opportunity to speak with all of them.

The issue of the built-in discretion you talked about in terms of police discretion or Crown discretion, to my recollection, was not specifically discussed, but I recall—and I believe it is the newer decision, albeit in slightly different circumstances—that the court talked about the role of discretion in saving constitutionally invalid provisions, and that it cannot be used as a way of safeguarding against—

● (1830)

Larry Brock: That was the majority decision, not the minority.

Matthew Taylor: Yes. For the example you gave, whereby a police officer or prosecutor doesn't bring a specific case before the courts in respect of that specific individual, the risks don't arise.

Larry Brock: I appreciate that. Thank you, Mr. Taylor.

This is the problem. This is a glaring omission in Bill C-16. We know there is a limit. There's an exception that any particular judge—on their own or by the application of the accused with their counsel—who decides that the application of a mandatory minimum penalty would result in cruel and unusual punishment, has the ability to undercut that mandatory minimum penalty. With the exception of murder and treason, you have to impose a jail sentence.

There is nothing in Bill C-16 that creates a threshold for how low a sentencing judge could go. Hypothetically, you'd agree with me that a one-day sentence for the possession of child sexual abuse material in the “most vile ways”, as Mr. Senneville's collection was described, could result in a one-day sentence followed by probation. Bill C-16 would not prevent a particular judge in this country from doing that after this bill receives royal assent. Answer yes or no.

Matthew Taylor: That's correct. There would be no specific guardrails in the legislation.

Larry Brock: Thank you, Chair.

The Chair: Thank you, Mr. Brock.

Mr. Gill.

Amarjeet Gill (Brampton West, CPC): Thank you, Chair.

This amendment is about one thing, and that one thing is protecting our children. We need to safeguard mandatory minimum penalties to protect our kids and our next generations.

Child pornography is not a minor offence. It is exploitation, it is abuse and it destroys lives. Those who possess it are fuelling that abuse. Those who access it are creating a demand for more victims. Canadians expect Parliament to stand with children, not with offenders.

This amendment makes it clear that for offences under subsections 163.1(4) and 163.1(4.1), there will be no loopholes and no easy constitutional challenges under section 7 or section 12 while this law is enforced. It also removes Bill C-16's safety valve for these offenders. That is the right decision.

Conservatives believe serious crimes, especially crimes against children, need serious consequences. The Liberals often talk about protecting the vulnerable. Here is their chance to prove it. Will they stand with victims and families? Will they stand with law enforcement trying to stop predators, or will they protect offenders with more legal escape routes?

This amendment sends a strong message that if you exploit children, there will be consequences. We need to safeguard mandatory minimum penalties to protect our kids. I disagree with Mr. Housefather's saying we bring in a notwithstanding clause every single time. We are protecting our kids and sending a strong message to the predators that they cannot get away with these heinous crimes.

If you consume these materials, there will be accountability. We must put our children first. Their safety matters more than the comfort of criminals. Conservatives will always fight to stop crime of any kind. We will always defend victims, and we will always stand up for our children.

I support this amendment, and I urge all the members to support this amendment as well.

Thank you.

● (1835)

The Chair: Thank you, Mr. Gill.

Go ahead, Mr. Baber.

Roman Baber: Thank you, Chair.

I have been listening to the debate, and I have been listening intently to my friend Mr. Housefather. I would like to make a couple of comments in response, specifically with respect to the notwithstanding clause.

I often urge this committee to consider the unique opportunity and, therefore, the obligation we have to consider legislation before us. I truly believe that many lives will turn on the work that this committee does, and not just the lives of the accused or law enforcement but also those of victims. I wish that we would remember why we're here, which is primarily the protection of the public.

The other thing I'd like to say is that, if there is one thing I often find absent from politics and, indeed, from this building, it's nuance. The notwithstanding clause is a very nuanced proposition. I agree with my friend from Montreal.

The first principle we have to agree on is that the Westminster parliamentary system is designed in a way so that Parliament is supreme, unlike the way it works for our neighbours to the south, where the constitution is supreme. The charter would not have been adopted if it had not been for section 33. It was the deal breaker to make sure that provinces were comfortable and, of course, the federal government would be able to avail itself of the same tool. That cannot be as grotesque as Mr. Housefather describes it if it is itself, as Mr. Lawton said, in the Constitution. The charter cannot limit or prohibit something that it explicitly prescribes.

The way to approach this legal question, just as with all statutory interpretation, is to look at the legislative intent, Mr. Housefather.

We discussed former attorney general Jean Chrétien. You spoke about former prime minister Jean Chrétien, but I was speaking about former attorney general Jean Chrétien.

I thank one of our capable colleagues, who sent me this quote. In the words of then attorney general Jean Chrétien, if a judge were to strike down a law against child pornography on the basis of freedom of expression, the notwithstanding clause would be there to allow Parliament to fix such an absurdity.

I very much take exception to the fact that Mr. Housefather is suggesting that this amendment is not responsible. This amendment is precisely in keeping with the spirit of section 33.

Mr. Housefather is correct in that in the last couple of years, we have seen the exercise of section 33 again and again. He's also correct to refer to prime minister Brian Mulroney, who said that the charter may not be “worth the paper it's written on” because of section 33, but I disagree with that very much, because there was an overriding principle to the framers of the charter. I've been asked that question multiple times by students. The question would always be, “But Mr. Baber, what would prevent a government from exercising the notwithstanding clause and invoking the notwithstanding clause every time it desired to do so?”

The answer to that, I believe, is twofold: political accountability and decency. Political accountability and decency are the mechanisms by which the notwithstanding clause would not be used. Political accountability is specifically factored into the notwithstanding clause, in that there is a sunset clause, as Ms. Lattanzio correctly pointed out.

● (1840)

If I'm incorrect to suggest that we should safeguard the mandatory minimum penalties for folks who hold in their possession 250 videos of children being raped, then I may pay that political price.

At the same time, it's decency. It's that slippery slope that maybe my Liberal friends refer to that would prevent a responsible government from invoking the notwithstanding clause. We have the legislative intent framework, but we also have the reference to the rationale behind the existence of the clause.

When Mr. Housefather says that he's been hearing the Conservatives talk about the notwithstanding clause a lot, well, in this committee, it's been spoken about only with respect to Senneville. I point to Mr. Brock, who said it's interesting that the safety valve does not apply to treason or to murder. It looks to me as if the Liberals have decided that on the scale of moral turpitude and offences for which the courts should really throw the book at the accused, murder and treason should not be offences from which judges are able to deviate, but child pornography—access to and possession of child pornography—can be.

It's actually very instructive, Mr. Brock, because maybe what we're hearing from the Liberals on the safety valve—that it's supposed to safeguard mandatory minimum penalties while not introducing the safety valve for treason and murder—teaches us something. Maybe it's not there to safeguard mandatory minimum penalties but specifically to be excluded from the application of the safety valve that can potentially undermine it.

Think about the use of the notwithstanding clause in the last couple of years. I was looking forward to seeing my friend Ms. Begum today, who I thought had been added to the committee. She and I served at Queen's Park for a number of years, and I was looking forward to reminding her about a number of debates we had about the notwithstanding clause in the Ontario government, and how you can differentiate what is appropriate from what is not appropriate.

After the election of the Ford government, in Bill 5, the Ontario government sought to reduce the size of Toronto City Council, because it had campaigned on the fact that government is too big and too inefficient. Because there was a good probability that the courts may have struck down the Ford government's attempt to rewrite municipal structure and law in the midst of a municipal campaign, the Ford government elected to preserve the legislation with the notwithstanding clause.

I would say that if it's a stated priority and I campaign on the fact that it is my legislative priority and get that mandate from the electorate, then it is within my purview to safeguard that priority. If it were not within my mandate, then the voters would tell me before the sunset clause expires. The Ford government won on appeal, in that it was concluded that the legislation was itself constitutional and invocation of the clause was not required.

What happened a couple of years later is that Ontario did invoke the notwithstanding clause, and to anyone who doesn't remember the circumstances surrounding that, it was on election legislation. It was the safe elections act, or something like that, because everything had to be safe at the time. I'm on the record; I debated that.

The suggestion was that we had to prohibit large, third party foreigners from interfering in our elections. Realistically, what that legislation did was preclude anyone who wanted to spend $500 on posters about their MPP not responding to phone calls from putting up posters and spending more than $500, which would require $400 in compliance.

● (1845)

On that legislation, the Ford government decided to invoke the notwithstanding clause; that was self-serving election legislation, and that would be politically indecent.

I take exception to Mr. Housefather's suggestion that the amendment I proposed to protect Canadian children—and, in fact, children all around the world—is irresponsible. I would say, with respect, it would be irresponsible not to adopt my amendment knowing that it could protect children. To rely on a safety valve that would allow a judge to disregard a mandatory minimum penalty, and to lean on a safety valve that we decide should not be applicable to murders and treason—it was probably for good reason the Liberals decided that—leads to the precise opposite interpretation.

Let's not miss this opportunity. Let's protect children. Let's celebrate Canadian heritage. Let's celebrate the charter.

This is what I'm trying to do here, Mr. Housefather.

The Chair: Go ahead, Mr. Baber.

Roman Baber: Actually, I want to add one last point. I appreciate the chair's allowing me to take a breath and think.

I was very proud during the last election campaign when the leader of my party, Pierre Poilievre, said he would use the notwithstanding clause in connection with the bail and sentencing legislation in some very discrete cases.

If you have an absurd situation where a violent repeat offender is out again and again, a scenario we have contemplated in this committee repeatedly, that would precisely be the type of absurdity that responsible government should address and prevent. It's entirely consistent, intellectually, historically and legally, to say that it's not willy-nilly. It's when it's government priority, when it's essential, when there's absurdity and when it's politically responsible, and there will be accountability. In all of that, decency will be maintained.

It's very regrettable that we can't agree on the use of the notwithstanding clause because we can no longer agree on decency in politics. That is a new thing, which maybe is even worse than all of this.

Thank you.

The Chair: Thank you, Mr. Baber.

Shall CPC-13 carry?

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 17 agreed to)

(Clause 18 agreed to)

(On clause 19)

The Chair: This takes us to CPC-14 in clause 19.

Who's going to speak to that?

Mr. Lawton, go ahead.

Andrew Lawton: Thank you, Mr. Chair.

I am moving CPC-14, which amends the bill in clause 19 by adding after line 39 the following:

> (5.1) If the illicit material is an intimate image, as defined in subsection 162.1(2), in relation to which an offence was committed under section 162.1, the court must order the custodian of the computer system to delete the material within 48 hours after the order is made.

If I can very briefly add some context, this is also an amendment that came about from witness testimony. While Bill C-16 is focused on criminal penalties, among other things, we have to acknowledge that we are trying to serve victims in what we're doing.

One of the testimonies in particular I'd like to highlight was from Madam Suzanne Zaccour. I asked her about whether civil remedies might be more suitable than criminal remedies for some of what she wanted to do in removing intimate images from the Internet, and Ms. Zaccour said, "What victims most want is a remedy to remove the photo from the Internet."

I think that's something we're trying to achieve here. It's certainly what I was thinking of when putting the amendment together. It isn't just about sending a strong signal and penalty, which is important. To Ms. Gazan's point, it's also about ensuring that tech companies are aware they have a responsibility here and trying to minimize as much as possible the harm these images will, and often do, cause victims by being available online.

That's what we're hoping to do here, and I hope we'll have full support from the committee for this.

● (1850)

The Chair: Thank you, Mr. Lawton.

Is there anybody else?

Ms. Gladu.

Marilyn Gladu (Sarnia—Lambton—Bkejwanong, Lib.): Thank you, Chair.

It's a pleasure to be here talking about Bill C-16. I was chair of the status of women committee for many years, and a lot of the recommendations that are in this legislation came forward there. We heard testimony similar to what Mr. Lawton is saying about the need for a mechanism to remove the pictures and images that are there, so I do support this.

The Chair: Thank you.

Mr. Fortin.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Chair.

This is an important issue, and I think I will be supporting Mr. Lawton's amendment. That said, I was wondering about the 48-hour time frame, which I wanted to mention in committee. I think it's very important and urgent to remove it.

How realistic is it? Right now, there is no leeway. It says that it must be court-ordered. Obviously, if the court orders it, it has to be done. I wonder about the possibility of doing so in 48 hours, and I'd like to hear from the analysts on that. However, I agree with the principle.

[*English*]

The Chair: Who wants to field that one?

Matthew Taylor: Chair, if it's okay, I'll bring a colleague, Mr. Wong, to the table.

[*Translation*]

Normand Wong (General counsel, As an Individual): Thank you for the question, Mr. Fortin.

[*English*]

Regarding the 48 hours, I'm not entirely sure. We haven't had a chance to study this amendment.

The way that 164.1 works currently is that the judge orders the takedown, and that is interpreted as the immediate takedown. On the timing of 48 hours, it's unclear to us whether that would delay the removal of the intimate images or if it would actually speed things up. As to whether it's possible, we have not had an opportunity to talk to service providers who might be hosting this type of material.

[*Translation*]

Rhéal Éloi Fortin: It might be possible, but you can't be sure. Is that correct?

Normand Wong: That's correct. It might be possible, but we're not really sure.

Rhéal Éloi Fortin: I have another question on the same topic.

Has anyone checked with the provinces to determine whether they felt that this was something feasible for managing the justice system?

Normand Wong: With respect to the question about section 164.1, no cases have been reported. That was added to the Criminal Code in 2001, and there have been no cases since. When Internet service providers are notified that something is on their network, they remove it immediately, with no need for a court order.

● (1855)

Rhéal Éloi Fortin: Thank you.

[*English*]

The Chair: Thank you, Mr. Fortin.

Ms. Gladu.

Marilyn Gladu: For your information, Mr. Fortin, when we did a study on violence against women and girls, there was a specific case, Rehtaeh Parsons, who ended up committing suicide because images couldn't be taken down. There was a web provider called NeedHelpNow.ca that was able to get 95% of content down within this time frame. We challenged Meta to do the same, so they introduced a mechanism whereby you can report content and have it removed if it's objectionable. Therefore, I believe it is possible. Those are just two examples.

The Chair: Thank you.

Shall CPC-14 carry?

(Amendment agreed to)

(Clause 19 as amended agreed to)

(Clauses 20 to 24 agreed to)

(On clause 25)

The Chair: This takes us to CPC-15.

Mr. Lawton.

Andrew Lawton: Could I request a brief suspension of about 90 seconds, Chair?

The Chair: I will do it on the condition that nobody leaves the room.

● (1855)

_____(Pause)_____

● (1900)

The Chair: I call this meeting back to order.

Mr. Lawton, you have the floor.

Andrew Lawton: I would like to move CPC-15. I just want to provide a bit of context on this one first.

Let me say that I genuinely trust, despite our disagreements across party lines on some parts of this legislation, that we all understand the horrors of intimate partner violence. I think we cannot look at that.... While understanding that intimate partner violence can happen to both men and women, we know that women disproportionately bear the brunt of this.

This has been an issue that I have been very fortunate to never have encountered in my family, but I have had friends—women—who have been in very abusive relationships. One had to leave the country to feel safe.

I have also been very grateful to have testimony from witnesses locally, whom I sought to include in this committee's work. Jennifer Dunn, from the London Abused Women's Centre, was very eloquent in her comments, as she always is. We had Valora Place in St. Thomas as well. We had Chief Thai Truong from the London Police Service, which has also been a tremendous advocate for protecting women from the violence that, sadly, all too often faces and confronts them.

One thing that came up in the testimony we heard before this committee and in other conversations I had, including with Megan Walker, who was formerly the executive director of the London Abused Women's Centre and whom I've come to know quite well, is that we need to have explicit protections and explicit reference to women when we're talking about femicide. This came up in multiple witnesses' testimony, where femicide was alluded to in a header but not actually defined or established with any degree of clarity in the bill itself.

My amendment, simply put, replaces intimate partner violence with femicide. This is something that women's advocates have argued is important, because they believe “IPV” is too euphemistic and doesn't actually speak to women and to the issue.

It defines very clearly that femicide is “first degree murder when the victim is female and the death is caused by her intimate partner.”

It's a very clear definition. It's a very simple one, and it's one that acknowledges the horrific harms that women in abusive relationships have to confront in these cases, tragically, when there is a murder involved.

I welcome any feedback and input from the committee on this, but that was where this came from, and those were the consultations that went into this amendment.

The Chair: Thank you, Mr. Lawton.

Ms. Lattanzio, go ahead

Patricia Lattanzio: I have a question for the officials.

On this proposed amendment, would you not agree that it narrows femicide to killings of female intimate partners and removes other contexts, like coercive control, sexual violence, exploitation and misogyny?

In your opinion, does it undermine the broader intent of Bill C-16 and remove protections for other high-risk contexts and victims?

● (1905)

Nathalie Levman: It would remove three of the circumstances: exploitation, sexual violence and misogyny. Those are in proposed paragraph 231(5.1)(b), proposed paragraph 231(5.1)(c) and proposed paragraph 231(5.1)(d). It would fundamentally change proposed paragraph 231(5.1)(a) to apply only when the victim is a woman and is the accused's intimate partner. It would remove the concept of coercive control entirely and wouldn't protect victims of other genders who may also be subjected to coercive control.

The bigger concern is that the overall objective of this amendment would be to remove key provisions. The sexual violence provision is the one that would apply any time a murder occurs where there is an offence of a sexual nature, or an offence committed for a sexual purpose also occurring at the same time. The concern is that this would target cases we know have occurred, like the Pickton case, for example, which involved somebody who murdered many women in the course of purchasing sexual services from them. That provision would capture this type of scenario. It's for all kinds of murders that take place in the context of sexual violence. It's quite broad.

The characterization of “offence of a sexual nature” is any offence that involves an act that is objectively sexual in nature. An offence that is committed “for a sexual purpose” is one committed with the intent to facilitate an act of a sexual nature. Removing that, I think, would defeat the purpose of identifying that aspect of femicide.

Of course, removing the hate-motivated aspect means this provision would no longer cover cases like the tragedy at Polytechnique or the incel cases we've had, etc. Removing the exploitation one means it wouldn't cover situations where labour or services are exploited and where a murder occurs in that context.

I'd also say that this provision would provide an effective definition of “femicide”. It says that any time a female is killed in any one of these circumstances, it is femicide. There is a definition built in to this provision.

I hope that helps. Thank you very much.

Patricia Lattanzio: Thank you.

The Chair: Thank you, Ms. Lattanzio.

Seeing no other—

Oh, I'm sorry, Mr. Lawton.

Andrew Lawton: I just want to understand that last comment a bit more clearly, if I could, please, Ms. Levman.

Are you saying that femicide is implicitly defined in the legislation but not explicitly defined?

Nathalie Levman: I'd call it more of an effective definition, because the marginal note, which identifies the content of a provision for awareness reasons and for being able to identify what's in a provision.... You're right that it wouldn't have force of law, but it certainly labels the provision. The marginal note is “Femicide...and other aggravated circumstances”.

This means that when a female is killed in any of the (a), (b), (c) or (d) circumstances as I've described them, the legislation would define those circumstances as femicide.

That is my understanding of the effect of the provision.

Andrew Lawton: However, you also said that proposed subsection 231(5.1) is gender-neutral.

Nathalie Levman: Yes. That's because the goal is to protect all victims who might be killed in those situations. Labelling it “femicide” recognizes that women are disproportionately impacted in these circumstances, meaning that they are disproportionately the victims of these types of killings. That's why the marginal note says “femicide”.

The intention, as I understand it, is to protect everyone who might be murdered in these four situations.

Andrew Lawton: I'm not debating. I realize you're not the sponsor of the legislation, so I'm making an aside, if I could, in my interaction with you.

The concern women's advocates have raised is that making it gender-neutral diminishes the fact that women bear the brunt of this.

I'll return to my question. I don't know if this is better suited for Mr. Taylor, Ms. Levman or one of their colleagues.

Was there any rationale given for not explicitly defining “femicide” in the legislation?

● (1910)

Nathalie Levman: Chair, perhaps I could ask for clarification on that question. By “explicitly define”—

Andrew Lawton: If I may, why not include femicide in the substantive and operative text of the legislation itself? Why is it only in the marginal note? Why is it not clearly spelled out? That lack of definition is a concern that has been raised in witness testimony and also other stakeholder dialogue.

Nathalie Levman: There are other groups that are also disproportionately impacted by these four circumstances, including gender-diverse people who may not identify as female. As I understand it, a decision was taken to ensure the protection of the law for everyone who could be subjected to murder in these circumstances. We know that although it's predominantly females, there are other groups who are impacted. They deserve the protection of the law too.

Andrew Lawton: How would proposed paragraph 231(5.1)(d) not already be covered by other legislation, including the recent Bill C-9, which deals with hate-motivated offences? Why does that need to be spelled out specifically when we already have provisions dealing with hate motivation, regardless of whether it's about sex, religion or anything else?

Matthew Taylor: You are right that Bill C-9 is very much focused on hate-motivated crime. This committee knows that quite well. You will recall that when the Liberal Party campaigned, one of their commitments was to treat hate-motivated murder as first-degree murder. Certainly, in the work that Parliament has done around coercive control at the FEWO committee and in the work of stakeholders and civil society organizations, that has brought to light concerns around femicide, as you've spoken to, Mr. Lawton. Fundamentally, it was a choice in terms of how to address both of those important objectives. The choice is what is reflected in Bill C-16.

Andrew Lawton: The concern I have with this is that we have one section presented as being about one thing, but the actual text is about a number of things. Just to follow this to its logical conclusion, let's say someone murders someone because the victim has a physical disability. A man with a physical disability is murdered by someone with pure hate in their heart. We would all condemn that. We would all want a very stiff penalty, but that is being captured under the same definition that's being presented to women as being an answer to femicide.

I guess I'm having trouble understanding how this section on femicide and intimate partner violence has such a broad catchment area. I'm wondering why this is all being done in one particular section, and I'm wondering if you can speak to that. If it's a decision the government needs to answer to, that's fine. I didn't know whether it's something you can shine a light on.

I'll try to avoid the compound question, if I can: Why is killing someone because of their mental disability being viewed in the same clause as femicide of an intimate partner, which has a very specific and very unique dynamic that Bill C-16 purports to address?

Nathalie Levman: These are all the enumerated grounds that are in all the hate-motivated provisions in the code. I would direct your attention to the marginal note, which says clearly, “and other aggravated circumstances”. I think Canadians would agree that the types of murders that have just been described are also heinous and are deserving of a strong legal response.

I understand that the objective of this provision is to properly label all aggravated circumstances in which people are killed and to say very clearly that when it is a female who is killed in these circumstances, that amounts to femicide. The intention, as I understand it, is to assist law enforcement and others in gathering the data we need in order to properly assess and evaluate this societal problem we are dealing with, and to also be a basis on which law enforcement may develop policies so they can properly name killings, when they occur, for the public.

● (1915)

Andrew Lawton: If my Liberal colleagues or anyone else on the committee wishes to offer any subamendments, I would welcome that discussion.

Certainly, there's no desire to narrow what the bill is trying to do here, but I hope we do not lose sight of the overall objective, which is that if we are going to have legislation that speaks to women and addresses head-on these concerns about intimate partner violence and specifically the effect it has on women, I believe that femicide needs to be clearly spelled out. It needs to be clearly acknowledged as having its own dynamic that is distinct from these other things, which, again, are not points of contention, but the bill is trying to lump them all under one banner.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Lawton.

Ms. Gazan wanted to speak first, and then I'll go to Mr. Housefather.

Leah Gazan: I don't know whether this is helpful, but I have a question. I understand the intent of Mr. Lawton in terms of clarity, but we know from the final report that the highest rates of femicide and murder are against indigenous women and gender-diverse folks. I would say the acronym, but apparently I insulted Elon Musk's intelligence. He can't remember the acronym that was used in the final report.

In saying that, is that the intention of the bill? When we're talking about intimate partner violence, yes, there is femicide, but if we're looking statistically at dealing with the issue, we have ample research. There are a lot of things I disagree with in this bill, but is it your understanding that failing to do this would also fail to rectify groups most impacted by intimate partner violence? Quite frankly, what's missing in this bill are the massive amounts of gender-based violence that happen against certain populations outside of relationships.

Nathalie Levman: I would just stress for the committee that it's only proposed paragraph 231(5.1)(a) that deals with the intimate partner violence issue directly. That's not to say there couldn't be situations that overlap among the four different circumstances. For example, there have been cases like this where a person has killed their wife in the context of sexual violence. That would be treated under proposed paragraphs 231(5.1)(a) and (b).

To answer the question more directly, I understand the overall objective of this amendment to be to protect everyone and to recognize that women are disproportionately represented in proposed paragraphs 231(5.1)(a), (b), (c) and (d) circumstances, as in the bill, but there are other groups who might not identify as female, might not consider themselves to fall within that rubric and might not want to use the term “femicide” for their murder.

There is no difference in moral culpability between a person killing a gender-diverse person, let's say, in the same circumstances as proposed paragraph 231(5.1)(b)—let's take it as an example—and a person killing a female person in that circumstance. My understanding of the overall objective of this provision is to very clearly denounce these types of killings, while also clearly recognizing that when a female is the victim of any of these types of killings, we need to call that what it is, as the stakeholders have clearly stated, stakeholders like Megan Walker and Jennifer Dunn from the London Abused Women's Centre. It's very important to label that as femicide. We've heard that again and again, and we've heard that we need to collect information, data, on this so that we can keep track of it and try to prevent it from happening.

Of course, that's what the coercive control offence is aimed at, but we're not there yet, so I will stop there.

● (1920)

The Chair: I'll go to Mr. Housefather.

Anthony Housefather: I think the provision is okay as is because, as indicated, other aggravating circumstances are there. If you have an equal situation while someone is attempting to commit an offence of a sexual nature—an offence for a sexual purpose, for example, under proposed paragraph 231(5.1)(c)—it doesn't matter who the victim is. It's exactly the same offence.

I think there's a misunderstanding, because the first word, “femicide”, deals with one subgroup of this clause, but other people who are equally vulnerable are also covered by this clause, as are people who might not be viewed as vulnerable. Cisgender white men could potentially be covered if they're a victim of the same circumstance in this clause. The issue is that there is a clause that generally sets out four subgroups that will attract a first-degree murder charge.

It seems fine to me. I appreciate your thoughts, Andrew.

The Chair: Shall CPC-15 carry?

Some hon. members: Agreed.

Some hon. members: No.

The Chair: We'll have to have a recorded vote.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 25 agreed to on division)

(Clause 26 agreed to)

The Chair: Now we're on a new clause, 26.1. I've reviewed it, and for reasons that are consistent with my previous rulings, I'm ruling this one out of scope.

Larry Brock: I challenge that.

Roman Baber: I'd like to speak to this issue now.

The Chair: What would you like to speak to?

Roman Baber: It's to your ruling.

Marilyn Gladu: It's a dilatory motion.

The Chair: There's no speaking to it. I've already ruled.

Roman Baber: We've heard something different from the officials. We've heard from the officials that this is what this legislation does.

The Chair: Mr. Baber, I am not going to argue with you. We've been through this before.

I'll say what I said earlier. I gave Mr. Brock an opportunity to speak at the outset, because all of these proposed amendments were being deemed out of scope for very similar reasons. I thought that was fair.

When I rule, there is no provision for you to make submissions. I realize you are making Twitter clips during the course of this thing. I would include in those Twitter clips that we have rules at this committee and they are to be followed. I'm trying to enforce them. It's as simple as that.

Mr. Clerk, it's over to you.

Roman Baber: Except, the officials told you—

The Chair: Mr. Baber, the discussion is over.

Roman Baber: It doesn't sound like we're having a discussion.

The officials told you that what the bill does is it restores mandatory minimum—

The Chair: Mr. Baber, we're going to a vote.

Roman Baber: One second—

The Chair: No, not "one second." We have rules, Mr. Baber. We're following those rules.

Go ahead, Mr. Clerk.

(Ruling of the chair sustained: yeas 7; nays 4)

The Chair: That takes us to CPC-17, which, for the same reasons I've previously stated, I am also ruling out of scope.

Larry Brock: I challenge that.

The Chair: Go ahead, Mr. Clerk.

(Ruling of the chair sustained: yeas 7; nays 4)

(On clause 27)

The Chair: That takes us to clause 27 and NDP-5.

I'll turn the floor over to you, Ms. Gazan.

Leah Gazan: Thank you so much, Chair.

The Chair: I'm sorry. I should point out that if NDP-5 is adopted, then G-4 cannot be moved due to a line conflict.

Go ahead, Ms. Gazan.

● (1925)

Leah Gazan: This one is from NAWL as well. Experts have told us the change to the category of harassment in Bill C-16 is problematic. In the recent past, charges of harassment were dismissed because women being harassed did not show signs of fear despite the intent of harassment.

I want to point out that not showing signs is a subjective observation. What we found at the Standing Committee on the Status of Women is that often police and first responders to an event are not trained, particularly in instances of coercive control, nor are judges, in fact, because it's a very new area. I know it's an area the bill attempts to address and add to the Criminal Code.

Additionally, somebody who's aware that a victim holds an unreasonable fear, such as a phobia of spiders, could use this knowledge to wilfully harass a victim. These are things that people might not see that a person perpetrating violence is using to intentionally traumatize their victim.

There are also a lot of concerns surrounding threats made to animals like pets. NDP-5 expands this category to include other pets known to the victim, such as an animal belonging to a friend or partner.

This remains an act of violence and is actually a really big deal. Many people experiencing intimate partner violence will not leave because they are scared of what will happen to their pets. There have been studies, and in Winnipeg in transitional housing, pets are now allowed so people who are fleeing violence don't have to worry about their pets. Making threats to kill a pet sounds peculiar, but it's actually really common for perpetrators of violence to use violence and threats against pets as a form of coercive control to trap victims.

We're hoping that you support that amendment.

The Chair: Thank you.

Ms. Lattanzio.

Patricia Lattanzio: Thank you to the member for bringing forward that amendment.

Although we agree with the intent behind the amendment, we are going to oppose it—or I will oppose it. The amendment we will bring forward and other amendments we will see further down address the same issue. They use more precise consent language in their structure to avoid unintended impacts in sensitive situations, including the work capacity or emergency considerations that are at play. I will be opposing your amendment because of that, but not because of the intent.

The Chair: Shall NDP-5 carry?

(Amendment negatived [*See Minutes of Proceedings*])

The Chair: That takes us to G-4.

Ms. Dhillon.

Anju Dhillon: This motion would amend subclause 27(1) of the bill to clarify that the criminal harassment offence applies to persons who know that their conduct would harass the victim and not just to persons who intend to harass the victim or who are reckless as to whether their conduct would have that effect.

Stakeholders have pointed out that the offence does not specify that an accused who knows their conduct would harass the victim is also committing the offence. This amendment would clarify that fact.

The Chair: Shall G-4 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: That takes us to NDP-6. Since NDP-6 is deemed moved, G-5 cannot be moved because they are identical.

Ms. Gazan.

Leah Gazan: It's similar to the other amendments, to ensure that threats against a pet, animal or anyone known to the victim, such as a parent, child or friend, are included in this offence.

● (1930)

The Chair: Is there no one else? Okay.

Shall NDP-6 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

(Clause 27 as amended agreed to)

(On clause 28)

The Chair: PV-4 has been withdrawn, which takes us to CPC-18.

Mr. Baber.

Roman Baber: CPC-18 seeks to conform the new offence of coercive control to the rest of the Criminal Code, effectively, with a few exceptions. There are various levels of the guilty mind of intent. Wilfulness is enough to prove intent, as is knowledge. Wilful blindness is the flip coin of "knowingly", but recklessness normally is not sufficient to predicate the making of the *mens rea* component, with a few exceptions, like manslaughter, wanton disregard, failing to provide the necessities of life, etc. What this amendment seeks to do is to remove recklessness.

The Chair: Thank you, Mr. Baber.

Shall CPC-18 carry?

Some hon. members: Agreed.

Some hon. members: No.

The Chair: Okay. I have to go into volume versus numbers again, so we'll have to do a vote.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

The Chair: Now we go to G-6.

Patricia Lattanzio: Mr. Chair, because we adopted NDP-6, does that mean mine drops?

The Chair: You're quite right.

Just before I say yes to that, hold on.

Anthony Housefather: I don't think that is correct.

The Chair: No, it was NDP-6. We're getting—

Anthony Housefather: It was G-5.

The Chair: G-6 is okay, so go ahead.

Anthony Housefather: Mr. Chair, I'll move G-6.

G-6 puts in a different place in the bill the same issue that we dealt with before—that an animal known to the intimate partner could be the subject of coercive control, rather than just something they own or they have control over. For example, if I threatened to harm your mother's dog, it could be as damaging to you as if I were to harm your dog.

It's the same thing we just adopted. It's just in a different place.

The Chair: Shall G-6 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: Next is G-7. If G-7 is adopted, NDP-6.1 cannot be moved due to a line conflict.

Mr. Housefather.

Anthony Housefather: This would add a new element to the coercive control offence. It would treat damaging or threatening or attempting to damage a victim's property or the property of anyone known to them as conduct that could threaten safety. There's a list of conduct included. We would just be adding it to that.

The Chair: Mr. Brock.

Larry Brock: First, I support Mr. Housefather. I want to make that abundantly clear. It's very odd that you have any member of the Liberal Party championing property rights, so this is an exception to that general rule.

I want to make a general comment. This is something that I looked at. When I got this bundle of amendments on Friday and I totalled the number of amendments brought by each party, I was shocked that the number of Liberal amendments was literally double the number of opposition amendments. It really speaks to how rushed, in my view, Bill C-16 was if the government has to amend a bill they have been championing for literally the last year.

This is an example of the failures by the justice minister, who took his marching orders from Prime Minister Carney to deliver substantive reforms on justice issues. Clearly, after hearing from a number of witnesses who should have been consulted, in my view, long before—

● (1935)

Iqra Khalid: I have a point of order, Mr. Chair.

The Chair: Go ahead.

Larry Brock: What's the point of order?

Iqra Khalid: It's on relevance to the amendment.

Larry Brock: Oh, it's relevant. I'm getting to that. I'm not quite finished yet, but that was a good attempt, Ms. Khalid.

The Chair: Go ahead, Mr. Brock.

Larry Brock: Attempts to rectify what should have been done up front are exactly what the Liberal government is trying to do now.

I want to put that out there, because it's rather ironic that we'd ever get to a situation such as this with the federal government in clause-by-clause consideration across the number of standing committees we have here. Nevertheless, we are supportive of this particular amendment because we also champion property rights.

The Chair: I'll put that down as support, but unenthusiastic support.

Larry Brock: No, it's enthusiastic.

The Chair: Okay.

Mr. Housefather, go ahead.

Anthony Housefather: Thank you, Mr. Chair.

I just want to say a couple of things in response to that. I restrained myself before, but I will briefly respond.

First of all, the Prime Minister himself, in the House today, talked about property rights and how important they were. Secondly, it shows that Liberal members of the committee listened to witnesses and that within our party we're allowed to make modifications to a bill. It actually shows the opposite of what Mr. Brock is suggesting.

I would also note, given the number of amendments, that a significant number of these amendments are consequential, one to the other. Just because you have multiple amendments, that doesn't mean you have a million different concepts. If you make a change to one clause, in some cases you have to make it to five or six other clauses. Some of the Liberal amendments are consequential, one to the other.

I don't think either of his points were correct, but I do appreciate very much that he's supporting the amendment I put forward.

Larry Brock: That's what I said at the outset. I support you.

The Chair: Thank you.

Ms. Gazan.

Leah Gazan: I have no vote, but I do have a thought. I understand that you're talking about the amendment and that it would delete NDP-6.1. Is that right? If we accept your amendment, are we still able to move forward with my amendment, NDP-6.1?

The Chair: No, we can't.

Leah Gazan: Okay. I ask because my amendment doesn't deal with what we were talking about. It comes from the Union of BC Indian Chiefs and is specifically about self-harm and mental crisis and about potentially criminalizing those who are experiencing mental health crisis due to the legacy of residential schools and genocide. This fits into the Gladue and Ipeelee principles. Especially if you're looking at the highest rates of violence with indigenous women, these factors, residential schools and PTSD, impact our families.

We also know that indigenous people are disproportionately impacted by the carceral system, and we're passing legislation that reinforces and perpetuates the legacy of systemic racism. All of the bills—and I know the Conservatives have brought up Bill C-5—push back against Gladue and Ipeelee principles, which could be used by courts in cases of residential school survivors, for example, not having to justify trauma based on their historical experiences.

I know that I don't have a vote, but I think it's unfortunate, especially if you're looking at the most impacted populations, that we just ignore that.

The Chair: Thank you, Ms. Gazan.

Andrew Lawton: I have a point of order.

Andrew Lawton: I have questions that I hope to ask the officials about proposed paragraph 264.01(2)(c). The questions are not pertaining to Mr. Housefather's amendment specifically. For clarity about the process, can questions be asked of officials when we get to the overall decision on the clause itself?

The Chair: Go ahead, Mr. Lawton.

● (1940)

The Chair: I believe so, yes.

Andrew Lawton: Okay, that's fine. Thank you.

The Chair: All right. Shall G-7 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: We'll go to CPC-19.

Mr. Lawton—

[*Translation*]

Rhéal Éloi Fortin: Mr. Chair, what about NDP-6.1?

[*English*]

The Chair: There was a line conflict between G-7 and NDP-6.1, Mr. Fortin. Because G-7 was adopted, we can't move 6.1.

[*Translation*]

Rhéal Éloi Fortin: With all due respect, Mr. Chair, that's not what I'm reading. In my opinion, NDP-6.1 should have come before G-7. G-7 referred to an addition after line 38, so after subparagraph (vii), which Ms. Gazan was talking about. I don't think one precludes the other, with all due respect, but I'll leave that up to you.

[*English*]

The Chair: Okay, thank you.

We're back to CPC-19.

Andrew Lawton: Building off the comments made by one of my colleagues here before, coercive control is a new area in law. It is important to get it right. It's important to confront a lot of the feedback we've gotten from both sides of it. I actually looked to a former New Democrat MP on this one. Laurel Collins, in the previous Parliament, put forward a coercive control bill that I believe had support from all parties.

This was a defence from that, on coercive control. It provides absolute clarity on the types of conduct, conflict and disputes within relationships that do not qualify as coercive control. That's the spirit of CPC-19.

It would add the following:

> (3.1) If an accused is charged with an offence under subsection (1), it is a defence that
>
> (a) the accused was acting in the best interests of the person towards whom the conduct was directed; and
>
> (b) the conduct was reasonable in all the circumstances.

It's just taking the language from Laurel Collins' bill in the previous Parliament, which was Bill C-332.

The Chair: Shall CPC-19 carry?

Some hon. members: Agreed.

Some hon. members: No.

The Chair: We'll have a recorded vote.

Larry Brock: You supported it in the last Parliament. We all did. It's identical.

Patricia Lattanzio: Are we voting?

Roman Baber: It's a very reasonable amendment.

The Chair: All right, we're having a vote on CPC-19.

(Amendment negatived: nays 7; yeas 4)

[*Translation*]

Rhéal Éloi Fortin: Mr. Chair, I'd like to raise a point of order, if I may.

[*English*]

The Chair: Go ahead, Mr. Fortin.

[*Translation*]

Rhéal Éloi Fortin: I don't want to make this a never-ending story, but I'd like to come back to NDP-6.1 and G-7, which were discussed earlier. I now understand your comments, because the legislative clerk showed me that, in the English version, line 36 was actually eliminated. You're right. However, in the French version, it would have worked. I was told that the English version takes precedence over the French version, unless I misunderstood. If that is indeed the case, I would like to point out that it seems to me to be contrary to the rules applicable to Parliament. The English and French versions should be the same in scope. Neither should take precedence over the other.

I understand that we are facing a tough dilemma. If I were in your shoes, I wouldn't have known what to do either. I am not blaming you personally, but I wanted to emphasize that, when amendments are drafted, we should make sure that the English and French versions have the same effect, which is not the case here.

I'm not speaking up because I'm attached to NDP-6.1. I would have voted against that amendment. I won't dwell on this for half an hour, but, as a matter of principle, I wanted to point out that I have a problem with saying that the English version takes precedence over the French version.

● (1945)

[*English*]

The Chair: Thank you, Mr. Fortin.

I'm going to let the analyst answer the question.

[*Translation*]

Michelle Legault (Legislative Clerk): Thank you, Mr. Fortin.

Let me clarify. It's not a matter of precedence, but a procedural matter related to the fact that the French text tends to be longer. To avoid confusion, when we look at line conflicts, we look at the English first, because the lines tend to be higher in the bill, while the French lines are lower. To avoid confusion and take a consistent approach, we use English when we look at line conflicts. The legal effect is the same. It's just that the drafting is done differently in English and in French, and our practice is to follow the lines in English. There aren't often situations like this, where we really see the distinction between the lines in English and in French. It can happen, but we still have to rely on the English, in accordance with our practice.

I hope that answers your question.

Rhéal Éloi Fortin: Thank you, Madam.

I want to point out that it worked in the French version. G-7 proposed an addition after line 38. NDP-6.1 proposed an amendment to delete lines 37 and 38. We could have passed both without any problem, in my opinion.

Again, I don't want to spend an hour on this, but I have to say that this rule of interpretation seems a bit problematic to me. At other times, it could have a significant impact.

I'll leave it at that, Mr. Chair.

[*English*]

The Chair: Mr. Fortin, I want to make sure you're comfortable with this. We can suspend for a moment if you want to make sure we're on the same page.

[*Translation*]

Rhéal Éloi Fortin: Even if you suspended the meeting, I wouldn't have anything more to say, Mr. Chair.

I explained the problem to you. It's not a matter of personal comfort. Basically, it wouldn't have changed anything, but I was told about an interpretation rule that I find problematic. I wanted to put that on the record. That said, I don't want us to spend the evening on this, because we have important work to do, but I had to mention it.

[*English*]

The Chair: Thank you, Mr. Fortin.

Mr. Housefather.

[*Translation*]

Anthony Housefather: Thank you, Mr. Chair.

I have a question, out of curiosity.

If there were a line conflict in the French version but not in the English version, wouldn't that have the same effect?

If there had been a line conflict in the French or English version, I believe that, as chair, you would have ruled the amendment out of order. Is that correct?

Michelle Legault: Yes. In this case, that is what is happening. It's fine in French, but if the amendment were adopted, there would still be a line conflict in English. The rule is that a line of the bill can only be amended once.

Anthony Housefather: That applies to both languages.

Michelle Legault: That's correct.

Rhéal Éloi Fortin: I appreciate that.

The purpose of G-7 was to add a subparagraph, whereas the purpose NDP-6.1 was to remove a different one. Both could hold up, meaning that one did not prevent the other. Again, I don't want to belabour the point, but I think the translations should be done in such a way that the text is identical in both languages. What I understand from the French version is that a subsection is being added and another is being removed.

The English version seems to say something else. There may be a problem when amendments are prepared or translated. I don't think that's a desirable situation. They are two different things: in one case, we are removing subparagraph (vii) and, in the other, we are adding subparagraph (viii). I understand that the numbering should have been changed, but it's a concordance, and the analysts do that very well. They don't need me or anyone else to make a decision. That said, in theory, both amendments were acceptable and could have been adopted.

[*English*]

The Chair: Mr. Fortin, I'm going to suspend for a couple of minutes.

● (1945)

(Pause)

● (2000)

The Chair: It's getting late. Everybody is getting a little giddy, I think, but we're getting there.

I understand we resolved the issue while we were suspended, so I'm going to ask whether clause 28 shall carry.

Go ahead, Ms. Gazan.

Leah Gazan: Chair, I just want to thank the committee for indulging this and for taking the time, especially because I'm not a regular member. That was very gracious of everybody.

I'm not going to move my amendment. I'll wait for report stage.

I have to say that this is quite emotional for me because these aren't abstract concepts for our families and communities. This is something we live with daily. We are the ones who would be most impacted by this bill. To put forward a bill without acknowledging or considering history and the colonial legacy it has left us with, including.... I was sharing this with Mr. Housefather. They've developed a name: residential school survivor syndrome. They compare it to what veterans and survivors of war have. It's the same sort of psychology.

We're not taking that into consideration. If I see a war veteran in a mental health crisis doing something, I take that into consideration. I think about the trauma that person must have gone through. We have residential school survivor syndrome in our family. We have the highest rate of intimate partner violence. We have the highest rates of femicide and homicide among any population in this country.

I will bring this back at report stage. I want to thank the committee for its indulgence, but we've been punished enough. To ignore our history and the psychology and trauma that came out of it.... When is that punishment going to stop? When are you going to see us and take this as seriously as it needs to be taken?

I'll leave it at that. I want to thank the committee for indulging me and for the respect you've shown me. I really mean it. It really means a lot to me.

The Chair: You're very welcome. That's why we suspended. We wanted to make sure we landed in the right place. Thank you for your comments.

Mr. Lawton.

● (2005)

Andrew Lawton: To confirm, are we now on clause 28 in its totality?

The Chair: That's correct.

Andrew Lawton: I was hoping to get some clarity from the officials on proposed subparagraph 264.01(2)(c)(vii). For context, this is under “Pattern of coercive or controlling conduct”.

Proposed paragraph 264.01(2)(c) says:

> engaging in any other conduct—including conduct listed in any of the following subparagraphs—if, in all the circumstances, the conduct could reasonably be expected to cause the intimate partner to believe that the intimate partner's safety, or the safety of anyone known to them, is threatened:

Proposed subparagraph 264.01(2)(c)(vii) then says:

> threatening to die by suicide or to self-harm.

Perhaps I'm mistakenly reading the grammar. How does threatening to die by suicide or to self-harm fit into proposed paragraph 264.01(2)(c) specifically, which is about an intimate partner feeling like they will be harmed or could be harmed?

Nathalie Levman: That's an excellent question. Perhaps it gives me an opportunity to explain this part of the legislation, which is probably the most modern part of it in the sense that it is targeted at capturing the more subtle forms of coercive and controlling conduct that we know abusers engage in.

What I would stress is that none of these lists in proposed subparagraphs 264.01(2)(c)(i) to (vii) can form part of a pattern of coercive or controlling conduct as defined in proposed subsection 264.01(2) unless they meet the safety test, let's call it, which has just been read out. I won't read it out again, but what it means is that any example of this conduct must also cause a reasonable person in the victim's circumstances to believe their safety is threatened before it can form part of the offence itself.

There's actually a mechanism built into proposed paragraph 264.01(2)(c) to ensure that somebody who threatens suicide...because that could be, as has been very rightly pointed out, a sign of mental health problems and not a sign of a coercive controller.

What we know from the evidence, unfortunately, because we did quite an extensive engagement process, led by Justice Canada, with our provincial and territorial partners in 2023.... We heard from a range of groups, and we heard from survivors themselves and those who represent them that this is a big problem in the context of coercive control. I would also note for the committee, in case it helps them in considering why this is here, that it also happened in the Bailey McCourt case.

Andrew Lawton: I appreciate that, Ms. Levman.

There are obviously circumstances in which.... In the clearest one, someone would say, "I'm going to kill myself unless you do this." That would be very clearly coercive control. There are also situations in which someone may be in a crisis. Their intention is not to do that; it may have that effect.

I'm wondering what, in your view, would save people like that—who are themselves victims—from being charged. They're not seeking to manipulate. They're not seeking to control. They themselves are experiencing very real issues with suicidal ideation or mental illness. What's to stop that person in a relationship from potentially being charged under this when they clearly have their own issues they need support for?

Nathalie Levman: It is, first of all, a modified objective test, so it would have to be, as I said, what a reasonable person in the victim's circumstances would believe. In addition to that, there is another safeguard built right into the offence. If you look at proposed subsection 264.01(1), you will see that a person cannot be considered a coercive controller under this offence unless they have the requisite intent, the requisite mental element. In the situation that has just been described, that person simply does not meet the legal test in proposed subsection 264.01(1).

Andrew Lawton: Thank you.

The Chair: Mr. Baber.

● (2010)

Roman Baber: I really hope that everyone here heard what the official just said. The safeguard against a catastrophe in a situation like this is the requisite intent. Part of the challenge with the clause, since my amendment was defeated, is that recklessness remains as a sufficient element to meet *mens rea*, which is why I have proposed that we remove recklessness—specifically for the type of situation that we're describing here.

If someone says, "I'm going to kill myself if you don't do something", God forbid, how do you square the safeguard that you just described—the intent—with the fact that the legislation, in clause 28, makes it clear that recklessness is sufficient to make up the *mens rea* element?

Nathalie Levman: It's not the only safeguard, first of all. There is the safety test in proposed paragraph (c), and there's a lot of jurisprudence that will help assist courts in interpreting proposed paragraph (c), because this test is taken from the human trafficking provisions in the definition of "exploitation". We have excellent case law right from the Supreme Court of Canada on that.

On the other point about recklessness, what recklessness means is that the person has to subjectively know that there is a risk their conduct could have that effect and proceed anyway. In the case of somebody who has mental health problems, they would not, in my view, meet that test.

I'd also like to stress that this offence is modelled after Scotland's approach, which stakeholders have said is the gold standard model for coercive control offences. There have been studies, and those studies have not raised any concerns about victims or others being inappropriately charged with the offence. I would stress that Scotland's offence includes the standard of recklessness, and that is viewed as an important protective element for victims.

The Chair: All right, we'll move on.

Shall clause 28 carry?

(Clause 28 as amended agreed to on division)

(Clauses 29 and 30 agreed to)

(On clause 31)

The Chair: NDP-7 is out of scope, which takes us to—

Larry Brock: What's out of scope?

The Chair: It's NDP-7, clause 31.

Larry Brock: Okay.

The Chair: You're not going to challenge that, are you?

Larry Brock: No.

The Chair: We're on G-8.

Ms. Lattanzio.

Patricia Lattanzio: This is a technical amendment. The motion would expand the application of the sexual activity evidence regime, which prohibits the use of evidence regarding a complainant's past sexual activity to support the twin myths: that the complainant is more likely to have consented to the sexual activity at issue or that they are less worthy of belief than in cases involving an offence under any act of Parliament that is of a sexual nature or committed for a sexual purpose.

The sexual activity evidence regime in Bill C-16 would currently only apply to a Criminal Code offence that is of a sexual nature or committed for a sexual purpose. This amendment would further protect victims of sexual offences by ensuring that the victims of offences that are of a sexual nature or committed for a sexual purpose, including offences in other federal statutes, would receive the same protections under the law.

The Chair: Mr. Brock.

Larry Brock: We largely approve of and support this amendment, but I would like to get some clarification from officials.

From your perspective, given the expansion of the scope to any other act of Parliament, are there any unintended consequences that we should be made aware of?

● (2015)

Nathalie Levman: I don't believe so. I think the main concern is that the Immigration and Refugee Protection Act contains a trafficking offence, which of course can be committed for a sexual purpose. The intention here is to ensure that that victim gets the same protection of the law.

Let's say police decide to proceed with section 118—that's the human trafficking offence in IRPA—and not the Criminal Code offence. The victim would not receive the protection of the law unless this amendment is enacted. That is the purpose of it. What it's reined in by and what provides safeguards is the tests. You have to have an offence of a sexual nature or an offence committed for a sexual purpose in order for the provisions to apply. I've already explained to the committee what that term means.

Larry Brock: Thank you.

The Chair: I'm seeing no one else, so shall G-8 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: That takes us to NDP-8, which I am also ruling out of scope.

That takes us to G-9.

Anju Dhillon: That would be me, Mr. Chair.

It's also a technical amendment. This motion would amend proposed subsection 276(2), which sets out the relevant evidentiary standards for the admission of sexual history evidence and inserts a pinpoint reference to proposed section 276.02, which was accidentally omitted. Proposed subsection 276(2) contains the procedures for part of the process that must be followed when the accused seeks to admit sexual history evidence.

The Chair: Thank you, Ms. Dhillon.

Shall G-9 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: That takes us to NDP-9.

Ms. Gazan.

Leah Gazan: Similar to an earlier amendment of mine, this amendment seeks to ensure that sexual history is not admissible as evidence in any case.

Legal experts have shared with us that explicitly affirming the state of law on sexual history evidence will reduce mistakes by making legislative intent even clearer and will prevent the sexist practice of invoking women's sexual history to damage the credibility of her testimony.

The Chair: I'm seeing no hands, so shall NDP-9 carry?

(Amendment negatived [*See Minutes of Proceedings*])

The Chair: We're on G-10.

Mr. Housefather.

Anthony Housefather: This is a “for greater certainty” clause to codify the 2025 Supreme Court decision in R v. Kinamore, which basically says that section 276, which is the sexual history evidence admissibility regime, is engaged by sexual inactivity evidence.

If anybody requires more clarification, I'm happy to provide it, but that's the intent.

The Chair: Thank you, Mr. Housefather.

Mr. Brock.

Larry Brock: This is a similar question for the officials. Are there any unintended consequences with this amendment?

Michael Ellison (Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): I'll take that question.

To give a relatively short answer, no unintended consequences are foreseen. This is a codification of part of the Supreme Court of Canada's decision in King and Kinamore, which came out in 2025. It is going to provide clarity to practitioners across the country that sexual inactivity evidence can also be used to invoke the twin myths and is properly captured by this regime.

The Chair: Thank you, Mr. Brock.

Shall G-10 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

(Clause 31 as amended agreed to)

(On clause 32)

The Chair: We're now on clause 32 and G-10.1.

Ms. Khalid.

Iqra Khalid: I'm moving that Bill C-16, in clause 32, be amended by replacing line 29 on page 19 with the following:

> prosecutor and filed with the clerk

It would also replace line 37 on page 19 with the following:

> the prosecutor and filed with the

It would also replace lines 8 to 10 on page 20 with the following:

> If the judge, provincial court judge or justice grants the application and agrees to hold the hearing, the accused shall cause a copy of the application to be given to the complainant by a person other than the accused.

This amendment is really just about cleanup. It is very technical.

● (2020)

The Chair: Shall G-10.1 carry?

(Amendment agreed to)

The Chair: We're on G-11.

Ms. Lattanzio.

Patricia Lattanzio: This motion would clarify that victims or witnesses who are protected by the automatic publication bans that apply to hearings to determine the admissibility or production of highly sensitive evidence in sexual offence trials may disclose information about the hearing, including to a legal professional, health care professional or a person in a relationship of trust with them, provided that they do not intentionally or recklessly reveal the identity of any other person protected by the publication ban.

The Chair: Shall G-11 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: Next is G-12.

Anju Dhillon: That would be me, Mr. Chair.

This is also a technical amendment. It removes the words “for a hearing” from proposed subsection 276.06(1).

This technical amendment would ensure clarity that the procedure for the Crown to apply to adduce evidence of sexual activity is intended by Parliament to be a single-stage procedure. This is not a policy change; rather, the words “for a hearing” were unintentionally included in the bill.

The Chair: Thank you.

Shall G-12 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: We're on NDP-10.

Leah Gazan: The amendment that we're proposing was submitted by LEAF.

This amendment relates to procedures surrounding the admissibility of sexual history as evidence. It is based on recommendations from organizations such as LEAF to create greater legal protections for women and gender-diverse people when there is an application for considering their sexual history.

This would provide greater notice to the complainant prior to the hearing to determine the admissibility of this evidence and would provide complainants with independent legal advice and standing during this process.

The Chair: Shall NDP-10 carry?

(Amendment negatived [*See Minutes of Proceedings*])

The Chair: On G-13, go ahead, Ms. Lattanzio.

Patricia Lattanzio: Thank you, Mr. Chair.

It is the exact same rationale that I used when I spoke to G-11.

The Chair: Shall G-13 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: Next is G-14.

Anju Dhillon: That would be me, Mr. Chair.

It's another technical amendment. It fixes a typo in proposed subsection 276.1(6) by removing the second “the” from “as to the uses that the they may and may not make of that evidence”.

The Chair: Shall G-14 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: Next is NDP-11.

Leah Gazan: If this were a baseball game, I'd feel like I was losing, but I'll tell you what my amendment is.

It's similar to my last amendment. On the recommendation of legal experts such as LEAF, it would ensure that the complainant would have a clear statutory right to counsel from the outset of the joint application process for the use of sexual history as evidence. This is important to ensure that women and gender-diverse people have legal protections to ensure that the rights of women and gender-diverse people are upheld in legal proceedings.

I'm wondering if I can ask the drafters about this, because it was really focused on by some of the women's organizations.

What is the issue with putting limitations on utilizing sexual history in the courts as part of the process? I understand you're voting against it, but there's been a lot of research about.... Is it just a line conflict, or is it...with the amendments we're proposing?

I'm sorry. I'm getting tired.

The amendment reads:

> (7) For greater certainty, the complainant has the right to be represented by counsel.

● (2025)

The Chair: I'm sorry; are you posing a question to the witnesses?

Leah Gazan: Yes, I'm asking a question—a very convoluted, tired question. I really apologize so much.

The Chair: No, it's just that I was having trouble hearing you.

Leah Gazan: Yes, I would have a hard time too.

Michael Ellison: Thank you, member, for the question.

NDP-11 would insert a “for greater certainty” clause into the first of the two proposed joint admissibility application processes that are new to Bill C-16 and potentially to the Criminal Code.

Looking at the very beginning of that procedure, you'll note that the proposed language in both of the joint application procedures refers to all three—the Crown, the defence and the complainant—agreeing to jointly apply together, so the position of the department would be that this alone does grant complainants the necessary standing as part of the joint application process.

That being said, there would be very little legal risk to including a “for greater certainty” clause in the joint application procedures to clarify that fact, because it is unusual, typically, for a complainant to be a party and to have standing. This would clarify that fact.

Leah Gazan: To follow up, the amendment I am offering would provide further clarity.

Michael Ellison: Yes. A “for greater certainty” clause can operate to clarify the existing state of the law and make it extremely clear for all justice system participants that this is the intention. That's what this would theoretically do. It would provide that clarity if it were adopted by the committee.

Leah Gazan: So the committee is voting against clarity. I'm just kidding.

Some hon. members: Oh, oh!

Larry Brock: No, we're supporting it.

Leah Gazan: Are you supporting it?

An hon. member: Yes.

The Chair: Okay, save the celebration.

Leah Gazan: I'm used to the letdowns. I'm sorry.

The Chair: Mr. Fortin, did you have a comment?

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Chair.

I certainly don't want to be against clarity either.

Mr. Ellison, we're talking about a victim's right to be represented by counsel. What does the right to representation entail? Does it involve the right to submit incidental procedures, for example to request expert opinions and all that during a trial? In that case, wouldn't there be a risk of delaying the administration of justice?

Second, if the right to be represented is recognized in the Criminal Code, does that imply that legal aid will pay the lawyer, for example, of the person represented, the complainant? If so, do the provinces agree to cover the complainant's legal costs and have the process changed? As I was saying, there may also be a risk of dragging out the proceedings.

Those are the two aspects of the proposal that concern me.

[*English*]

Michael Ellison: First of all, what does this entail in terms of the role of counsel for the complainant? This wouldn't necessarily fundamentally change the role of counsel for the complainant when it comes to these types of applications, except for the fact that these measures are aimed at reducing delay overall.

If there are non-controversial aspects of sexual history that even the complainant agrees, after consulting with counsel, can be admitted as part of the trial process, and if we get the relatively rare circumstance where all three parties agree, at that point we can go through an expedited process, as proposed in the bill, to have this reviewed by the trial judge. You then receive a response. If for any reason the trial judge needs to provide further direction or disagrees with the proposed specific use of the sexual history, the trial judge can compel a normal stage two hearing, where this would normally be litigated.

The Criminal Code already provides direction as to the role of a complainant's counsel, namely that they are able to make submissions on the matter. The Supreme Court of Canada and other courts have provided specific guidance in this context about what counsel can do. For example, the Crown does not necessarily have the full right to cross-examine witnesses at one of these hearings.

As for the rest of your question with respect to legal aid, this “for greater certainty” clause and the proposed substantive provisions in the bill when it comes to the joint application processes would not necessarily fundamentally change entitlement to legal aid in the provinces or territories, so existing criteria would most likely be applied by provincial and territorial legal aid commissions or legal aid societies.

● (2030)

[*Translation*]

Rhéal Éloi Fortin: What I understand is that this is already being done right now if there is consent among the prosecutors and if the court authorizes it, obviously. However, if this is included in the Criminal Code, it will become an obligation. The tribunal will have no choice but to allow representation. You say that, right now, counsel for the complainant can cross-examine if the judge authorizes it. Once this provision is in the Criminal Code, will the judge still have some leeway or will the complainant's lawyer not have the right to do so?

Everyone agrees that we have the right to talk to a lawyer. Obviously, it doesn't have to be written into the act. We're not talking about consultation here, but about representation. Maybe I'm wrong, but, in my opinion, that implies the right to cross-examine, to argue, to file briefs, to submit incidental proceedings and to challenge them. I'm not saying I'm against the clause, but I have trouble understanding how far things would go if it were introduced.

[*English*]

Michael Ellison: Just to clarify, the role that complainant's counsel would have within the proposed joint application processes would not change what they are able to do in order to assist a complainant throughout a traditional sexual history application. The courts have provided guidance that complainant's counsel can make submissions, but there are restrictions on what they can and can't do, and it's not the full breadth that a Crown attorney would have in a sexual history application. For example, a Crown attorney would be able to cross-examine an accused person bringing such an application alone on an affidavit, or related witnesses if it's not the accused person who's signing an affidavit to support such an application.

The role of complainant's counsel will ultimately be essentially the same as in existing law. Once you hit the second stage of a sexual history application, a complainant has standing, traditionally, in these types of applications. That is what would be enshrined here as well. It's just that at the front end of this joint application process, when all the parties agree, we are simply confirming that the complainant has counsel.

[*Translation*]

Rhéal Éloi Fortin: Thank you.

[*English*]

The Chair: Thank you.

Shall NDP-11 carry?

(Amendment agreed to [*See Minutes of Proceedings*])

The Chair: There you go, Ms. Gazan.

Let's end on a high note.

We will adjourn for tonight, and I'll see you at the next meeting.