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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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•(0845)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): I'll call the meeting to order.

This is the Standing Committee on Citizenship and Immigration, meeting 43, Tuesday, March 31.

We are about to study Bill S-7, which is to amend a number of acts. This is the start of our hearings on this bill.

We have with us this morning the Honourable Chris Alexander, the Minister of Citizenship and Immigration, and his colleagues. The minister will appear for the first hour, and then the colleagues will remain. This meeting is televised.

Minister, I'd like to welcome you to the immigration committee. You may begin.

Hon. Chris Alexander (Minister of Citizenship and Immigration): Thank you, Chair. Thank you, colleagues.

I'm delighted to appear here today with my colleagues before this committee about Bill S-7, zero tolerance for barbaric cultural practices act, which has as its principal aim to ensure that no girl or woman in Canada becomes a victim of early or forced marriage, polygamy, so-called honour-based violence, or any other form of barbaric cultural practice. Obviously, we aim to extend those protections to all Canadians.

[Translation]

As you know, the measures contained in Bill S-7 would amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code to provide more protection and support for vulnerable individuals, primarily women and girls, but also boys and men.

[English]

Our government is taking a strong stance against these practices because they are wrong, but we are also leading international efforts to address them as violations of basic human rights.

According to the NGO Girls Not Brides, every year approximately 15 million girls are married before they turn 18 across dozens of countries, cultures, and religions. In fact, there are hundreds of millions of men and women around the world who are living today with the consequences of forced marriage, who faced those circumstances and were denied protection. Robbed of their childhoods and denied their rights to health, education, and security, they are often victims of sustained violence, including sexual assault. In

the most recent Speech from the Throne we recognized that millions of women and girls worldwide continue to be brutalized in these ways by violent practices, including through the inhumane practice of early and forced marriage. Our government committed to help ensure that barbaric cultural practices do not occur on Canadian soil.

[Translation]

Bill S-7 follows up on the commitment the government made in its throne speech. It sends a clear message to anyone coming to Canada, and to those who are already part of Canadian society, that such practices are incompatible with Canadian values and will not be tolerated here.

[English]

The amendments in this bill would strengthen provisions in the Immigration and Refugee Protection Act, the Civil Marriage Act, and the Criminal Code to add further protections. These amendments would improve protection and support for vulnerable individuals, especially women and girls, in a number of specific ways.

First, they would render permanent and temporary residence inadmissible if they practise polygamy in Canada.

Second, they would strengthen Canadian marriage laws by establishing a new national minimum age for marriage of 16 years, by codifying existing legal requirements for free and enlightened consent for marriage, and for ending an existing marriage prior to entering another. They would criminalize certain conduct related to underage and forced marriage ceremonies, including the act of removing a child from Canada for the purpose of such marriage ceremonies. They would help protect potential victims of underage or forced marriages by creating a new and specific preventative court-ordered peace bond where there are grounds to fear someone would commit an offence in this area, and they would ensure that the defence of provocation wouldn't apply in so-called honour killings and many spousal homicides.

Allow me to elaborate.

Mr. Chair, polygamy is an affront to Canadian values, a contradiction of our understanding of marriage, and as such it has been illegal in this country since 1890. While it's against the law in Canada to practise polygamy or to enter into a polygamous union, that's not the case in every country in the world. To increase our ability to prevent polygamy from occurring on Canadian soil and to make sure the immigration system is not facilitating this practice in any way, Bill S-7 would create a new ground of inadmissibility in the Immigration and Refugee Protection Act for practising polygamy. Keep in mind that these grounds of inadmissibility as codified in the act are few. They are limited. They are important to our immigration system. They have, to date, related to national security concerns, threats to national security; criminality, those convicted of crimes abroad; and extreme cases of ill health, where the medical conditions of those coming to Canada are such that we simply wouldn't be able to cope in this country.

Polygamy would be added to that very limited set of inadmissibilities. It would provide immigration officers with the tools they need to render both temporary and permanent residents inadmissible for practising polygamy. The new inadmissibility would mean that those entering on a temporary basis who are in polygamous marriages abroad would be able to enter only on their own.

• (0850)

It also means that permanent residents found to be in a polygamous marriage will be removed on that basis alone. In other words, if someone applied for immigration and received permanent residence without informing authorities of the reality of their situation, and were found to be in a polygamous union, they would be removed. We would no longer need a criminal conviction or a finding of misrepresentation in order to begin deportation proceedings.

Mr. Chair, measures in Bill S-7 would also amend the Civil Marriage Act in order to address the problem of early and forced marriage. This is almost certainly the part of the bill with the widest potential application, certainly from my understanding of the scale of the phenomenon we're dealing with.

In Canada today there is no national minimum age for marriage. Specific federal laws, which apply only in Quebec, set the minimum age at 16 years old. In other parts of Canada, the common law applies. There is some uncertainty and debate about the common-law minimum age, which is sometimes interpreted as setting a minimum of 12 for girls and 14 for boys, although in some instances, and historically, it can be as low as seven years old. Setting a national minimum age of 16 years old for marriage would make it clear that underage marriage is unacceptable in Canada and won't be tolerated.

Other amendments proposed in Bill S-7 would codify the requirement that those getting married must give their free and enlightened consent to marry each other, and would codify the requirement for the dissolution of any previous marriage. In other words, it has not been unambiguously clear in our law today that you cannot enter another union without dissolving the previous one.

Building on the proposed amendments to the Civil Marriage Act, Bill S-7 also contains measures that would amend the Criminal Code to help prevent forced or underage marriage.

[*Translation*]

Building on the proposed amendments to the Civil Marriage Act, Bill S-7 also contains measures that would amend the Criminal Code to help prevent forced or underage marriage.

[*English*]

These measures would criminalize essentially celebrating, aiding, or participating in a forced marriage ceremony: anyone knowingly officiating at an underage or forced marriage; anyone knowingly and actively participating in a wedding ceremony in which one party is marrying another against his or her will or is under 16 years old; and removing a minor from Canada for a forced or underage marriage.

Other proposed amendments would create a new peace bond that would give courts the power to impose conditions on an individual when there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur.

Why is this important, Mr. Chair? Because in cases where family members are affected by forced or underage marriage, as we know from experience, there isn't always a willingness to bring criminal charges. A peace bond allows individuals to place restrictions on their family members by court order without having to go through the additional trying experience of pressing charges against an immediate family member. Such a peace bond could be used to prevent an underage or forced marriage, for example, by requiring the surrender of a passport, as well as preventing a child from being taken out of Canada. This is an important option for a young girl, for example, who wants to stop her family from taking her out of the country for a forced marriage but does not want to press charges.

Mr. Chair, measures in the bill would also address so-called honour killings. So-called honour-based violence is usually perpetrated against family members, usually women and girls, who are perceived to have brought shame or dishonour to the family. Honour killings are usually premeditated and committed with some degree of approval and sometimes participation of family or community members. However, in some cases they may also be alleged to be spontaneous killings in response to behaviour by the victim that is perceived to be disrespectful, insulting, or harmful to a family's reputation.

Under the Criminal Code, anyone charged with and found to have actually committed murder can raise the defence of provocation in seeking a reduction to the lesser charge of manslaughter. In other words, the accused can argue that the victim's conduct in some way provoked them into the heat of passion that brought them to kill the other person in that state. Yes, disrespect and defiance could lead to a defence of provocation in a murder case, which could potentially lead to a lesser conviction.

A conviction for manslaughter instead of murder carries greatly reduced stigmatization, and more importantly, wide latitude for judicial discretion in sentencing. Manslaughter carries a maximum of life imprisonment with no minimum sentence unless a firearm is used, whereas murder carries a mandatory life sentence with ineligibility to apply for parole for at least 10 years. Of course, we would be tightening the penalties in some of these cases under the “life means life” legislation now before Parliament.

This defence has been raised in several so-called honour killing cases across Canada. Accused murderers have claimed that real or perceived marital infidelity, disrespect, defiance, or insulting behaviour on the part of the victims towards their spouse, sibling, or parent provoked the killing. As a society, we need to send a clear signal that this kind of reasoning and these kinds of acts are unacceptable and will result in a severe penalty.

• (0855)

Passage of Bill S-7 into law would send a strong message to those in Canada, and those that wish to come to this country, that we won't tolerate cultural practices in Canada that deprive individuals of their human rights or that lead to violence.

If the committee wishes to go into further detail about any aspect of this legislation, I am happy to address it across the board and to answer your questions.

Thank you very much.

The Chair: Thank you for your presentation, Mr. Minister.

We will have some questions from members of the committee.

Mr. Eglinski.

Mr. Jim Eglinski (Yellowhead, CPC): I want to thank all the witnesses who came out, especially Mr. Alexander.

I believe this bill is sending a clear message to individuals coming into this country that violent cultural practices are unacceptable in Canada. There are critics on the opposition side, especially from southern B.C., that say this isn't necessary; it's just a waste of time.

Mr. Alexander, have you or members of your department held consultations on this bill and can you tell us what you heard in relation to that aspect?

Hon. Chris Alexander: Many of us around the table were involved in consultations in the preparation of this bill in all major urban areas of Canada and beyond. I'm particularly grateful for the work that my parliamentary secretary, Costas Menegakis, did in this respect.

The view across the country was uniform. This is happening in Canada, not on an enormous scale but on a significant scale, and one that hasn't been fully documented. The few studies that we have from settlement organizations, from university researchers, give us grounds to believe that there are hundreds, even thousands, of these cases occurring even over limited numbers of years. One case is frankly too many.

We found that women and girls, especially, but all advocates on behalf of the protection of Canadians from all forms of violence, were very interested in moving forward with measures of this sort. They identified very clear gaps in the criminal justice system that

prevented law enforcement, that prevented prosecutors, from taking action to date in the ways that we all would have liked to have seen.

On the question of cultural practices, these are practices that have been defended in families, in homes, in communities, on the basis of tradition, on the basis of the sanctity of family, on the basis of culture, and those defences will not work.

Any culture of violence, any culture that justifies violence in Canada won't be acceptable to Canadians. That's what we're trying to attack in this bill.

Mr. Jim Eglinski: I noticed that at the end of your speech you talked about provocation. I know some of the opposition say that we should leave it in there. As a former police officer, I've always looked at it where we've had premeditated murder where the person plans that murder versus a murder that takes place just because it happened in a set of circumstances.

I've always looked at the provocation side as premeditated. This is a planned outright act that a lot of strategy went into.

Can you give us some details of some cases that you may know of or your department knows of?

Hon. Chris Alexander: You as an experienced police officer have, of course, the kind of experience that is vital to getting this right. You are absolutely right that the idea that defence with reference to provocation in a case where a spouse has murdered his wife is absurd in many of the cases we've seen. I think it's repugnant to most Canadians.

This bill essentially says that in a case where the perpetrator is being charged with murder, there will be no defence that has any reference to what the victim said. That will not constitute a defence ever. There will still be a defence by provocation, but the provocation will have to involve an indictable offence punishable by up to a minimum of five years. It has to be a violent act in and of itself.

Of course, where there are no witnesses, it will be hard to prove these things, and we leave that to the justice system. The idea that someone could defend the act of murder by saying someone said this, that, or the other thing is absolutely absurd and will end with this bill.

The Shafia case, which ended in Kingston, Ontario, but took place in many communities, is the most famous recent example. It involves polygamy, forced marriage, and murder. There were convictions in this case. Did the accused, the murderer, feel that family honour was at stake? Yes. Was the defence of provocation used or successful? No, but it's important for all of us to ensure that it never will be used in a case such as this.

Of course, closer to home for me there is the murder case of Ms. Fazli in Ajax, which is still under way. This is a case where a sponsored spouse, a husband in this case, who had come very recently from Afghanistan, is accused of having murdered the sponsor and is the only suspect in the case.

These are the kinds of cases that show us how one case of violence, especially on the ultimate scale of murder, is too many and how we need to protect women and girls in our immigration system and in our justice system generally, even more than they are already protected under the relatively strong system we have in Canada.

● (0900)

Mr. Jim Eglinski: Thank you very much for that.

The Chair: Okay.

Madam Blanchette-Lamothe.

[*Translation*]

Ms. Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP): Thank you very much, Mr. Chair.

Let me also thank the witnesses for joining us today.

I would like to quickly go back to the comments made by my colleague, Mr. Eglinski. He said that the opposition found that it was a waste of time and it was useless. The NDP is convinced that violence against women and children exists in Canada. One instance of violence is one too many. There is a lot of work to do on that.

However, we definitely have a difference of opinion on Bill S-7 itself. I am not sure that Bill S-7 is really the most appropriate solution to the problem. That is what I would like to ask the minister about.

How many sections of the Immigration and Refugee Protection Act does Bill S-7 amend exactly?

Hon. Chris Alexander: Bill S-7 amends the sections of the Immigration and Refugee Protection Act that have to do with eligibility. It adds the principle of ineligibility for those practising polygamy.

The amendments also relate to the Civil Marriage Act and the Criminal Code.

Ms. Lysane Blanchette-Lamothe: Thank you.

More specifically, Bill S-7 adds two subsections to one section of the Immigration and Refugee Protection Act. Most of the amendments proposed in Bill S-7 are actually amendments to the Criminal Code. If I'm not mistaken, the bill proposes to amend seven or eight sections of the Criminal Code. However, you rose first in the House to talk about Bill S-7, and the Standing Committee on Citizenship and Immigration is studying Bill S-7.

Why is it being studied in relation to immigration rather than in relation to the Criminal Code? Why is the bill not being studied by the Minister of Justice or the Standing Committee on Public Safety and National Security and the Standing Committee on Justice and Human Rights? The vast majority of the bill deals with the Criminal Code.

Hon. Chris Alexander: That is an excellent question.

It is truly a team effort. Here around the table, we have representatives from a number of departments. The bill is the fruit of the joint efforts of four ministers, if not five: the Minister of Justice, the Minister of Health, the Minister of Status of Women, the Minister of Foreign Affairs—because of the international dimension

dealing with forced and underage marriage in particular—and myself as the Minister of Citizenship and Immigration.

We had to choose from all the committees we work with. I think the provisions on forced and underage marriage are likely to have the strongest impact in Canada.

How does that affect immigration when the changes are being made to the Civil Marriage Act and the Criminal Code? Because forced and underage marriage is common practice in a lot of countries.

● (0905)

Ms. Lysane Blanchette-Lamothe: That includes Canada.

Hon. Chris Alexander: Yes, but the forced marriage rate in other countries is much higher than Canada's. Canada's population is 35 million people and there are 7 billion people in other parts of the world. We need to keep an eye on this issue in our immigration programs to ensure that people who come to Canada don't think those practices are permitted. We also need to make sure that people, especially girls, are not expatriated to be forced into a marriage in another country.

Ms. Lysane Blanchette-Lamothe: Thank you. I understand what you are saying.

You have actually repeated that the most important issues in this bill have to do with forced and underage marriage. However, several people who testified before the Senate committee complained that this bill—or even the bill's overall approach—had overtly racist and discriminatory connotations. We can see it in the title, but I think we also see it in the fact that you, not the Minister of Justice, are the champion of the bill.

Of course, there are significantly more forced marriages in other countries than in Canada, but we don't want to solve the problem of forced marriages in other countries. We are interested in the situations in Canada. Regardless of people's countries of origin and cultural background, if they use violence against women, especially through forced marriage, what matters is the crime they are committing as well as the response triggered by their crime.

In that light, Ms. Yao-Yao Go, who is the clinic director of Metro Toronto Chinese and Southeast Asian Legal Clinic, said the following when she appeared before the Senate committee:

From the very naming of this bill to the various legislative amendments it seeks to amend, Bill S-7 invokes racist stereotypes and fuels xenophobia towards certain racialized communities.

Furthermore, in the House of Commons, you quoted Ms. Miville-Deschênes by saying that she supported some aspects of your bill. However, if you really attach importance and credibility to her testimony, you will agree that she criticized the title of the bill as well. She said the following:

The title should essentially be changed because we think it might encourage xenophobia.

Further on, she said:

...for prevention purposes, we need communities to be with us and not against us. That is why the title of this legislation must absolutely be changed.

We are talking about the overall approach of the bill, which includes the title. I don't want you to stop talking about Bill S-7. It is being studied right now at the Standing Committee on Citizenship and Immigration. However, we need to make sure that forced marriage does not become a "racialized" issue and that it is handled as a crime, an act of violence against women, period.

Given that all those witnesses have criticized the title of the bill, do you think it would be appropriate to change it?

Hon. Chris Alexander: No, because addressing violence is in no way "racialization". We are not promoting violence or crime. We are dealing with it. Those crimes are not concentrated in one culture or one part of the world.

Ms. Lysane Blanchette-Lamothe: But why not change the title?

Hon. Chris Alexander: Because we think violence is barbaric. We find that people from all kinds of backgrounds and religions sometimes justify it in the name of culture, tradition or the family. Studies done to date show this. We want to say that defending violence on behalf of culture is unacceptable. That culture of violence is unacceptable.

Ms. Lysane Blanchette-Lamothe: So, in other words, you aren't listening to the witnesses.

● (0910)

[English]

The Chair: We're finished. I'm sorry, we're well over.

Mr. McCallum.

Hon. John McCallum (Markham—Unionville, Lib.): Thank you, Chair.

Thank you to the minister and officials for being here.

We support the content of the bill, but as we have discussed, we would propose the removal of the word "cultural" in the short form. In our view, cultures don't have anything to do with this because such acts go across cultures. You have a different definition of the word.

I guess my main point is that whatever our semantic debate might be, the reality out there is that the perception in a number of communities, particularly in the Muslim community, is that the use of the term "cultural" is an attack on their community. Whatever the merits of our debate on semantics, I would ask that you might reconsider this and consider removing the word "cultural" because it would not do anything to change the content of the bill but it would send a small signal to the Muslim community, or perhaps other communities, that their government is not out to get them. It seems to me you would be sacrificing nothing in terms of content, and sending a positive message.

I do have a second question, which I'd like to put now so I don't run out of time. This is with regard to provocation.

I think if we accept the government's argument that the availability of the defence in the legislation sends a signal of tolerance for the crime, then we need to examine what signals we are sending with this amendment. The problem with the amendment is that if it were to pass, a number of specific criminal offences would fall under this definition, including theft and mischief, because the criterion is a

five-year term. I wonder if the government might consider other options that would include only violent acts in the definition of the crime that is relevant.

My two questions then regard, one, the use of the term, or hopefully the removal of the term "cultural" in the short title; and the possible amendment in the area of provocation.

Hon. Chris Alexander: Chair, I'm grateful for those questions but confident of the answer. Around the world, according to Girls Not Brides, there are 720 million girls and women alive today who were married or entered into union before their 18th birthday. That is 10% of the world's population.

Why do people want to come to Canada as immigrants? Why do they, as women and girls, see life in Canada as better than in almost every other part of the world? Why do they respect our justice system? That's because they have a reasonable expectation that forced marriage, early marriage, will not happen here. Yet it still happens, as we know from several settlement agencies, as we know from academic studies, so these protections against practices that are defended in the name of culture, not by all Canadians, not by most Canadians, but by small groups of Canadians, need to be dealt with, and this bill does exactly that. There is a culture of support for forced marriage in Canada on a limited scale that needs to be eliminated and that's what we hope to do with this bill.

I'm confident that the Liberal Party will come around to the new name. A couple of years ago their leader objected to the use of the term "barbaric"; now they accept that. Give them a little time and they'll come around to the use of the word "cultural". It takes a while for the penny to drop on these points for the Liberal Party of Canada, apparently.

On the defence of provocation, we're very confident of the amendment that is proposed here. We're saying that the only provocation that might be acceptable in a court of law is very serious violence by the victim. Indictable offences punishable by up to five years or more are violent offences. Am I right?

Hon. John McCallum: No, they're not necessarily.

Hon. Chris Alexander: What are the non-violent ones?

Ms. Joanne Klineberg (Senior Counsel, Criminal Law Policy Section, Department of Justice): The property-related offences where the value of the property is over \$5,000—

● (0915)

Hon. John McCallum: Yes, exactly.

Ms. Joanne Klineberg: —are also punishable by a maximum of 10 years, and extortion, though that does involve some threatening conduct. There are some property offences that would still potentially be provocation.

Hon. John McCallum: That was exactly my point.

Thank you.

Hon. Chris Alexander: This is something that we could look at.

In reflection and analysis, I think we came to the conclusion that the non-violent offences are very unlikely to be used. In fact there is no case in which they have been used that has been put before me, and I've looked at scores of such cases. The vast majority of the cases that would now be relevant in any way to this kind of defence, which is only used infrequently, will be violent offences.

The Chair: Thank you, Mr. Minister.

Mr. Aspin.

Mr. Jay Aspin (Nipissing—Timiskaming, CPC): Thank you very much, Chair.

Minister, thank you very much for being with us this morning, along with your officials, to address such important legislation.

I think it's very important that this bill demonstrates that this government is taking action to strengthen our laws to ensure that no young girl or women in Canada becomes a victim of early or forced marriage, polygamy, so-called honour-based violence, or any other form of harmful cultural practice.

Minister, you touched upon the peace bond element. Could you please provide a little detail about the peace bond and how it would work? Would it prevent parents from travelling with their children? What type of evidence is required to establish the peace bond and who could approach the court for a peace bond in these cases?

Hon. Chris Alexander: Thanks very much for the question.

The peace bond is a measure that would allow real limitations on a family from removing a child or a young girl from Canada for the purposes of allowing a forced marriage or an underage marriage to take place, by essentially allowing a court to set limits on the behaviour of the family in question. It could be suspension or lack of access to a travel document. It could be an order not to travel. It could be an order to report to the court on a regular basis on certain fronts to make sure that what had been agreed, and what was feared with regard to forced or early marriage, doesn't happen.

In other words, it allows a court to set limits on the behaviour of the family, including the travel of the family, that would prevent a forced or early marriage from happening either in Canada or outside of Canada, without criminal charges having to be laid. That is the advantage.

We all know there is a phenomenon—police officers will be particularly aware of this—of family members not wishing or not being able to press charges against one another. A peace bond is an alternative solution that has an equally beneficial result: the prevention of an early or forced marriage.

Mr. Jay Aspin: Okay, sir, and what type of evidence would be required to establish a peace bond?

Hon. Chris Alexander: I'll ask my colleagues to give an example.

Ms. Gillian Blackell (Senior Counsel, Family, Children and Youth Sector, Department of Justice): Thank you.

As opposed to the standard of evidence in criminal matters, which is beyond a reasonable doubt, the application for a peace bond is based on a civil standard of evidence, so it's a balance of probabilities. Therefore, the evidence would be that it would be more likely than not that the defendant would commit an offence

related to forced marriage. On that basis, the evidence that the crown prosecutor would bring to the court to establish that would be sufficient to have the peace bond emitted.

Mr. Jay Aspin: Thank you very much.

Polygamy, as we know, is already illegal in Canada and has been since the 19th century. We know that unfortunately this barbaric practice is still a reality in Canada despite this.

Mr. Minister, how would this bill affect permanent residents who are now practising polygamy in the country?

Hon. Chris Alexander: First of all, I think the point you've just made is that the long-standing criminalization of polygamy in Canada points to the fact that it has been a phenomenon in Canada for some time. That point reminds us of Bountiful, British Columbia, and some other communities across the country. It is absolute proof of the fact that there is no racial or xenophobic aspect to this. Polygamy is a practice that can be found in Canada, among people born here who have been here for generations, as well as among newcomers.

Polygamy is legal, to one extent or another, in over 60 countries around the world, and there have been recorded cases of polygamy involving Christians, Muslims, and Hindus. Anyone from the opposition side who says that one group or another is being targeted by this is absolutely wrong, and any cultural community in Canada that makes that claim is wrong. We know from our consultations that most cultural communities, particularly women, welcome protection from polygamy, as they welcome protection from forced and early marriage. That is why they came to Canada.

Now, what does the bill do? It essentially says that instead of having to have a criminal conviction for polygamy—and we know there have been nine of those in over a hundred years, although there are some cases under way today—or a finding of misrepresentation, which is a very high threshold of administrative proof in our immigration system, we will now, instead of meeting those very onerous thresholds, simply have to have an immigration officer satisfied by the evidence before them as they examine the file that polygamy has been practised. That in itself would be grounds for removal, just as a finding that someone, after immigrating to Canada, has been convicted of murder in their home country or has been a *génocidaire* in Rwanda would be grounds for removal. Polygamy will now be similar grounds.

On your question of peace bonds, I should add that there are some orders the court could give that haven't yet been mentioned. The family could be ordered to refrain from making arrangements or agreements in relation to the marriage. They could also be ordered to participate in a family violence counselling program. There are some preventative aspects to a peace bond as well.

• (0920)

The Chair: Thank you, Mr. Aspin.

Ms. Mathysen, go ahead.

Ms. Irene Mathysen (London—Fanshawe, NDP): Thank you, Mr. Chair.

Good morning, Minister.

I have some questions in regard to the whole issue of polygamy. Now, it's very clear in the IRPA that polygamist couples are not admissible to Canada. You are suggesting that they do manage to get here. I wonder to what degree we have these situations in Canada. How many families in your study have managed to make it through the system?

Hon. Chris Alexander: We do not have accurate statistics, obviously, about how many people have succeeded in misrepresenting themselves by coming to Canada as immigrants while in polygamous relationships, or have managed to immigrate along with multiple wives.

Talk to people who work in the sector, in settlement organizations. Talk to my colleagues. Having been in this position for less than two years, travelling the country, I have heard of dozens of cases that are proven.

They are of concern not only to those who have to give services to people in this situation, to the victims of polygamy, but also to cultural communities, because the vast majority of those who immigrate to this country follow the rules, know what is illegal, refrain from polygamy and forced marriage, and celebrate the protections we have in this country. When they see a member of their community living down the street who got away with bringing two or three wives here—one as the wife sponsored, another as the sister, as was claimed at the time, and a third as a parent sponsored under the parents and grandparents program, and there are such cases—they are scandalized that this was allowed to happen, and they would give evidence of the polygamist relationship if there was any hope of its having any consequences.

As of today, there has been no such hope. A criminal conviction for polygamy is a very high threshold. It is hard to do and hasn't been done lately. We are essentially asking those who benefit from the immigration system to help us keep polygamy out of it, and they will be able to do so.

• (0925)

Ms. Irene Mathysen: In those situations where polygamy is discovered is everybody deported?

Hon. Chris Alexander: Someone who is here as a citizen and is found to be in a polygamous relationship obviously could not be removed. Their citizenship could not be revoked. They would be facing criminal proceedings. We hope in the wake of the prosecutions now under way in Bountiful and the attention this issue is now getting, there will be more criminal prosecutions and convictions of Canadians born in this country and naturalized Canadians.

A permanent resident who is found by an immigration officer to be in a polygamous relationship will now, under the changes proposed in Bill S-7, be inadmissible to Canada. Yes, they will lose their permanent residence and be asked to leave and removed if they don't leave, as would anyone else who is found to be inadmissible to Canada after having been granted permanent resident status.

Ms. Irene Mathysen: Do you have any concerns about the consequences? We've heard testimony that there are unintended consequences that could be very negative. For example, if a polygamous relationship is discovered, what about the children of that relationship if they are born in Canada? What happens in that situation?

Hon. Chris Alexander: We have an extremely generous immigration system. We have an immigration system that takes account of family circumstances. It would be looked at on a case-by-case basis.

There are relief mechanisms that would allow individuals, women or children, to remain in Canada, just as in cases of family violence or domestic violence. We have gone to great lengths to ensure that women who are victims of such violence, even if they have been sponsored by their spouses, are able to maintain their immigration status in Canada even as the husband loses it and is removed from Canada. There are dozens of cases where recourse to that protection has been made, in recent years since the changes made by our government in that respect.

The Chair: Thank you.

Mr. Shory.

Mr. Devinder Shory (Calgary Northeast, CPC): Thank you, Mr. Chair.

Minister, thank you very much for introducing such important measures.

Before I ask a couple of questions, Minister, I want to make it clear that I represent the most diversified riding, Calgary Northeast, and of course the hardest working as well. I know.

I want to make a comment on this title. When I hear that it is racist... First of all, I have not heard from one single constituent that the title is racist. In my view as well, when we talk about forced marriage and child marriage, this is barbaric. You know that I'm an immigrant. In my motherland it is well known that they had the practice of child marriages and to an extent forced marriages as well. When I chose Canada, I chose for some reasons and I believe that the system is better than where I was.

I have a couple of questions. When you talked about introducing this bill, what information was known about the prevalence of forced and underage marriages in Canada? Does the Government of Canada provide any funding to organizations that help the victims?

Hon. Chris Alexander: Thank you so much for the question. Your riding is extremely diverse and a fantastic example of the strength of our diversity and of our immigration system.

As with polygamy, so with forced and underage marriages we do not have definitive statistics, obviously. These are practices that families and individuals go to great lengths to disguise as something else, to pretend are not happening. But in the case of one settlement organization in Toronto, which has already been mentioned today, there were more than 200 cases recorded over only two years just in the province of Ontario and just by one settlement organization.

The Department of Foreign Affairs, Trade and Development has received 100 requests for consular assistance from Canadians related to forced marriage since 2009. These are people who went to the trouble of requesting assistance from a government department.

It is a serious issue. As you mentioned, it is widespread in certain parts of the world. I would draw everyone's attention to the website and the documentation put forward by Girls Not Brides. It's an important partner for Canada in the worldwide effort to stop forced marriage. The map they have showing child marriage by country shows it as an unfortunate phenomenon on every continent, but the highest absolute number of cases they can document is in India, actually. Given the population of India, that may not be surprising, but it has also been a public issue in that country, as it is elsewhere, and rightly so, because the vast majority of women and girls in India, as everywhere else, would dearly like to avoid this fate.

● (0930)

Mr. Devinder Shory: I'm sure you will have noticed that in India, even, there is now a lot of awareness of this issue and that many organizations are working on it, but you missed my question asking how much funding the government supplies to organizations.

Hon. Chris Alexander: Yes, thank you for that.

I don't have exact information on all of the funding put forward by all departments to prevent forced and early marriage, to empower women and girls to speak up and speak out against the phenomenon of domestic violence and violence against women and girls. Let's just say that the funding has grown significantly under our government.

For example, Status of Women Canada has supported, with the Public Health Agency of Canada, a white ribbon campaign to develop a brief on engaging men and boys to prevent and reduce gender-based violence. There is a new website, launched two years ago by Status of Women Canada, called Ending Violence Against Women, with sections on the nature of violence, how to prevent it, where to help.

We have a number of well-funded initiatives against cyberbullying. The Department of Health, I would argue, has done even more, and the Department of Justice obviously has a vast agenda related to the changes we made to the criminal justice system related to the victims charter and to support for victims, all of which is relevant to the issue of violence against women and girls, including forced and early marriage.

The Chair: Thank you.

Mr. Leung.

Mr. Chungsen Leung (Willowdale, CPC): Thank you, Chair.

Thank you, Minister, for your attendance at this session.

We understand that the Speech from the Throne indicates that the government needs to strengthen the prevention of violence against women and children, and so on.

What I'd like you to elaborate on is the very distinct difference between what we call a barbaric cultural practice and someone's hiding behind religious freedom. Perhaps you can elaborate and share with us your thoughts on how we make the distinction between

someone hiding behind religious freedom and a barbaric cultural practice.

Hon. Chris Alexander: I think what we're saying with this bill is that these practices, which involve violence and which constitute crimes, cannot be defended under any other heading. You can't defend them because it's a family practice. You can't defend them because "that's just the way things were done traditionally in my community", whether that community is Bountiful, British Columbia, or some community elsewhere in Canada or some community abroad. You can't defend those practices in the name of culture, saying, "I don't have to observe the Criminal Code in this case, because my culture exempts me from that". There would be no defence in terms of religious freedoms either. One's religion, one's culture does not give one the right to commit crimes in Canada, to violate the Criminal Code.

All the outstanding leaders of our cultural and religious communities understand that the rule of law is one of the great anchors of the quality of life in this country. We are strengthening it when we attack barbaric practices, violent practices that masquerade as culturally acceptable or even religiously acceptable practices.

You will remember some of the practices that were tolerated in the name of religion in previous centuries, even in the last century, in many parts of the world. They also were barbaric. Every religion has some of those practices. We see the Islamic State doing horrific things and justifying them in the name of Islam. We know that's not Islam. We know they are not justified by reference to religion. This is terrorism, this is criminality, this is horrific, and it shouldn't be tolerated anywhere.

It certainly won't be tolerated in Canada, even in the forms it previously was, if we enact these measures.

● (0935)

Mr. Chungsen Leung: This brings me to my point that very often in my community of Willowdale, where there is significant diversity in people of various national origins, I ask the question, "Why do you come here?" We come here because of our shared values in freedom, equality, democracy, and respect for the rule of law. I think this addresses that point precisely.

Hon. Chris Alexander: Absolutely. But there is an almost universal issue here that really needs to be attacked. Quite apart from the issue of culture and religion, there can be a tendency, when violence is taking place in a family—inside a circle of people who are related in one way or another—to say, "We will just resolve this ourselves, this does not constitute a crime, it was one of us against the other; we can patch it up, we can overcome this."

Unfortunately, violence against women and girls, quite apart from immigrant communities, quite apart from the phenomena of polygamy and forced marriage, is still far too common in this country. There are still far too many cases of sexual assault, forced marriage, and early marriage brought forward into the criminal justice system.

We need to make sure that women and girls feel empowered to bring these issues forward; that they are not revictimized; that they are protected; that men, boys, women, and girls speak up and speak out about these issues; that they get the support they need in the community; and that we are, down the road, increasingly known as the country in the world in which violence against women and girls, including these barbaric practices that we're discussing today, do not take place or take place at the very lowest level in the world.

That's our goal. It involves all of us, because every community has cases in which violence of this type, as you would know, Mr. Eglinski, has gone unpunished and un-investigated. We need everyone to make this their business.

The Chair: Thank you, Mr. Minister.

Madam Blanchette-Lamothe.

[*Translation*]

Ms. Lysane Blanchette-Lamothe: Thank you, Mr. Chair.

I have two more questions for you, Mr. Minister.

First, I would like to quote what you said in the House of Commons in the first hours of debate on Bill S-7. You said, and I quote:

... we also based this bill on a committee report written in 2013 and 2014. That report was on protecting women in our immigration programs

I was here at the beginning of this study. I helped draft that report. As you have probably noticed in the supplementary report, the vast majority of witnesses—almost all of the witnesses, in fact—said that they did not support the conditional permanent resident status, saying that it was an important factor in the vulnerability of women. They said that abolishing a status like that, or at least changing it, would help women in violent situations, such as situations of forced marriage.

If you really drafted this bill by considering the testimonies made during the study and the report of this committee, do you intend to make changes to the conditional permanent resident status or to abolish it in the near future?

The purpose of the question isn't to get your opinion on conditional permanent residence. Do you plan to abolish it or change it soon?

● (0940)

Hon. Chris Alexander: We have already made changes to this aspect of our immigration system.

Ms. Lysane Blanchette-Lamothe: When did you do that?

Hon. Chris Alexander: We've ensured that women sponsored by men and who are victims of spousal abuse or another form of violence have the right to have their permanent residence status protected, even if the sponsor is removed.

As I said earlier in the meeting, we are encouraged by the fact that in dozens of cases—if not hundreds because I know there are several dozen cases—women have benefited from this measure.

If we need...

Ms. Lysane Blanchette-Lamothe: Do you intend to change it again? Is it the only change that you've made?

The testimonies were also made on the adoption of those changes. People commented on those amendments, and they want more changes.

Hon. Chris Alexander: We've strengthened it since then.

Ms. Lysane Blanchette-Lamothe: When did you do that?

Hon. Chris Alexander: The number of women who have used this measure is on the rise. We are doing a lot to protect women sponsored in our immigration system.

Ms. Lysane Blanchette-Lamothe: Thank you, Mr. Minister, but my question is not about the other things you're doing.

If I've understood correctly, you aren't making any other changes, despite the testimonies that have been given.

Hon. Chris Alexander: Yes, we will, if it will be beneficial.

Ms. Lysane Blanchette-Lamothe: So it's not on your radar right now.

Hon. Chris Alexander: The protection of women is always on our radar.

Ms. Lysane Blanchette-Lamothe: That's not very convincing. Unfortunately, I don't have the impression that you have heard those witnesses. That's fine; everyone has their priorities.

I have another question for you. I would like to discuss...

Hon. Chris Alexander: Your priority is to not support the bill.

Ms. Lysane Blanchette-Lamothe: Excuse me, Mr. Minister.

Let's talk about reporting. You spoke about numbers a little earlier. It is clear to everyone that reporting is a problem. There aren't enough people aware of forced marriages or enough victims whose reported cases have the chance to move through all the stages of the existing processes.

Denmark has put in place measures like the ones in Bill S-7 on forced marriages. Since these measures were put in place six years ago, the police have not been able to charge a single person, and the courts have not found anyone guilty. A lot of witnesses said that the measures in Bill S-7 could aggravate the situation and reduce the number of reported cases.

What do you tell them? What amendments to Bill S-7 could you suggest to respond to these fears and ensure that more cases, not fewer, are reported?

Hon. Chris Alexander: I think the number of cases reported will increase, as will the reporting rate. In fact, there are ways to participate in forced marriages that have not been criminalized until now, but will be going forward.

Ms. Lysane Blanchette-Lamothe: You think it will increase, but what do the people on the ground think? We heard from someone from the United Kingdom who has seen such changes and who spoke about some victims. He told us that the victims are often girls and young women who want to be protected by the police, but who do not want to pursue their parents or family because they don't want them to go to prison. They clearly state that if after speaking with the police, the police lay charges, they would withdraw their case and refuse to cooperate.

On one hand, we have what you think, but on the other, we have what the stakeholders on the ground are hearing. These stakeholders speak to many more victims than you and I combined. I think that refusing to listen to those concerns shows bad faith. If you had listened to them...

[English]

The Chair: I'm afraid our time has expired. I'm sorry, unless you can very quickly finish, we've run out of time.

Mr. Minister, I want to thank you for taking the time and starting us off on studying this bill. We appreciate your comments. Thank you for coming.

Hon. Chris Alexander: Thank you, Chair.

The Chair: We will suspend.

• (0940) _____ (Pause) _____

• (0945)

The Chair: We will reconvene.

For the second hour we have representatives from two departments, from the Department of Justice and the Department of Citizenship and Immigration.

I'd like to welcome Gillian Blackell, who is senior counsel of the family, children, and youth sector; Joanne Klineberg, senior counsel of the criminal law policy section; and Lisa Hitch, senior counsel, family, children, and youth sector. Good morning to you.

From Citizenship and Immigration, we have Maureen Tsai, who is the director of the admissibility branch; we have Karen Clarke, who is the deputy director of the admissibility branch; and Paul Yurack, who is legal counsel, will be joining us soon.

We've heard from the minister so there may be some technical questions that my colleagues have.

Mr. Eglinski.

Mr. Jim Eglinski: Thank you.

Thank you again for being here. Throughout my years on the force within the RCMP I spent a lot of time in remote communities. I was surprised at the time when I was doing the investigation to find out that there was no age...in Canada. I found a number of cases where we had complaints levied of young people getting involved in a marriage at the age sometimes of 14 and 15.

I'll go back. I believe it's more of a cultural practice. I'm talking about very remote and isolated communities within Canada where they really haven't progressed at the rate that the rest of us have. They're very happy with the very remote lifestyle that they live,

living off the land. Their grandparents probably got married at the age of 14 and 15, and maybe their parents did, and maybe they find that's acceptable. I think that as the youth of today in Canada and across this country have more access to the computer Internet system, we definitely need an age bracket put in the act.

I wonder if I could ask Joanne if she would just clarify the real meaning behind the change in the Civil Marriage Act that will come because of Bill S-7, and the requirement for that age factor to be in there?

• (0950)

Ms. Joanne Klineberg: I will actually defer that particular question to my colleague Lisa.

Ms. Lisa Hitch (Senior Counsel, Family, Children and Youth Sector, Department of Justice): Thank you very much.

There is, as you point out, currently no national minimum age for marriage. This is an area that is very confusing to many people because they assume, as you point out, that there is one. The Province of Quebec is the only jurisdiction in Canada that has an actual minimum age for marriage in legislation. It's in federal legislation. The Federal Law—Civil Law Harmonization Act, No. 1 provides age 16 as the minimum age for marriage.

In other jurisdictions in Canada what happens is that there are many ages for marriage. The provinces will provide that the age of majority is the age for independent consent. Below the age of majority—for example, from 19 to 16 in some jurisdictions, or from 18 to 16—one can get married with parental consent. Where parental consent is not available, there are court orders that are available.

In many jurisdictions they then go further and provide that under 16 there are further requirements, for example a court order, or in some jurisdictions, proof of pregnancy of the female, as it says in legislation, or proof that a girl child is the mother of a live child before the marriage can take place.

What is a little bit worrisome is that if you look even further, in most of the provincial statutes there is another provision that says that even if the children marry under that age, the marriage cannot be invalidated if the marriage has been consummated, or if there was intercourse before the marriage, or if the pair have lived together as husband and wife after the marriage. Even if it's under those ages, it can't be invalidated. This is because it's within federal jurisdiction to provide the absolute minimum age or the floor age below which no marriage would be valid. That has not been provided in legislation federally and therefore the common law applies.

The common law is extremely old in this particular regard. That's why, as the minister mentioned, there's some confusion. Generally, it's interpreted as age 14 for boys and age 12 for girls. There is older case law that does go below that, but the general interpretation is age 14 for boys and age 12 for girls.

Mr. Jim Eglinski: Thank you.

Are you aware of the youngest age that we know of in Canada where something like that has taken place? You're referring basically to common law, but do we have any actual cases that come to your mind that you can explain to us?

Ms. Gillian Blackell: Thank you.

We have had some discussions with the provinces and territories about this issue. They've consulted their vital statistics and have looked at marriages that were registered in the provinces and territories, and the ages, over the past decade or so. There certainly are marriages under the age of 16, including 15-year-olds. In the case of Saskatchewan, there were two marriages at age 14 that were registered. There were none registered below that age, but these are still fairly young for these times.

Ms. Lisa Hitch: I should add that this minimum age is a capacity issue that travels with the child. If the child is ordinarily resident in Canada or a Canadian citizen, the minimum age for marriage would apply regardless of where in the world the child is married.

There are also some anecdotal reports of Canadian children being married as young as 12 for girls and 14 for boys, but none below that common law age in the last couple of decades.

Mr. Jim Eglinski: Thank you.

In regard to dealing with these forced marriages, I believe there's been some confusion here, as you've just said, about who would be charged. This bill says that people who engage or are involved in a forced marriage would be, and some people think that even the guests at such a function would be subject to charges. I wonder if I can have that clarified so people clearly understand what we're referring to in that portion.

• (0955)

Ms. Joanne Klineberg: I can address this one.

Mr. Jim Eglinski: Thank you.

Ms. Joanne Klineberg: The words that are included in the new offences, the verbs, if you will, are “celebrates”, “aids”, and “participates”. “Celebrates”, in the context of marriage, refers to the formalities of the marriage itself. In this particular context, in regard to someone who knowingly celebrates an early or forced marriage, it would be understood to be the actions of the official who is presiding over the ceremony itself. That's a fairly limited class of individuals.

In terms of aiding and participating, these are the types of words that are used in a variety of different criminal contexts. This is not the first time that the Criminal Code would be using “aids” or “participates” in a certain type of conduct. For instance, there's an offence of aiding a person to commit suicide. The person who commits suicide is not committing an offence, but the one who aids them to do so is.

“Participating” is also an action verb that is used in offences related to terrorism and organized crime. Any person who participates in the activities of an organized crime group or a terrorist group is also committing an offence.

These are also long-standing principles of criminal law. A person who aids another person to commit an offence can also be found guilty of that offence.

The Chair: Thank you, Ms. Klineberg.

Ms. Mathysen has some questions.

Ms. Irene Mathysen: Thank you very much, Mr. Chair.

Thank you for being here.

I appreciate your expertise and I'd like to go back to some of the questions I asked of the minister, just to get a sense of what the department has been doing. The minister said that there had been extensive teamwork with regard to the creation of this bill. I want to know, based on that and on the fact that polygamy, for example is addressed under the IRPA, to what extent you found there were polygamous families in Canada. The minister said there were dozens. I wondered how you determined that and whether you had some hard numbers in that regard.

Ms. Maureen Tsai (Director, Admissibility Branch, Department of Citizenship and Immigration): Thank you for the question.

I believe the minister spoke to the fact that this is something we have seen on an anecdotal basis. We don't have studies that would give us the numbers of polygamous families, but we have heard through consultation. For example, the minister held consultations over the summer. He had round tables in Montreal, Toronto, and Vancouver on this subject, and he spoke to stakeholder organizations that work with victims of early and forced marriages. The issue of polygamy was raised specifically, and again, while they didn't give specific numbers, certain stakeholders acknowledged that it is an issue and that it happens.

Ms. Irene Mathysen: Thank you.

I want to come back to the point about unintended consequences with regard to a situation in which polygamy is discovered and some of the family is deported and there are consequences for children who may be born here. In your discussions, what did you hear from organizations or from groups with regard to the potential harm of deporting some of the family and leaving some here, or deporting all members of the family?

Ms. Maureen Tsai: To my knowledge that issue was not raised specifically. Certainly it is an issue that has been raised by stakeholders in the legislative process. As our minister indicated, the framework of IRPA sets out very specific inadmissibilities, and those inadmissibilities are very clear. However, our law also gives us a number of facilitative mechanisms that can be used on a case-by-case basis. For example, we do have the ability to use humanitarian and compassionate considerations, and humanitarian and compassionate considerations do consider, for example, the best interests of the child.

The situations in question would be evaluated on a case-by-case basis. Generally officers look at the benefit of allowing someone to remain in Canada versus the risks of allowing them to remain here.

• (1000)

Ms. Irene Mathysen: Okay, and you're referring to already existing laws instead of to Bill S-7.

Ms. Maureen Tsai: That's correct.

Ms. Irene Mathysen: So there are already existing laws that provide protection.

Ms. Maureen Tsai: Certainly, and this is within the broader framework. As I said, polygamy would be a new inadmissibility, but the other provisions that we already have in the act could be applied on a case-by-case basis.

Ms. Irene Mathysen: Thank you very much.

One of the things the minister referred to was help and support with regard to addressing those who are harmed unintentionally. I'm wondering what consultations by various departments have determined with regard to providing additional safe and affordable housing, investing in counselling, and helping often very traumatized people to navigate the system, particularly if they've been criminalized. Have there been discussions, and to what degree is the government planning to provide those supports now?

Ms. Gillian Blackell: Thank you for the question.

If I may, the Department of Justice has been looking at these issues for a number of years and has held seven sector-specific round tables or workshops with police, crown prosecutors, victim services workers, child protection workers, shelter workers, and academics to talk about some of the gaps, challenges, and promising practices in dealing with this wide range of harmful cultural practices, if you will, or what the UN will sometimes call "customary practices". As a result we've also funded a number of projects.

In 2013, we held a letter of intent for projects to respond specifically to forced marriage, which resulted in half a million dollars in funding over three years for four projects, including for SALCO for awareness raising, training, and risk assessment. So we fund some of the work of the key service providers through that program.

Status of Women Canada has also funded over \$2.8 million for early and forced marriage, and honour-based violence-related community-based projects. They had a specific call for proposals in 2012 on honour-related violence. At the federal level we cannot directly fund some of these services, but we can fund NGOs and other community-based organizations that provide these services. This is something we have been doing for number of years and will continue to do.

Ms. Irene Mathysen: Thank you.

Can you comment on the realities? You talked about projects and proposals. Is there something concrete? For example, do we have new housing, or housing that's been made available so those who are unintentionally impacted can find safe housing?

The Chair: Be very brief, if you can. We're running out of time.

Ms. Gillian Blackell: Housing isn't something that our department would be in a position to fund constitutionally. We have an interdepartmental working group with 13 federal departments and agencies on early, forced marriage and on related violence, as well as female genital mutilation and cutting. We have regular discussions about funding, looking to leverage various funding opportunities throughout the federal government, and we've had discussions with Canada Mortgage and Housing Corporation about enhanced funding to shelters. Most of their money goes directly to the provinces and territories.

There are some challenges in the federal system to having funding for the particular services you're mentioning, but we are reaching out to the provinces and territories directly to make them aware of the importance of these issues.

The Chair: We have to move on, I'm sorry.

Mr. McCallum.

Hon. John McCallum: Thank you.

Just to return to my earlier point about the issue of the five-year sentence, and that could include non-violent crime like theft and mischief, I think. From a legal or technical point of view, would there be a way to amend that to limit the crimes to acts of violence? I think that was the intention, not to include these more minor crimes.

• (1005)

Ms. Joanne Klineberg: There's a way to draft many things.

One of the main challenges I think would be in how the offences one wanted to have captured would be identified. They could either be identified through particular offences being specifically listed, or they could be identified with a description such as "an offence that involves violence".

Part of the problem with the use of the word "violence" is that it's not a word that appears in offence provisions. For instance, the offence of assault is "the application of force without the consent of the other person", so even the offence of assault is not described from a criminal law perspective in terms of violence.

One would have to think very carefully about the way to capture the sorts of offences you wanted to see included to the exclusion of others, and difficulties I think would arise with certain offences that people might reasonably disagree into which category they fall.

A voice: Like criminal harassment....

Ms. Joanne Klineberg: Criminal harassment is a good example of an offence that certainly can cause a person to feel traumatized and fearful, but doesn't involve the physical application of force. Child pornography offences, for instance, there's a way to look at them such that they are violent offences, but there's another way to characterize them such as they aren't. So there's a characterization challenge.

Hon. John McCallum: Okay. Thank you.

Turning to a different question, in the House the revenue minister said that the justice minister is working with his provincial counterparts on a framework to limit marriage for 16- and 17-year-olds to situations where a court has approved the union. I'm wondering whether the government could suspend the application of the 16- and 17-year-old marriage provisions until a provincial government enacted rules as I've just described.

Ms. Lisa Hitch: Constitutionally the federal Parliament has jurisdiction only over, as I mentioned, that absolute-floor minimum age below which there can be no marriages, so there really is no constitutional way to do that. The government would have to set the age at either 16 or 18. In either instance, there would be no marriages possible below it, but it's within provincial jurisdiction to deal with what happens above it up to the age of majority.

Hon. John McCallum: Thank you.

Finally, officials in the Senate hearings on Bill S-7 referred to an internal Justice study on provocation. I wondered if it might be possible for you to send a copy of that study to the committee.

Ms. Joanne Klineberg: Yes, for that we looked at appellate cases from 1999 to 2014 that dealt with some legal issue pertaining to the defence of provocation. We will have to confer with our departmental supervisors to see if we can provide it. If we can, we certainly will.

Hon. John McCallum: Thank you very much.

The Chair: Thank you.

Mr. Aspin.

Mr. Jay Aspin: Thank you, Chair.

Welcome again, officials. Thank you for giving us your advice on this important legislation.

I want to focus on the barbaric practice of forced marriage. I have a few questions, perhaps for Ms. Tsai.

What information is known about the prevalence of forced and underground marriage in Canada?

Ms. Gillian Blackell: I will respond, if that's all right.

Mr. Jay Aspin: Absolutely.

Ms. Gillian Blackell: As the minister mentioned, these are certainly issues that are fairly clandestine and difficult to identify. In terms of hard data, there's no actual category for forced or underage marriage at this point in time, and therefore there's no reliable statistical data in this regard. However, one of the most relied-upon sources is the study by SALCO, the South Asian Legal Clinic of Ontario, which identified 219 cases in Ontario between 2010 and 2012.

The Department of Justice has also been looking at this issue for a number of years and funded two anecdotal studies on forced marriage in Canada to gauge the scope of the issue. The first was by Naïma Bendriss, in association with Rights and Democracy. It dates from 2008. It examined the incidence of forced marriage in Montreal and Toronto through interviews with service providers. The study did confirm the existence of forced marriages in Canada and that many women were unaware of their rights. It did identify the link between forced marriage, honour-related violence, and polygamy.

The second study was by Dr. Zohra Husaini—

• (1010)

Mr. Jay Aspin: Okay, I have a few questions here and I'm limited in time.

Do families typically take these forced marriages out of the country?

Ms. Lisa Hitch: That's what I was just going to throw in as my cautionary note. Those studies do not distinguish between marriages that were celebrated in Canada and marriages that were celebrated outside of Canada. Certainly it would appear that a large number of them were celebrated outside of Canada, so yes, that's a concern.

The other concern, of course, is that probably a number of telephone and proxy marriages were involved as well, where one of the parties would have stayed in Canada and the other would have been in another country.

Mr. Jay Aspin: Thank you very much.

That was a good segue into my next question. How will these proposed amendments prevent young girls from being taken out of the country for the purpose of forced marriages?

Ms. Gillian Blackell: The amendments with the specific offences of underage and forced marriage ceremonies in the Criminal Code serve as anchoring offences for the extension of the offence on the removal of a child from Canada for the purpose that a criminal offence would be committed abroad, which currently applies to a number of sexual offences as well as female genital mutilation. We're now able to extend that to removing a child from Canada for the purpose of an underage or forced marriage.

It also allows for the linkage to the specific peace bond, so that specific peace bonds could be taken out to prevent these marriages from occurring, including preventing the defendants from removing the child from the jurisdiction, or from travelling or making arrangements for the marriage. There are specific measures to prevent that.

Mr. Jay Aspin: What can you folks tell us about honour killings? Do you have any statistics or evidence in that regard?

Ms. Gillian Blackell: As with forced marriage, there's no actual legal category of honour killing, so we don't have any statistics through Statistics Canada that would identify percentage of homicides that were actually related to honour.

However, we have examined reported cases and identified around a dozen cases that appear to have been related to honour. Not all of these cases, of course, involve the defence of provocation. They were not always raised in all of those cases, for sure. The commonality between these cases is that either the defence raises or the prosecution identifies the case as being related to the family honour as being one of the motives for the actual killing.

Mr. Jay Aspin: With regard to honour killings and with regard to the proposed legislation, and forced marriage as well, will there be some tracking or monitoring with regard to this?

Ms. Gillian Blackell: Again, in terms of tracking cases statistically, you need to have a particular category in the Criminal Code for the uniform crime reporting survey to identify it. That's the police-based tracking system. It has to fall under a particular category, so once we have a specific offence of forced marriage, we would be able to track it.

I want to indicate, because I hadn't identified my notes, in terms of honour-related violence, that since 1954, we've identified at least 20 people that have been convicted of first or second-degree murder in Canada where there was some evidence on the record that it was related to family honour.

• (1015)

Mr. Jay Aspin: That seems to verify the information I have, that there have been approximately 25 Canadian criminal cases of honour-based violence since 1995, with 21 of these crimes occurring within the last decade.

Ms. Gillian Blackell: Because there isn't an actual legal category and it's not a legal term, this will depend on your definition and how you are examining the case law. We took a fairly conservative approach to the case law and it had to actually have something on the record either raised by the crown, raised by the defence, or in the victim impact statements where the terms "family honour" or "shame" were related directly to it, so it's fairly narrow just to be on the safe side. Again, it's very subjective.

The Chair: Madam Blanchette-Lamothe.

[Translation]

Ms. Lysane Blanchette-Lamothe: Thank you, Mr. Chair.

First, I would like to come back to something that Ms. Tsai said a little earlier.

Ms. Tsai, you spoke about consultations that were held in order to draft Bill S-7. Could anyone who attended these consultations testify? If not, who sent out the invitations? How were people chosen to participate in these round tables or consultations?

[English]

Ms. Maureen Tsai: They were not open to the public. I believe that invitations were extended to stakeholder organizations that offered services related to early and forced marriages, and polygamy.

[Translation]

Ms. Lysane Blanchette-Lamothe: Was everyone who offers those services invited?

Ms. Maureen Tsai: I saw the list. I think about 20 representatives were invited to each meeting.

Ms. Lysane Blanchette-Lamothe: Who selected these people?

Ms. Maureen Tsai: I can't answer that question.

Ms. Lysane Blanchette-Lamothe: No problem. I understand.

Were the discussions in these meetings distributed? Was the content of the discussions available to the public?

Ms. Maureen Tsai: The discussions were not made available. I don't know if we now have the authority to distribute them.

Ms. Lysane Blanchette-Lamothe: Thank you very much.

I know that you can only answer what your duties permit. I simply want to say that this committee did a study where witnesses were selected by various political parties and where the content was made public. Even though several witnesses recommended abolishing or seriously modifying the conditional permanent residence, it was not taken into account.

I'm wondering if the content of those meetings was selected to advance a political agenda or if it was considered as a whole. I know this isn't at all up to you to comment on this. Thank you for your answers.

I have a question about what's been done in other countries. I don't know which one of you will be able to answer.

Were practices in other countries, such as Denmark and the United Kingdom, studied when Bill S-7 was drafted?

Ms. Gillian Blackell: Thank you for your question.

We looked at the forced marriage practices of a number of countries similar to Canada. As you know, in the last decade, at least 10 European countries have introduced forced marriage offences. Most of them have set out sentences of two to seven years imprisonment. We looked at the practices in the United Kingdom, the Netherlands, Sweden, Australia, France, Switzerland, Germany, Denmark, Belgium, Austria and Norway. We looked at the outcome of these practices to date, because it's something recent for many countries, and we don't yet know what the outcome has been.

We know that charges have been laid in Denmark and that there have been some arrests. We don't currently know what the outcome of these arrests has been. I would like to point out that the goal of criminal charges isn't just to go to trial. It really is important to know that criminal law has an important social role to play. It makes it possible to set limits for socially acceptable behaviour. It's important to indicate where the line is.

It has a deterrent effect. It can give victims a way of...

● (1020)

Ms. Lysane Blanchette-Lamothe: I have a question about that.

Do you have any studies showing that minimum sentences, for example, have a deterrent effect on the actions?

Ms. Gillian Blackell: This bill does not set out minimum sentences.

Ms. Lysane Blanchette-Lamothe: Do you have any studies that show that sentences, like those in Bill S-7, have a deterrent and preventive effect?

Ms. Gillian Blackell: You're talking about maximum sentences. What's important is that sentences correspond to the seriousness of the actions. If we look at...

Ms. Lysane Blanchette-Lamothe: But do they have a deterrent effect? If you have any studies on that, you could send them to us.

[English]

The Chair: Mr. Shory.

Mr. Devinder Shory: Thank you, Mr. Chair, and thank you to the witnesses.

I want to start with this because this conditional permanent resident provision is one that the opposition raises all the time. It seems like they're trying to send the message that abused women in that kind of situation are fearful to not get out. They are fearful that they may lose their status if they come out and report it.

Of course, this is a very sensitive issue. All parties and all members are united in that we do not believe that there should be any family violence in those circumstances. My understanding is that some guidelines have been developed to assist officers in processing those kinds of applications, where they can go with exceptions based on abuse or neglect, and they can handle the sensitive information related to that. Can you elaborate on that?

Ms. Maureen Tsai: Yes, indeed, you are correct.

The department has developed guidelines to assist officers in processing requests for exemptions from conditional permanent residents based on abuse or neglect and also to assist in handling any sensitive information related to this case. Essentially this allows spouses in abusive situations to come forward without fear of jeopardizing their permanent resident status in Canada.

Mr. Devinder Shory: Thank you for that clarification.

I want to come back to the Civil Marriage Act too. I believe you will be responding to this. I want to talk about this free and enlightened consent provision, which will be added to the Civil Marriage Act. I was surprised, because I had thought it was already there.

When we add these words into the Civil Marriage Act, how will this amendment assist law enforcers? How can this affect those who are forced into marriage?

Ms. Lisa Hitch: Thank you for the questions.

Unlike some countries, Canada does not have a single statute that codifies all of the federal aspects of marriage, marriage of course being divided constitutionally between the federal parliament that has jurisdiction over the legal capacity to marry or who can marry who and the provinces and territories that have capacity over the solemnization of marriage, licensing, registration, and other things like that.

The Civil Marriage Act, when it was first passed, was passed for a particular purpose, and that was to provide equal access to civil marriage to same-sex partners. Over time the Civil Marriage Act is becoming a codification of all of the federal aspects of marriage. The amendment would add two aspects, which are currently only within the law for the province of Quebec. The statement that you must give free and enlightened consent exists in the common law, so it's very clear in the rest of Canada but it is not in a statute anywhere that you can point to.

Having it in a statute you can point to will make it somewhat easier, as the U.K. experience has shown. Having a statute in the United Kingdom that says you can't force a child into marriage has allowed children there to say to their parents, "Look, it's in the law that you can't do this to me". In the same way, this will provide that for children in Canada.

•(1025)

Mr. Devinder Shory: Thank you.

You kind of covered my second question regarding peer countries, so thank you.

I want to come back to you, Ms. Tsai, because when we talk about early and forced marriage, I believe education is very important.

When someone chooses to come to Canada, they are given some literature. I want you to share with us whether this Welcome to Canada guide or Discover Canada guide says anything about this barbaric practice of early and forced marriage, etc., in order to educate the newcomers.

Ms. Maureen Tsai: Certainly both our citizenship study guide, the Discover Canada publication, and the orientation guide, Welcome to Canada, have been updated to reflect the fact that Canada's openness and generosity do not extend to harmful cultural practices such as forced marriage or other forms of gender-based violence.

We also have a wealth of information on the CIC website, which is available to newcomers to provide them general information on life in Canada, including information related to family violence, family law, and human rights.

The Chair: Thank you.

Mr. Leung.

Mr. Chungsen Leung: Thank you, Chair.

Having heard our discussion mostly on forced marriage, child marriage, and other aspects of marriage, I would like to have some clarification on Canada's Civil Marriage Act as well as our common-law marriage act. Why did it take us so long to address the fact that the original age of consent was seven years old? Why is it taking us so long to bring this up to date?

My second question deals with one aspect of the marriage act that is perhaps not addressed or at least our discussion has not addressed it, and that is incestuous relationships? How far do we go to define what is an incestuous relationship?

Ms. Lisa Hitch: All right. Well, those are very interesting questions.

Why has it taken us this long to codify the law of marriage? I really don't know what the answer would be. I could speculate but that's all I could do.

I know that there was an agreement by the Government of Canada to codify this aspect of minimum age—at the Uniform Law Conference of 1973—as soon as it was able to, given competing legislative priorities.

The Chair: I don't think this topic is in the bill, unless you're proposing an amendment.

Mr. Chungsen Leung: No, there's no amendment. It's just for clarification.

It's an interesting topic. Incest—

The Chair: Well, it may be interesting, but it has nothing to do with the bill.

Mr. Chungsen Leung: Okay.

Well then perhaps you can share with us what process we have gone through to bring our marriage act up to date to include these elements of forced marriage, and so on? What was it before?

Ms. Lisa Hitch: As I was saying before, I think part of the reason for making the amendments now is that although these aspects are in the common law, the common law is not as accessible, particularly for people who are not legally trained, as a statute on the books.

The idea is to codify the three elements, of minimum age, the requirement for free and enlightened consent, and the requirement that all prior marriages have to be dissolved before you can marry. It's not that any of these, except for the minimum age, are new, but just to make sure that it's all clearly on the books.

Mr. Chungsen Leung: Now we mentioned peace bonds earlier.

What methods or procedures are there for us to reach into a family to protect a child with a peace bond in case there's a suspicion that they may be transported out of this country for a marriage that is not wanted?

Ms. Gillian Blackell: Thank you.

If a child is under the age of child protection in the jurisdiction where they reside, then the child protection authorities would become involved and stand in on behalf of the child, for any act, in terms of requesting a peace bond or any other intervention with the family to help them become aware of the harmful impact of forcing a child into a marriage.

Normally that would be the role for the child protection. However, if the child is over the age and speaks to a victim services worker, that person could apply for the peace bond on behalf of the child. It's the same if the child contacts the police; usually it is the police who apply for peace bonds on their behalf.

• (1030)

Mr. Chungsen Leung: So the agencies that would be responsible for this would be, say, social services or the police or other law enforcement agencies.

Ms. Gillian Blackell: Exactly. Normally that would be the case, although anyone could do so on behalf of a victim if they felt that was necessary.

The Chair: Okay.

Mr. Sandhu.

Mr. Jasbir Sandhu (Surrey North, NDP): Thank you, Chair.

Thank you for being here this morning. It's been quite an informative session.

I want to get back to the provocation defence. You mentioned that there has been about a dozen cases where the prosecutor or the defence or the victim statement has mentioned provocation. Would that be correct?

Ms. Joanne Klineberg: Yes.

Those would be cases that could be characterized as honour killings, but it wasn't in all of those cases that the defence of provocation was raised.

Mr. Jasbir Sandhu: How many cases have used provocation as a defence?

Ms. Joanne Klineberg: There were at least three cases. All three of the cases went to their respective provincial courts of appeal on legal issues relating to the defence.

The first case was Nahar out of British Columbia, which was decided by the court of appeal in 2004. In that case, it was the accused who brought expert evidence from someone in his community. The accused was a member of the Sikh community, and he brought evidence before the court that alleged that the provoking conduct of his wife—it was a case where he stabbed his wife to death—was in the nature of defiant and disrespectful behaviour. She was smoking cigarettes and drinking alcohol and having conversations and meetings with men not to his liking. He raised—

Mr. Jasbir Sandhu: I don't want to get to know the details.

There were three cases where this was used. In those three cases was the judgment influenced by the provocation defence?

Ms. Joanne Klineberg: In all three cases the defence was raised, but it failed.

Mr. Jasbir Sandhu: We don't have any case at all that has been successful using provocation in Canada?

Ms. Joanne Klineberg: No cases to date have been successful.

Mr. Jasbir Sandhu: Let's go to polygamy. As I read the notes here, and from the testimony I've heard, polygamy has been illegal in Canada for over a hundred years. Would that be correct?

Ms. Joanne Klineberg: Yes.

Mr. Jasbir Sandhu: Wonderful. We haven't had any successful cases being tried over those hundred years. There is one case that's going through the courts right now. With this new law we're essentially creating two sets of rules, one for immigrants and one for the citizens. Would that be correct?

Ms. Joanne Klineberg: The criminal law with respect to everyone in Canada is exactly the same. The amendments in Bill S-7 in no way affect the applicable criminal law that could apply; it's only law in relation to the immigration context.

As a general matter, everyone who's in Canada is subject to being prosecuted under the same criminal offence. I would let my colleagues from Immigration Canada speak to the immigration-related consequences of polygamy.

Mr. Jasbir Sandhu: Why wouldn't we try those immigrants under our existing law? What is the need for this new law?

Ms. Maureen Tsai: The federal government creates laws, including the Criminal Code and the Immigration and Refugee Protection Act. If I understand correctly, prosecution under the Criminal Code is the responsibility of the provinces. In terms of the immigration law, yes, Joanne is absolutely right, the IRPA would only apply to foreign nationals and permanent residents.

• (1035)

Mr. Jasbir Sandhu: I still don't understand. If we have a criminal law in place that applies to everybody in Canada, what was the need for us to have this additional law enforcement through immigration? That's fine.

Mr. Chair, do I have any...questions?

The Chair: I think that Mr. Menegakis does.

Mr. Jasbir Sandhu: Do I have any—

The Chair: I'm sorry, you don't. You're out of time. I'm sorry, I misinterpreted what you said.

Mr. Menegakis.

Mr. Costas Menegakis (Richmond Hill, CPC): Thank you, Mr. Chairman, and thank you to our officials for appearing before us today.

Perhaps I can add, as part of a response to some of the questioning we've heard here today, concerning why this bill and why this bill now, I think we should highlight, in order for all members to know, that there have been approximately 25 Canadian criminal cases of honour-based violence, killings, and non-fatal crimes since 1995, with 21 of these crimes occurring within the last 10 years. That is 25 cases of this type of violence in the past 10 years, but on this side of the House, the government believes that one case of this type of violence is too much.

We did consult across the country, and we consulted with groups and organizations that are dealing with people every single day, dealing with this specific type of problem. Overwhelmingly, we heard about the need for legislation to be put in place that will protect women and girls against such barbaric cultural practices. I say this with a fair amount of emphasis and passion. It is cultural to some people that if their child of 14 years does not abide by a decision they made the day the child was born, the child should be somehow harmed—killed, stoned, discredited, thrown out, discarded. To them it's a cultural practice.

It doesn't speak to any specific community of people. We have a very dynamic and vibrant multicultural community in Canada, people who come from all parts of the world. We are speaking specifically about those who will perpetrate such barbaric acts on women, and particularly young women and girls.

Clearly our message is this: we will not tolerate spousal abuse of any kind—honour killings, gender-based violence, you name it. We're taking steps to strengthen our laws to ensure that no young girl or woman in Canada becomes a victim of early or forced marriage, polygamy, so called honour-based violence, or any form of harmful cultural practice. It's not the Canadian way. We don't do that in Canada. We need to have laws in place to ensure that these women, these girls have a right to speak out and that they have a right to be protected.

As my first question, having said that, I'd like to ask you to comment on the peace bond process and on how the peace bond will work.

Ms. Gillian Blackell: Thank you.

As the minister mentioned earlier, when you apply for a peace bond—a peace bond is a preventive court order, although it is in the Criminal Code—and a peace bond is taken out against the defendant, it does not constitute a criminal charge. That defendant would not have a criminal record. It is only if that defendant breaches the peace bond that he or she is subject to a criminal charge and potentially a criminal record. It is a preventive measure, which is extremely useful wherever there are reasonable grounds to fear that an offence will be committed.

We examined the general peace bond provisions and they didn't seem sufficient to address this particular issue, because it is extremely unusual to say that we want somebody to stop making arrangements for a marriage. It was really to focus on stopping those individuals from making the marriage take place, from basically pursuing the preparations and ensuring that the marriage ceremony takes place. In order to focus on that, we have to focus on the specific ceremony itself.

Having an offence based on the marriage ceremony, focused on the unique harm that is related to the marriage ceremony itself—which is basically a violation of that individual's human right to decide when and whom and whether to marry anybody, with all of the potential and almost inevitable violence that falls from that.... By focusing on that particular crystallization of harm, the peace bonds allow us to prevent the harm.

The experience in the U.K. with its forced marriage civil protection orders indicates that these are very effective in stopping families from forcing their children to marry. Most families are doing it because they believe it's in their child's best interest. When they realize, one, that it's illegal and that it's harmful, and two, that if they go ahead with this they will have the shame of having committed a criminal offence, that realization has a very strong dissuasive power.

This is the Canadian equivalent at the federal level of the U.K. civil forced marriage protection orders, because in the Canadian context civil protection orders would fall within the jurisdiction of the provinces and territories.

Once the application is made, there are a number of conditions that can be issued against the defendant, including the requirement to surrender passports and other travel documents, limits on their movements or from leaving the jurisdiction, etc.

• (1040)

Mr. Costas Menegakis: What are some of the penalties? If someone has knowledge of this going on or assists in a barbaric act, what are some of the things we can do with a peace-bond power to penalize those who would perpetrate or participate in such activities?

Ms. Gillian Blackell: If a peace bond is taken out against the defendant and the defendant breaches that peace bond, they are currently susceptible to a term of imprisonment of up to two years. This will be changed with Bill C-26, I think it is, which would increase the maximum to four years of imprisonment.

In terms of the new proposed offence of forced marriage, the maximum is five years' imprisonment. Again, that is a maximum. Of course, it would depend upon the discretion of the judiciary, depending on the particular circumstances of the case.

Mr. Costas Menegakis: Thank you.

In the 2013 Speech from the Throne—we heard a little about this earlier—the government recognized that millions of women and girls worldwide continue to be brutalized by violence, including the inhumane practice of early and forced marriage. The proposed changes in this particular bill, Bill S-7, the zero tolerance for barbaric cultural practices act, will help ensure that these harmful cultural practices do not occur on Canadian soil.

Let me say in my last 20 seconds that I would strongly urge and implore all members of this committee to speak to their caucuses and to their leaders to ensure that we expeditiously pass this legislation at the end of the day, because what we will be doing, Mr. Chair, is protecting women and girls.

Thank you.

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

I'd like to thank members from the Department of Justice and the Department of Citizenship and Immigration for visiting with us today and helping us start our hearings on this bill. Thank you very much for coming.

This meeting is adjourned.

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