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Chair

Mr. Art Hanger

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• (1530)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call the Standing Committee on Justice and Human Rights to order. It is Wednesday, March 21, 2007. Our agenda is, as noted, pursuant to the order of reference of Monday, October 30, 2006, Bill C-22, An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act.

Appearing before our committee this morning is the Minister of Justice, Mr. Rob Nicholson.

Thank you, Minister, for appearing. I turn the floor over to you now.

Hon. Rob Nicholson (Minister of Justice): Thank you very much, Mr. Chairman. I'm pleased to be back before the committee.

I'm pleased to have with me Ms. Carole Morency, acting general counsel, from the Department of Justice.

I would like to make some opening remarks.

[*Translation*]

I am pleased to address the members of this committee as they begin their study of Bill C-22, An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act.

[*English*]

Bill C-22 supports a key component of the government's tackling crime commitment. It proposes to better protect youth against adult sexual predators by raising the age of consent from 14 to 16 years and renaming it the "age of protection".

The two issues of, one, the protection of children and youth against sexual exploitation, and two, the age of consent are well known to this committee. In 1987, I and other members of this committee were also on the legislative committee that considered what was then called Bill C-15. The former bill sought to significantly overhaul and modernize the Criminal Code's response to sexual abuse. I recall that this issue attracted considerable scrutiny and commentary at the time, and today we see that this level of interest continues with Bill C-22—as well it should; all of us, after all, are trying to better protect youth against sexual exploitation.

Mr. Chairman, there are many things on which Canadians and parliamentarians may agree to disagree, but my understanding today, just as it was 20 years ago as a member of this committee, is that the protection of children and youth against sexual exploitation is not

such an issue. Indeed, it is an objective for which we typically find universal support, and to the extent that there may be some disagreement, it is usually on how best to achieve this objective.

So this is our starting point. Canadians have told us that youth need better protection against adult sexual predators, and the government agrees. This is exactly what Bill C-22 delivers.

The age of protection refers to the age at which criminal law recognizes the legal capacity of a young person to consent to engage in sexual activity. Below this age, any and all sexual activity with a young person, from sexual touching to sexual intercourse, is prohibited. Of course, any non-consensual sexual activity, regardless of age, is a sexual assault.

Currently the Criminal Code sets the age of protection at 18 where the sexual activity involves prostitution, pornography, or it occurs within a relationship of authority, trust, dependency, or is one that is otherwise exploitive of the young person. Bill C-22 maintains this age of protection.

The Criminal Code sets the age of protection for other sexual activities at 14, and this is what Bill C-22 proposes to change by increasing it to 16 years.

There is currently one exception to the 14-year age of consent; 12- and 13-year-olds can consent to engage in sexual activity with another person who is less than two years older, but under 16 years, and with whom there is no relationship of authority, trust, dependency, and it is not otherwise exploitive of the young person.

Bill C-22 maintains the existing two-year close-in-age exception for 12- and 13-year-olds, but it also proposes a new close-in-age exception for 14- and 15-year-olds, who would now be below the new age of protection. Under the proposed new exception, 14- and 15-year-olds would be able to consent to sexual activity with another person provided the other person was less than five years older and the relationship did not involve authority, trust, dependency, and was not otherwise exploitive of the young person.

Why a five-year close-in-age exception? First, our objective with Bill C-22 is to protect youth against adult sexual predators and not to criminalize consensual teenage sexual activity. A five-year close-in-age exception also recognizes that of those youth who may be sexually active, the vast majority are sexually active with partners who are within that age range.

Bill C-22 also provides two other time-limited or transitional exceptions. When the new age of protection comes into effect, it is possible that there may be some 14- and 15-year-olds who are already in an established relationship with a partner who is older than the teenager by five years or more, and who therefore will not fall within the proposed five-year close-in-age exception.

A time-limited exception is therefore proposed for these youth where they are already, as at the date of entry into force of the new age of protection—married, or living in a common-law relationship as already defined by the Criminal Code or as proposed by Bill C-22, and provided always that the relationship is not one of authority, trust, dependency, or is not otherwise exploitive of the young person. The common-law relationship exception would therefore be available for a 14- or 15-year-old who has been living in a conjugal relationship for a period of at least one year, as currently defined by section 2 of the Criminal Code, or under Bill C-22, where the common-law relationship had not endured the requisite minimum period of one year but had produced a child, or one was expected.

• (1535)

But under either formulation of the definition of a common-law relationship, a second prerequisite always applies, and the relationship is not otherwise illegal because it involves authority, trust, dependence, or is otherwise exploitive of the teenager. As a result, neither the marriage nor the common-law relationship exception would be available where a 15-year-old wanted to marry or begin to live common-law with a 25-year-old on the day after Bill C-22 comes into effect.

These are the reforms proposed by Bill C-22. Let me go back to where I started: why these reforms are needed. As I said at the outset, the objective of this bill is to better protect 14- and 15-year-olds against adult sexual predators. Statistics Canada's April 2005 *Juristat* on "Children and youth as victims of violent crime" looked at all violence against children and youth, including sexual assaults. It reported that teenage girls aged 14 to 17 accounted for approximately one-third of all child and youth sexual assault victims, and the majority of offenders, 86%, were known to the victim.

Internet luring, or the use of the Internet to communicate with a child for the purpose of facilitating the commission of a sexual or abduction offence against the child, accounted for 10% of all reports received by Cybertip.ca during its two-year pilot phase. Cybertip.ca is Canada's national tip line for reporting online child sexual exploitation. Of these reports, 93% of the victims were female, and the majority, 73%, were between the ages of 12 and 15.

From these few statistics, it's clear that 14- to 15-year-olds are at a greater risk of being sexually exploited, including through Internet luring, and yet they are the ones who are precisely left unprotected by the current age of consent of 14 years. Bill C-22 will change this. Unlike the law's current approach, this bill will also remove the guesswork as to what constitutes sexual exploitation of these youth

by drawing a very clear line. If you are five or more years older than a 14- or 15-year-old, you are prohibited from engaging in any sexual activity with that young person.

Last, our focus under Bill C-22 is on those who would sexually exploit these youth and not on whether the young person consented to that exploit of contact. Mr. Chairman, this is as it should be.

Mr. Chairman, I said at the beginning of my remarks that Bill C-22 is a key component of this government's commitment to tackle crime, but I hope the committee will look beyond this and will also see Bill C-22 for the immediate and real opportunity that it presents to us, to stand shoulder to shoulder and clearly say with one voice that we condemn the sexual exploitation of youth by adult predators. Bill C-22 delivers on what Canadians want and, most importantly, on what our youth need and deserve.

Thank you very much, Mr. Chairman.

• (1540)

The Chair: Thank you, Minister.

Now to questions. Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you, Mr. Chairman.

Welcome, Mr. Minister.

My party supports fully the concept behind this legislation, and we'd like to deal with it as quickly as we can. I have a couple of really technical questions.

One of the problems or challenges facing this type of legislation is the need to build in these exceptions for close in age, the problem with marriages and common-law relationships, and the fact that we prefer not to have the Criminal Code regulating non-typical social relationships. In any event, we do want to target predatory behaviour.

Now the technical questions. It's great to see you have an adviser from your department.

Hon. Rob Nicholson: Is that what you're going to say?

Mr. Derek Lee: Exactly. I'm sure you could do it.

Hon. Rob Nicholson: I'm pleased to have her with me.

Mr. Derek Lee: But I know you'll probably turn to your right when I ask these very technical questions.

The way the bill is drafted, as I understand it, the married and common law exemption is only transitional. Therefore this bill will effectively prohibit a marriage between a 15-year-old and a 22-year-old, unless there's going to be a platonic relationship of some sort. Let me just throw out that hypothetical case.

Hon. Rob Nicholson: That's correct.

Mr. Derek Lee: Has that been addressed constitutionally? If we are effectively prohibiting a marriage, does that disturb any of the provincial partners in the justice system?

Hon. Rob Nicholson: I don't know of any provincial partners that would be disturbed by that, Mr. Lee. But it goes to the essence of this bill, which is to prevent that kind of activity and protect children 14 and 15 years of age, just as it would be prohibited right now at the age of 13. We're just moving that age up by two years.

Mr. Derek Lee: I'm suggesting this will effectively prohibit the marriage of a 21-year-old and a 15-year-old.

Hon. Rob Nicholson: Exactly.

Mr. Derek Lee: But it won't technically do it. If the marriage laws allow them to get married, they'll be able to get married. The only problem is that the wedding night may be a little bit different.

• (1545)

Mrs. Carole Morency (Acting General Counsel, Department of Justice): Provincial law sets the minimum age, within their competence, over solemnization. For the most part, provinces set it at 16 with parental consent, or 15 in the Northwest Territories or Nunavut. In a situation where someone below that age wishes to marry, three jurisdictions disallow that: Quebec, Yukon, and Newfoundland and Labrador. In the other jurisdictions it's only allowed where it's either approved in advance by a court, or in three jurisdictions where the minister responsible for the solemnization of marriage provides written permission to that effect.

So Bill C-22 will not prevent somebody who meets the criteria under provincial legislation from marrying a person who is within the close-in-age exception. If a court is being asked to approve the marriage of a young person, the exceptional circumstance provided in the provincial legislation is generally because it's expedient and in the interest of the young person—she's pregnant, those types of issues. The court would be cognizant of what the criminal law says. If this were a sexual assault under the criminal law, the court would make a determination whether it was expedient or in the interest of the young person to authorize a marriage in those circumstances.

Mr. Derek Lee: So even if a court provided an order that allowed the marriage of persons who were not close in age, the court order would effectively allow something that would become a criminal offence.

I'll just leave it there, because I realize there's no answer to it.

Hon. Rob Nicholson: Presumably they wouldn't give authorization in the face of a Criminal Code offence. That's the bottom line. In the case of a 25-year-old who wanted to marry a 14-year-old, presumably the court wouldn't give consent to that if Bill C-22 were passed.

Mr. Derek Lee: My scenario would have involved a 21-year-old and a 15-year-old or a 14-year old, but I see the difficulty. I'm just pointing out a technical problem.

Second, the close-in-age exemption, or where parties are not close in age, refers also to the concept of dependence—where there is not dependency. But if a 19-year-old adult marries a 15-year-old, you may well have dependency, so the dependency removes the exemption. The existence of a dependency turns this into a criminal

offence, and I don't see where being married removes the criminal offence if there exists a dependency.

Could you put me at ease and explain how a male who supports a 16-year-old—they are married or common law, but there is dependence, and dependence takes away the exemption?

Mrs. Carole Morency: Section 153 of the Criminal Code already provides a prohibition against sexual activity with a young person between the ages of 14 and 18 where there is a relationship of trust, authority, or dependency. From the last Parliament, former Bill C-2 broadened that to look at the facts and situation of each case.

In that context, the provision has been in the Criminal Code since 1988 with the reforms brought in by former Bill C-15. In that context they are looking at the nature of the relationship. An example is dependency where the other person is basically exploiting the vulnerability of the younger person for a sexual exploitation purpose. Dependency in that sense is a bit different from what we understand it to be, for example, in a family law context. But it is well understood within the criminal law context in section 153.

The Chair: Thank you.

Thank you, Mr. Lee.

Madam Freeman.

• (1550)

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Good morning, Minister.

First off, I want to say that I agree with you that protecting our youth is a goal we all share. However, the means to achieving that goal may differ. I believe that sex education is undeniably one way of truly protecting teenagers from being sexually exploited.

Education informs children and teenagers about their responsibilities in terms of their sexuality, whether it be about STDs or unwanted pregnancies or about how they can protect themselves from unwanted sexual relations or exploitation.

Earlier, you shared some statistics with us. What needs does the bill introduced by your government aim to address? Have other more detailed statistical studies been done on the number of exploitative and non-exploitative relations where the proposed age difference is either a factor or not. Are cases of teenage sexual exploitation increasing? Do you have that kind of information to share with us? I'd like to hear the statistics on this. The figures you gave us show that young girls between the ages of 14 and 16 are the most vulnerable. That doesn't tell us what needs this bill aims to address.

[English]

Hon. Rob Nicholson: I'm sorry you don't think it does, Madam Freeman. It seems to me that the statistics I quoted are very specific that this is an age where young people are quite vulnerable, and a pretty solid argument can be made. I think we're just bringing this country in line with where a number of countries have gone.

You may be interested to know that the United Kingdom has put the age at 16. In most Australian states and many American states it's 16 at least. It seems to me that in a modern society it's inconsistent, and there's a gap in the law when 14-year-olds can be preyed upon by 40-year-olds. Even if the statistics show there are not that many 25- or 35-year-olds who are exploiting or taking advantage of young people, nonetheless there's a pretty solid public policy argument for raising the age to 16.

The statistics I quoted may not convince you there is a need, but I think there's a pretty solid public policy rationale for protecting 14- to 15-year-olds.

[Translation]

Mrs. Carole Freeman: According to the figures that you presented to us yesterday, most cases that come before the courts are thrown out. Can you explain why that occurs? Only about 10% of cases involve assault. Yet, according to the statistics presented yesterday, in 2003-2004, 62% of the charges were stayed and 59% were dropped.

To what do you attribute this state of affairs?

[English]

Hon. Rob Nicholson: I think, Mr. Chairman, that one of the things this bill does is clarify the law so we know exactly what we're talking about. No longer would there be any doubt as to the ages and the age limits and the type of activity we're talking about. I mentioned, Madam Freeman, that the laws of 20 years ago were very complicated in terms of what sexual activity was being prohibited, and it seems to me that we modernized it then and that we've clarified the law.

I think crown attorneys and police officers right across this country will tell you that these types of cases are very difficult to move forward. Nonetheless, I think it's incumbent upon us to take every step possible to make sure the law is clear and that there's a rational public policy framework for the enactment of that law. Of course, our job is to support those institutions in society. We don't do it just by changing the law.

I mentioned Cybertip.ca, which is an important tool in making sure that the exploitation of young children isn't covered.

I note that the budget we just announced puts in an additional \$6 million for the protection of children in order to strengthen current activities combating the sexual exploitation and trafficking of children. Of course, you would know, at the provincial level, that this is a concern for provincial and territorial governments across this country. I know they have programs to intervene and to assist in this particular area. I think there's a wide range of activities and support for this.

But I, for one, wouldn't underestimate the challenge in moving forward. Sometimes individuals are reluctant to come forward with

accusations of this type. Nonetheless, it seems to me, in my years as a lawyer, that the criminal justice system has become more sensitive. The provisions that have changed—for instance, on witnesses testifying, removing inquiries into the backgrounds of the individuals, and that sort of thing—I believe, are steps in the right direction and help facilitate the protection of young people that we're trying to achieve.

• (1555)

The Chair: Thank you, Ms. Freeman.

We'll go to Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Minister, for being here.

Thank you, Mr. Chair.

Mr. Minister, I think you know that I have three concerns, one that's already been raised by Mr. Lee on the constitutional question. Although I accept, generally, Ms. Morency's analysis, it is making the assumption that the provinces would have to back off from the federal jurisdiction, and I'm not entirely convinced that's the case. That's my first concern.

Then I have a concern that you've not included: an amendment to section 159.(1) of the Criminal Code that lowers the age from 18 to 16 for anal intercourse. This is clearly discriminatory and has been found to be so by a large number of our courts, in spite of which we are still having charges laid under that section. In that regard, my statistics show that in 2003-04, there were 78 charges laid. There were only two convictions; all the rest were acquittals. I have to be suspicious that the section is being used as a harassment, probably exclusively, against the gay community in Canada. So I'm very concerned about that not being included.

Finally, I'm concerned about this legislation where you have a relationship between a couple in excess of the five years and there's an issue of sexually transmitted disease and the young person in the relationship refuses to get care out of fear of having to disclose the name of the other one. That issue is not addressed in this legislation.

Having said all that, Mr. Minister, what I'm more concerned about today is that I see a motion coming before the House tomorrow that is going to usurp the function of this. I think this committee is entitled to know, first, whether your government is going to support that motion, and second, whether you are going to implement it and just take this issue away from us. If you are, we might as well just close our files and go home right now.

Hon. Rob Nicholson: I think you've touched on four different issues.

Mr. Joe Comartin: Can you address the last one?

Hon. Rob Nicholson: That's right, we might all be out of here. Is that what you're thinking?

Mr. Joe Comartin: Well, I might as well. There would be no use in answering the other ones.

Hon. Rob Nicholson: I'll have a look. I've just been informed that it's justice related and that the Liberal Party wants to expedite four bills. They don't include Bill C-10, the mandatory minimum bill. It doesn't talk about dangerous offenders. But I'm always interested in any procedure, anything that might expedite the passage of bills. Whether that can be done on an opposition day, or in fact if it should be, is something I will have a look at, and I hear your concerns on that.

We know the concerns of the Liberal Party in this area and perhaps the reasons they're coming forward, but again, I won't do anything in haste—

Mr. Joe Comartin: Their concern, Mr. Minister, is more political than it is with public policy.

Hon. Rob Nicholson: I know. That's what I'm saying. I appreciate that. That's their rationale. You can appreciate that I'm looking for every opportunity that makes common sense and is within parliamentary procedure to make sure our justice legislation gets through, so I will have a look at it. I actually haven't received a copy of it, but I understand it has been tabled with the Clerk of the House, and I will have a look at it.

With respect to the constitutionality, Mr. Comartin, you're very experienced in this area. When there is an activity that Parliament has a legitimate concern in prohibiting or circumscribing, it is proper for Criminal Code jurisdiction under the Constitution of this country. I have complete confidence that raising the age of protection from 14 years of age to 16 years of age will pass constitutional muster.

The bill doesn't address section 159. It doesn't address a lot of different areas. It's not meant to address all sexual activity dealt with in the Criminal Code; it's very specific. It raises that age of protection for 14- and 15-year-olds, and that applies to all types of sexual activity that is not otherwise prohibited as an assault. It protects all children, whether heterosexual or gay, under the age of 16.

With respect to disclosure, you would be aware, of course, that there are disclosure requirements on health care professionals, and that if a 13-year-old, for instance, is being sexually exploited by an adult, there are reporting requirements. We're asking that the same reporting requirements apply to 14- and 15-year-olds, because as this legislation makes clear, we intend this to be a crime. The 25-year-old who is having sex with a 15-year-old can and should be reported. It's a criminal activity.

• (1600)

Mr. Joe Comartin: Mr. Minister—

Hon. Rob Nicholson: I think that hit all four. You may have a follow-up, but—

Mr. Joe Comartin: I do, on two areas.

On the last point in particular, these are the current numbers as of the current census: in the 14- and 15-year-old category, there are 872,000 youth in this country; based on the best estimates we can get—and they're rough—as many as 13% of them are engaging in sexual activity with individuals who are in excess of that five-year gap. That's based on U.S. statistics, because we have none that are

particularly valid. That statistic is not a very strong one, but we could be dealing with as many as 125,000 youth in terms of their relationships.

It's a much more significant number than the 12- and 13-year-olds, and of course the ratio of sexual activity in the 14- and 15-year-old category is substantially higher than it is among the 12- and 13-year-olds. So on the health issue, we're talking of a potentially much more significant problem of people stepping back and refusing to get treatment because they don't want to declare the names of the parties they are engaged in sexual relationships with, whether it's exploitive or not. They are just not going to do that, because they are not going to expose them to criminal charges. It's a much more severe problem than the one we're currently confronted with in regard to 12- and 13-year-olds. I make that statement.

Second, to come back to the constitutional issue, has there been any consultation with the provinces? They have been advised that if this legislation goes through, they're either going to be faced with court challenges to their marriage legislation or their marriage legislation is going to be struck down in this regard.

Hon. Rob Nicholson: Mr. Comartin, I wasn't justice minister at the time this piece of legislation was introduced, but my understanding is that there were some inquiries by some provincial governments as to how it would work. To my knowledge, there is no objection at the provincial or territorial level with respect to this bill.

The Chair: Thank you, Mr. Comartin.

Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Thank you, Mr. Minister, for being here today.

I want to especially thank you for placing the concerns of parents regarding their kids as a top priority on your agenda. Bringing this bill forward indicates some of the things I've been talking about for the 13 years that I've been here, and I'm very pleased to finally be able to address that with a minister of the Crown in order to get some changes made.

I also want to commend you on the \$600 million addition to the budget to fight child exploitation. That's an indication to me that the things that need to happen are really going to happen.

I realize the technicalities that are being talked about. I was principal of a school for the better part of my life before coming here. I want to share with the minister that Mr. Comartin's figures that approximately 13% could be engaged in sexual activities at ages 14 or 15 could be fairly accurate. Compared to what I had to deal with in the school I was at for a number of years—it was a small school, but we had 14-year-olds and 15-year-olds, and I can name specifically five times where individuals of 14 and 15 were engaged in sexual relations with adults over five years older than themselves.

Each one of those situations ended in tragedy—I'm talking two or three years down the road, beyond the initial contact—devastating tragedy. They were children of friends of mine, so I know what I'm talking about regarding what it can do to families and to young people, what it can do. No, maybe it doesn't happen in every case, but I saw it, I felt it, and I was part of it. It has to stop. It just has to stop.

So I want some assurance. In every one of those cases that I mentioned in my particular situation, we tried to involve the police to remove the 14-year-old or 15-year-old from the situation. The police couldn't do anything; they were handicapped. Parents forcefully tried to move in and remove their children from those situations. Each one of them was charged with trespassing and, in a couple of cases, charged with assault for entering a premise, trying to bring their child out of something that they hated to see them involved in. Had they been successful, the tragedies wouldn't have occurred. That's why I think it's so important that we really address this seriously.

Will the authority be returned to the parents to have control over decisions made by 14-year-olds and 15-year-olds with regard to their sexual activities with people five years older or more?

• (1605)

Hon. Rob Nicholson: Well, you certainly touched on a lot of different issues, Mr. Thompson. Certainly there has been an evolution in the thinking in this country. I think this particular change of provisions is actually overdue.

That being said, if you go back to the history of this country, go back to the time of Confederation, the age of sexual consent was 12. When the present Criminal Code, which is based on the English criminal code, was adopted and modified, the age of consent was raised to 14—in the year 1890. So I think most people would say that our views on when people become adults have changed. Certainly this is consistent with that.

So I think it's a step in the right direction to move it up to 16. Quite frankly, I think this is consistent with thinking—not just, of course, in Canada, but many other like-minded countries and jurisdictions have likewise sought to increase greater protection within the law.

With respect to involvement with others, school officials, parents, everybody of course has a stake in this. Parents of course have a huge moral and legal responsibility for their children. I'm quite certain that parents whose children may be subject to the type of exploitation we are talking about in this bill would welcome this, as would, I'm sure, school board authorities and teachers and principals.

So I think you'll find that this committee will bring widespread support upon itself, and the House of Commons, by moving forward on it.

Mr. Myron Thompson: So would it be legal or illegal for a parent to decide they're going into a residence to remove their 14-year-old child from a situation they've already given consent to?

Hon. Rob Nicholson: You're giving me a fact situation. Everybody has a responsibility if a criminal offence is taking place—we have a moral obligation, as a society, quite apart from any legal responsibility—to protect that individual.

You'll note in my answer to the previous questioner that I believe there should be a legal responsibility to report those individuals—adults who are going after children—who run afoul of this legislation I'm talking about.

So yes, everyone should report that kind of activity. It's exactly what we are trying to prohibit in this bill.

• (1610)

Mr. Myron Thompson: Thank you.

I have one more question, but I'll wait.

The Chair: Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

Mr. Minister, thank you for being here.

I'm relatively new in the legislative history of things, so I wasn't here when Bill C-2 was passed. I wasn't here when through various incarnations the then opposition asked for this type of legislation.

I refer you to the opening salvos of the former Minister of Justice, your predecessor, who in October of last year suggested that Conservatives have been asking for this kind of change in the law for years. For years, the former government—I guess that would be the Liberals—refused, basically stating that existing law was adequate to protect children.

Since that time, and correct me if I'm wrong, I think this bill has changed the Conservative philosophy that a close-in-age exemption was important. Again, correct me if I'm wrong, because you were part of that caucus and that criticism, but until the tabling of this bill there was no talk from any of the Conservatives about a five-year close-in-age exemption. I think you would admit that in the spirit of compromise and evolution—to use one of your words right back at you—that makes this bill quite palatable to the Liberal side, and obviously to the other parties who are supporting it, because it's balanced, it's reasonable, and it's workable. Heretofore that was not the position of the Conservative Party. That's my first question.

The second question I don't think was adequately covered in your response to one of Mr. Comartin's usual incisive questions. That has to do with the unconstitutional aspect that groups like Egale have brought up with respect to anal intercourse and the age of protection, if you like, of 18 years.

Again, I would draw your attention to the summary in your bill, and actually the preamble, which by the Interpretation Act should apparently be taken into consideration. The summary does not specify that this bill is homing in on exactly what you think it's homing in on. It talks about sexual activity and age. While we welcome this bill, to keep the scope of the summary and the preamble, can you tell us whether you plan to fix what I would call the lacuna, the gap, with respect to anal intercourse?

Thank you, Mr. Minister.

Hon. Rob Nicholson: First of all, with respect to the close-in-age exemption, it wasn't the responsibility of the opposition party to draft legislation. Certainly the opposition Conservatives were very vociferous in terms of asking that the government of the day address the question of 14- and 15-year-olds. If the close-in-age exception helps make it, in your words, "more palatable" to the Liberals, then I'm pleased about that. I think it's a reasonable amendment to have in this piece of legislation. Quite frankly, I think it strengthens the legislation, and I'm glad.

Hopefully this bill will get passed and it won't go the route of some previous pieces of legislation that have been introduced into this Parliament. I'm well aware of the fact that this is a minority Parliament and that basically none of our justice legislation can get through unless somebody steps forward and supports it.

Are you asking me if I was encouraged? I was encouraged in the last election when I heard that a number of these issues were important to political parties. So yes, I'd like to see progress made on a whole wide range of our justice legislation. Certainly this one is very important to the members of my political party, so yes, I appreciate any cooperation that we get in terms of moving the bill forward and hopefully receiving support.

With respect to your second comment on section 159 of the Criminal Code, I think I can paraphrase my predecessor by saying this bill isn't meant to cover all areas of sexual activity. There are a number—many, quite frankly—different sections in the Criminal Code that touch on sexual activity. This had a specific purpose, which was to raise that age of protection, move it from 13 to 14 and 15, to protect all 14- and 15-year-olds. I indicated that whether it's heterosexual or gay sex, they are protected under the provisions of this legislation.

I think it's a step in the right direction. Does it address every section in the Criminal Code that touches on sexual activity? It doesn't. It has a specific direct purpose. I think it's a legitimate one, and it should be supported.

• (1615)

The Chair: Thank you, Mr. Murphy.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelega, BQ): Thank you, Mr. Chairman.

Good morning, Minister.

As you know, we support the bill, a priori. Unfortunately, you haven't given us much information. Everyone wants to protect young people from sexual exploitation. However, I would like to get a little more information from you.

First of all, how many offences are we talking about? How many charges of sexual exploitation involving young persons have been laid by law enforcement officials in recent years?

Secondly, you have neither confirmed nor denied the numbers quoted by our colleague Mr. Comartin. How many young persons are targeted by this bill? I know we're talking about approximate numbers, but can you confirm, or deny, the claim that 125,000 young persons will be affected by the bill?

Thirdly, the most important element is setting an age limit. What were the reason for selecting this particular age? Some people feel that it would be more effective if judges could determine the exploitative nature of the relationship and that less relevance should be assigned to age. How do you respond to that? Why was the age set at 16 years, and not at 17 or at some other number?

[*English*]

Hon. Rob Nicholson: I think Ms. Morency has some statistics on how many charges have been laid with respect to sexual exploitation.

On the statistics that Mr. Comartin quoted, I believe he extrapolated from American sources with respect to how many children at the age of 14 and 15 are sexually active. I believe he said there are a little over 800,000 Canadian children at the ages of 14 or 15. He extrapolated from there that there might be 125,000 children who are sexually active. That is not to say that a majority, or even a lot of that group, are in sexual relationships with somebody five or more years older than them. That would be going too far.

With respect to the rationale for the age of 16, I believe there is a consensus in Canada that the age of 14 is too low and that it should be raised. I quoted to you a number of jurisdictions that have justice systems somewhat similar to our own.

[*Translation*]

Mr. Réal Ménard: I see.

[*English*]

Hon. Rob Nicholson: They have determined that it's at least 16 in some cases.

[*Translation*]

Mr. Réal Ménard: What do you say to those who maintain that legally, a 14-year old can be responsible? For example, under the Criminal Code, a 14-year can give consent to receive treatment. I agree that this matter warrants a debate. However, you say that there is a consensus of opinion. That may be the case, but how did you determine that the age of consent was 16 years? Did your department conduct any studies? Did the department do some studies based on the charges? It's not obvious to me that such a strong consensus exists. How do you reconcile the fact that a person can be held legally responsible at 14 years of age and yet, that consenting to have sexual relations before the age of 16 could, under those circumstances set out in the act, constitute an offence? How do you reconcile the two?

[*English*]

Hon. Rob Nicholson: Mr. Ménard, actually going back to your initial question about difficulties in determining sexual exploitation, I think this bill actually brings clarity to that. It makes it very clear that we don't get into the question anymore for 14-year-old and 15-year-old children as to whether there is "consent". We believe that other than the exceptions that are provided for teenagers engaging in consensual sexual activity, we make it very clear that we're having a prohibition, and ultimately it's a judgment call. You may disagree with that and say it's 14 or it's 13 or once upon a time it was 12, but a decision was made in this country to move it from 12 to 14, and I think that was consistent with views in this country, and we are making that judgment call as well, that 16 is a more defensible age in trying to protect.

I indicated to you that according to the information we have from Cybertip.ca about the sexual exploitation of 14-year-olds and 15-year-olds, very often they are the ones who are victimized at that particular age. They are a particular target for people who are sexual predators.

● (1620)

[Translation]

Mr. Réal Ménard: Which components—

[English]

The Chair: Thank you, Mr. Ménard.

Mr. Brown.

Hon. Rob Nicholson: Perhaps we'll get back to it again.

The Chair: Sure.

Mr. Patrick Brown (Barrie, CPC): Thank you, Mr. Chairman. Thank you, Mr. Nicholson, for being here today. You've certainly been a frequent visitor to the justice committee, and we certainly appreciate the information you provide to us.

I've had numerous visits in my riding office from groups that have had a keen interest in seeing the age of consent raised. Judy Nuttall, who is the chair of the white ribbon campaign against child pornography and exploitation, has been sending ribbons to MPs for the last 11 years, and collecting petitions and sending them to Ottawa. I've had numerous church groups, police officers, and parents come and express their aspirations to see some action. So it gives me great pleasure to see a Minister of Justice pushing this important legislation, and I certainly applaud you for it.

I have two questions for you, and would ask you to share the answers with our committee.

First of all, do you have any examples we can look at of the age of consent in other countries? Also, could you shed some light on why it's taking so long for us to get to this point? With so many Canadians clamouring for this change, why did this not happen 10 or 12 years ago?

Hon. Rob Nicholson: You've raised a couple of good questions.

It's interesting, but when you look at other jurisdictions, it's sometimes very difficult to compare the same thing. For instance, in the United Kingdom the age of consent is 16, but they don't provide what we are providing, the close-in-age exception. And we could debate whether theirs is a better law than ours; I think this is a better way to proceed. In the United States, because their criminal code is at a state level, many of the states have it at 16, but I have to tell you that many others have it at a higher age. Most of the Australian states seem to have a similar age to our own, but across Europe there's a fairly wide range.

Ultimately, this is a decision that we as Canadians have to take. I can tell you that legislation in this area is a tricky business. It's not easy. Even on those items where you'd think that you would have complete consensus, or that there would be unanimity, you find resistance.

For instance, in the spring of 1993, I was quite involved with the first bill that made it a crime to possess child pornography. If you were working in my office with me, you would know and remember

that we were deluged with literature and people trying to make representations to us—many times people from south of the border who were wondering why we were getting into this area. Children participating in sex acts and being recorded did not receive universal disapproval. There was this organization called NAMBLA—something about men and boys loving each other—contacting my office and sending material. I mean, it was astounding to the people working with me that anybody out there opposed making the possession of child pornography a crime, but in fact they did.

So something as clear as that can present a challenge to those of us who are legislators. I think that underlies how difficult some of these are.

Again, I think this is an idea whose time has come. I made the point that perhaps it should have been done years ago, but that's the challenge we have.

It's also the challenge that you have, as a committee, with respect to the Criminal Code. The Criminal Code that is before us today was instituted and adopted in 1890, and we're continuously updating it. We have to update it. We have to stay one step ahead of the bad guys. We have to make sure the Criminal Code is responsive to today's concerns, and believe me, I'm very much of the opinion that this is a great step forward in protecting children and updating our Criminal Code.

I hope that answers your question.

● (1625)

Mr. Patrick Brown: It does very much, sir. Thank you.

The Chair: Thank you, Mr. Brown.

Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you so much for being here today, Minister, and thank you for your presentation.

As you know from the speeches the Liberals made at second reading of this bill, Bill C-22, and from our Liberal justice strategy, which we announced in October 2006, Bill C-22 is in fact one of the bills the Liberal Party and the Liberal caucus supports. And back in 2006 we offered to fast-track it for the government, to work with the government to see that it was fast-tracked.

I'm pleased to hear in your response to my colleague Brian Murphy that you're delighted that the Liberals are supporting C-22 and that you want to see it come into effect and be enacted as quickly as possible.

So you have obviously been made cognizant of the Liberal opposition day motion, which will be debated tomorrow as part of the supply day for opposition, which makes an offer, for the third time, to this Conservative government that we are prepared to work with the government to have Bill C-18, An Act to amend certain Acts in relation to DNA identification; Bill C-22, An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act—on which you're appearing before us right now—Bill C-23, An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments); and Bill C-35, An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences) deemed to have been considered by the House of Commons at all stages.

Should the government agree to vote in that way, this bill, C-22, Bill C-18, Bill C-23, and Bill C-35 will have been deemed to have gone through the House of Commons at all stages.

So I would hope that, given your delight in hearing that we're prepared to support Bill C-22.... You're not learning of this for the first time, because that was announced back in October 2006. The offer was made back then. Unfortunately, the government only took us up on three bills: C-9, conditional sentencing; Bill C-19, street racing; and Bill C-26, payday loans. But Bills C-18, C-22, and C-23 were part of that offer. You and your government, in its wisdom, decided not to take us up on it in October. The offer was again made when we came back after the Christmas break. The government decided not to take us up on it.

We're now making it for a third time, this time in writing, as part of an actual motion on which you and your colleagues will be called on to vote. I'm hopeful, and I'm asking if you will be prepared to recommend to your Prime Minister, to your colleagues, that they vote in favour of the Liberal opposition day motion, which would deem Bills C-18, DNA identification; C-22, age of protection; C-23, criminal procedures; and C-35, reverse onus for bail hearings, to have been considered by the House at all stages and adopted.

Hon. Rob Nicholson: From the wording of your motion, would it pass all those bills within an opposition day tomorrow?

Hon. Marlene Jennings: Yes.

Hon. Rob Nicholson: Oh, is that right? Would that be a precedent, then? I'm just asking. I don't know. If it passed on a majority, therefore, presumably, on future opposition days I suppose you could bundle together private member's bills. I'm just asking for some clarification. And then that would be used as a rationale and a precedent to pass private member's bills that'll be gathered together in one vote.

Is that the way it would work?

• (1630)

Hon. Marlene Jennings: Minister, as you know very well, what you're suggesting is not out of order. If the member who has proposed a private member's bill agrees, then any motion—it could be the government that presents the motion—that would have a private member's bill deemed to have gone through all stages—And as you very well know, that has happened. There's been unanimous consent in the House—

Hon. Rob Nicholson: Do you have unanimous consent for this? Are the Bloc and the NDP—?

Hon. Marlene Jennings: I'm asking you, sir, if you, as Minister of Justice—

Hon. Rob Nicholson: Well, I remember that some of these offers we've had from the Liberals before—

Hon. Marlene Jennings: You're avoiding the question.

Hon. Rob Nicholson: —have needed the unanimous consent of the House, and then if all four parties don't agree, even though we agree with these, then we don't get it. So in the end, if the agenda of the Liberal Party is not to move forward, in a sense you've accomplished that, because you know that unanimous consent is impossible to get.

Hon. Marlene Jennings: This is an opposition day motion, sir.

Hon. Rob Nicholson: Nonetheless, I welcome, Madam Jennings, any attempt to get these things through. This committee, as you know, had Bill C-10, the mandatory minimum sentences. And you'll know that in the last election we were promised the doubling of mandatory minimums for firearms, and I would have liked to see it. I would still like to see it, and I certainly welcome any support on this.

Hon. Marlene Jennings: You're not answering the question.

The Chair: Ms. Jennings, your time is up.

Hon. Marlene Jennings: Thank you, Mr. Chair.

The Chair: I'm sure that the minister is going to take that information and look at it as it's put before him.

Minister, your time is actually up. I know there are one or two more questioners on my list here. Do you have time to continue?

Hon. Rob Nicholson: If you want to do that, let's do them. That would be great.

The Chair: Thank you very much.

Mr. Petit.

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you.

Thank you, Minister, for coming here to present Bill C-22 to us.

I don't know if I should direct my question to you or to Ms. Morency. As you know, for nearly three years, prostitution rings operated in the Quebec City area. The young women involved were dominated by certain groups of men, specifically rapper groups where members were barely five or six years older than the victims. When the trials began, it was very difficult to get these young girls to testify for various reasons: they were gang raped, they were in love with the person who got them into prostitution, and so on. I'd like to know if Bill C-22 will have an impact on section 212 of the Criminal Code. Basically, this provision is problematic because we're encountering a number of problems with prostitution rings. Will Bill C-22 afford young people better protection, given the problems encountered with section 212, even when the victims are 18 years of age? Young women are afraid to testify, among other things.

[English]

Hon. Rob Nicholson: Again, Monsieur Petit, the facilitating, the support of witnesses in a criminal proceeding is many times a challenge.

One thing I think this bill does is bring some clarity to the offence that is being talked about. We won't get into discussions with, for instance, a 14-year-old—whether the 14-year-old consented, for instance—because if the individual is 20 years of age or more, it is an offence to have any sexual activity with that individual. So we won't have the extra hurdle that takes place in a courtroom, which presently exists, where the accused can make the claim that the 14- or 15-year-old consented to that and then that becomes an issue. That becomes one of the great challenges, quite frankly, for police, crown attorneys, and those who are interested in protecting children.

So bringing this kind of clarity to that particular issue, I think, is one of the major benefits of Bill C-22. To that extent, it will be welcomed in communities across this country that are quite worried about the sexual exploitation of children at that age.

[Translation]

Mr. Daniel Petit: Thank you, Minister.

I have another question for you.

[English]

The Chair: Go ahead.

[Translation]

Mr. Daniel Petit: Moving along, if I understand correctly, Bill C-22 is truly beneficial because by changing the age of consent,

we're preventing section 212 from being used as a defence. For example, in the past, when the john was arrested, he could argue that he thought the young women was of a certain age, that he had requested identification, and so on. These excuses were often used. If I understand correctly, this would be an improvement, because a provision in the bill will afford more protection to young women.

• (1635)

[English]

Hon. Rob Nicholson: I don't want to leave you with any misapprehension, Monsieur Petit. The section you are referring to is the prostitution section of the code. It of course will remain in effect, and the age is 18 under the prostitution section.

This goes back to what I was saying earlier, that 16 is not the only age that is specified in sexual offences in the Criminal Code. You just identified one. I can go back to my earlier comments that in terms of prosecuting these, I'm quite certain that bringing some clarity to that age group of 14- to 15-year-olds will be welcomed.

The Chair: Thank you, Mr. Petit.

[Translation]

Mr. Daniel Petit: Thank you for this improvement.

[English]

The Chair: You have one other question, Mr. Thompson.

Mr. Myron Thompson: This is a true life situation, because I lived with part of it, being a school administrator and attached to the families. A 15-year-old boy ran off with a 27-year-old woman. They came back from Nevada married. How would this law apply in that kind of situation?

Hon. Rob Nicholson: If there's any sexual activity involved, it's very clear that it's against the law, because 27-year-olds cannot and should not be involved with 15-year-olds, and they can be charged under this piece of legislation. It's as simple as that, no matter where you run off to, in your words, Mr. Thompson.

The Chair: Thank you, Minister, for your appearance here.

I think that concludes our session with the minister. If the committee will stay put, we will go in camera to deal with some committee business.

[Proceedings continue in camera]

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