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Tuesday, July 15, 2014

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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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• (0930)

[English]

The Chair (Mr. Mike Wallace (Burlington, CPC)): I'm going to call to order meeting number 44 of the Standing Committee on Justice and Human Rights.

The orders of today are, as per the order of reference of Monday, June 16, 2014, Bill C-36, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts.

We are being covered by, I believe, CBC and Sun TV. All cameras are fixed. The one behind us is the camera that will be used. It will be fixed only on those who are speaking and is not to be used to pan the room.

We are joined by witnesses from the Department of Justice, in case there are any questions about the clauses or amendments that may be brought forward.

Madame Boivin, you have your hand up before we start the clause-by-clause consideration.

Ms. Françoise Boivin (Gatineau, NDP): I'll be very brief, because I don't have much hope. But you always have to have hope.

[Translation]

I'd like to move a motion, in one last attempt with the Conservative benches.

Based on what we've heard and based on the theories we've been hearing left and right—I'm not talking in the political sense, but in terms of the very diverse positions we've heard—I'd like to move a motion calling on the Standing Committee on Justice and Human Rights to recommend that the government send Bill C-36 to the Supreme Court of Canada before proceeding with the clause-by-clause study.

The reason, as everyone knows, is that the Minister of Justice and Attorney General of Canada is required to ensure that his bill complies with the charter and our Constitution. Constitutional experts have told us that the bill doesn't comply and others have told us that it does. Simple and good legal logic would have us present a bill of sound order, especially when this bill is in response to a Supreme Court decision.

As a lawyer, I'm not comfortable sending this bill back to the House at report stage and guaranteeing to our colleagues in the House that it complies with the charter and the Constitution.

I think we should avoid spending a lot of money. As experts and the minister himself have said, this bill will end up before the court as surely as night follows day. With that in mind, I think the prudent and diligent thing to do would be to send the bill to the court. That's what the Standing Committee on Justice and Human Rights should request at this time.

[English]

The Chair: Thank you very much.

I'm assuming there will be comments on that motion.

Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Just briefly, I thank Madam Boivin for the motion. She knows there's been much discussion of the potential for a direct reference to the Supreme Court of Canada.

Along with the government, the Minister of Justice and others, I am very confident that Bill C-36 as drafted is in full compliance with the Bedford decision and the Charter of Rights and Freedoms. This is our response to the Bedford decision. It was carefully considered and carefully crafted by the minister and by Department of Justice specialists.

We heard from those Department of Justice specialists last week. They made it clear that in their considered opinion as experts in the field of criminal law, the bill is in compliance with the Bedford decision and the Charter of Rights and Freedoms in all its aspects.

As a lawyer, myself, I say personally to you that I am very comfortable that it is compliant. I also take the words of the chief justice seriously. She said that Parliament has a legitimate right and obligation to propose a new way of dealing with the issue of prostitution.

It was thrown back directly to Parliament to do that. My personal view is that to do otherwise would be an abdication of our responsibility as elected members of Parliament. On that basis, we'll be opposing the motion.

• (0935)

The Chair: Thank you.

Mr. Casey, and then we'll end with Madame Boivin.

Mr. Sean Casey (Charlottetown, Lib.): Thank you, Mr. Chair.

I won't repeat the arguments put forward by Madame Boivin, except to say that I agree with them. We have asked that this be put to the Supreme Court as a reference. All of the witnesses who appeared before the committee who were trained in the law, except for the Minister of Justice and those from the Department of Justice, and one lawyer who disagreed with her client, were of the same view that it will not pass constitutional muster.

The prudent thing to do in the circumstances is not to burden Canadians with a law that will eventually be found to be unconstitutional, over a period of six to seven years while it wends its way through the courts, and to get the opinion of the court in an expeditious manner. This motion allows for that to happen.

If all of the lawyers who testified before the committee are wrong, at least we'll have a quick answer. As far as I'm concerned, there is very little risk. It's certainly in the best interests of Canadians, all of those who are impacted by this legislation, to have that decision made by the Supreme Court. It would also show some respect for the process we've just gone through and for the testimony that's come before the committee.

I support the motion.

The Chair: Thank you, Mr. Casey.

Madame Boivin.

Ms. Françoise Boivin: Briefly, Mr. Chair, I'm glad that Mr. Dechert is so sure of himself as a lawyer. I don't tend to be that affirmative. If my client were the Government of Canada and I were reviewing this, I'm not sure I could go either way. I'm still looking forward to seeing what legal advice they receive.

All of the lawyers around this table have at some point had to write some legal advice. You take the facts of the case, if it's a factual case, which it's not here; it is a legal question. Then you have to review both sides, and sometimes third sides and fourth sides, and possibilities.

I still remember when we were told by the government members of the committee, when we were reviewing the changes to the Supreme Court Act to validate a nomination, how it was sound, that it was legally perfect. They were so confident. Then look down the road to what happened. Maybe the question is the credibility of this government, the fact that they are so secretive, that we don't have that scientific survey, for which our request was turned down when we moved to have it tabled.

When you see a lawsuit, good or not, valid or not, as was the case of Edgar Schmidt and the Attorney General of Canada.... When your own employee says, "We were asked to do something that is not charter compliant, not to do our work", whether he was right or wrong, it puts doubts in the minds of people.

I know we'll be told there will be delays, that there is deadline from the Supreme Court. But if you do a reference to the Supreme Court, of course, the Supreme Court will understand that it's based on its decision of Bedford and will adjust and adapt. The Supreme Court is not an idiot court.

It's too big of an issue, too divisive, with too many people saying the same thing but from different angles—or not the same thing on others. There is legal advice that says one thing or another. How can

people seriously say, looking at me, after four days of testimony and a weekend to ponder this, that they are 100% confident? If they have information that we don't have, please share it with us, because from what I've heard and read, it is not that evident.

● (0940)

The Chair: Madame Boivin, we need specific wording of the motion so that the clerk can record it properly.

[*Translation*]

Ms. Françoise Boivin: Mr. Chair, the motion is as follows:

That the Committee suspend the clause-by-clause study and recommend to the government that Bill C-36, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts, be sent to the Supreme Court, pursuant to Section 53(1) of the Supreme Court Act.

[*English*]

The Chair: Mr. Dechert, you have a comment on the actual motion.

Mr. Bob Dechert: Thank you, Mr. Chair.

I just want to respond briefly, and I won't repeat what I said earlier. While it's true that I have practised as a lawyer—I'm a member of the Bar of Ontario—and I have heard all the legal arguments on both sides, and I'm appreciative of the views that were expressed to us by witnesses and others, and I have examined it from my own perspective as a lawyer, frankly, I'm not here today as a lawyer.

I'm here today as an elected member of Parliament sent here by the people in my electoral district to make decisions. I'm also a member of the government, and I believe this bill does meet all the requirements. I also believe that by exercising the power that we're here to exercise today, we're doing the job we were sent here to do by the people who elected us.

On that basis I appreciate Madame Boivin's comments and the motion we'll be voting against, and I would call the vote.

The Chair: There's no such thing, but seeing no other speakers, for the motion on the table as presented by Madame Boivin, all those in favour? All those opposed?

(Motion negated)

The Chair: We're off to clause-by-clause consideration, and I have a couple of comments. Pursuant to the Standing Order 75(1), consideration of the preamble and clause 1, the short title, will be postponed, and there are some amendments to the preamble and so on. That's just so you know that's going to happen at the end of the clause-by-clause review.

I have two further things to say. I'd like to do everything on division if possible. Obviously there will be a vote on amendments, but on division, and I wouldn't mind for time's sake that where there are no amendments, unless you want to discuss a clause, I will group them together if that's okay.

We have no amendments between clauses 2 and 7.

Ms. Françoise Boivin: No, because we may want to speak, as there might be some we agree with. Oh, surprise. There might be some good clauses in that bill.

The Chair: I don't know if you heard me. I was going to do it on division, so if you want an actual vote, speak to it, and we'll vote on it. Is that okay?

Ms. Françoise Boivin: Excellent.

The Chair: Is that good for everyone? We'll do one at a time then.

Shall clause 2 carry? On division? You want a vote then? There's no yes. It's we vote, or we say on division. You want a vote.

(Clause 2 agreed to)

(Clause 3 agreed to)

The Chair: Let me know if you want to speak to it. I'll just run through it if you want to speak to it.

(Clause 4 agreed to)

(On clause 5)

The Chair: Madame Boivin.

[Translation]

Ms. Françoise Boivin: A good explanation is important, so that the government doesn't get too carried away.

These clauses clearly have to do with human trafficking. I don't think a single person this whole time has sided with those who engage in human trafficking or in trafficking children. It may have been about quantifying or explaining the positions on clauses 1 to 5.

● (0945)

[English]

The Chair: Thank you.

Is there anything further on clause 5? Seeing none, shall clause 5 carry? All those in favour?

(Clause 5 agreed to)

Chair: Now to clauses 6 and 7.

(Clauses 6 and 7 agreed to on division)

(On clause 8)

The Chair: Thank you very much.

Here we have one amendment. It is from the government, G-1, that Bill C-36, in Clause 8, be amended by replacing lines 13 to 18 on page 6 with the following:

171 or 279.011 or subsection 279.02(2), 279.03(2), 286.1(2), 286.2(2) or 286.3(2);

The amendment is in order because it's replacing lines.

Mr. Dechert, the floor is yours to speak to it.

Mr. Bob Dechert: Thank you, Mr. Chair.

This is a technical amendment, and so I'd be appreciative of hearing the officials on this as well.

Clause 8, as you know, proposes amendments to paragraph 171.1(1)(a) of the Criminal Code, which prohibits making sexually explicit material available to children in order to facilitate the

commission of any of the enumerated child sexual offences, including the existing child prostitution offences.

Our proposed amendment would remove the references to subsections 212(1), 212(2), 212(2.1), and 212(4) for the reasons I've provided. There would be no gap in the law, and the accused person would always be charged with the law as it existed at the time they allegedly committed the offence.

On that basis we'll be supporting the amendment.

The Chair: Did you want our witnesses from Justice to...?

Mr. Bob Dechert: Sure.

The Chair: Do you have anything to add to that description?

Ms. Nathalie Levman (Counsel, Criminal Law Policy Section, Department of Justice): I think he spoke fairly to the amendment. These are preparatory offences, child sexual preparatory offences. The concern was to ensure that a person who committed a preparatory offence with the intention of committing a prostitution-related offence against a child would always be caught regardless of when the offence was committed. However, we have spoken to crowns who are experienced in historical-type prosecutions. They have assured us that this is not necessary, because the offence at the time the offence was committed would apply to the conduct. It's unnecessary and it may cause some confusion. That particular crown has recommended that we remove the reference.

The Chair: Thank you for that.

Madame Boivin.

Ms. Françoise Boivin: On that note, if I understand correctly from what I read this weekend, this amendment and others from the government, except maybe for one, are technical in the sense that this is nothing that was heard at this committee. It's other research or work that was done by the department, I guess in parallel with the work of this committee. We didn't hear anything about this.

My point is that this is something that could have been done before the bill was presented. It has nothing to do with the study in committee. It's a review, and you feel it's a good time to present that amendment, but it could have been done.

I hope I'm clear. Sometimes, with my English, I'm lost in translation.

[Translation]

I will repeat in French.

[English]

Ms. Nathalie Levman: Well, it was an error.

Ms. Françoise Boivin: An error: that's what I suspected.

Ms. Nathalie Levman: The intention was to ensure that somebody who commits a preparatory sexual offence against a child, after Bill C-36 is enacted, would be caught. Therefore, we put the historical offences...listed them in, but subsequently, in terms of the intense review that we always do again and again, and consultations with crown, who actually of course apply these offences, we came to the conclusion that it wasn't necessary.

Ms. Françoise Boivin: Imagine what we would catch if we would have more time.

Anyway, I understand. You're clear. It was an error and it's been corrected. It has nothing to do with the work of the committee, but it's a good time to correct the mistake.

Thank you.

The Chair: Thank you.

Is there anything further on amendment G-1?

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

(Clause 8 as amended agreed to)

(On clause 9)

• (0950)

The Chair: We have another amendment from the government side. It amends clause 9 by replacing lines 26 to 31 on page 6. It lists basically the same sections as in the previous amendment. It's in order, as the previous one was.

Mr. Dechert, would you like to speak to it?

Mr. Bob Dechert: Thank you, Mr. Chair.

As with the last amendment, this is also a technical amendment. Clause 9, as you know, proposes amendments to section 172.1 of the Criminal Code, which prohibits luring a child in order to commit any of the enumerated child sexual offences, including existing child prostitution offences.

Our proposed amendment would remove the references to subsections 212(1), (2), (2.1), and (4) for the reasons that I've already provided. There would be no gap in the law. An accused person would always be charged with the law as it existed at the time they allegedly committed the offence.

For that reason, we'll be supporting the amendment.

The Chair: Is there anything further to the amendment?

Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: I want to be clear for the senior officials from the Department of Justice.

This is the same concept. This was an error picked up through your ongoing studies of a bill done in parallel with the committee's work. However, this didn't come out of the committee's work. It was something that you heard elsewhere and it's an error that you're fixing.

[*English*]

Ms. Nathalie Levman: Yes.

Ms. Françoise Boivin: Thank you.

The Chair: Is there anything further?

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

(Clause 9 as amended agreed to)

(On clause 10)

The Chair: Clause 10 also has an amendment. It is from the government side. It proposes to amend clause 10 by replacing lines 35 to 40 on page 6 with the following:

163.1, 170, 171 or 279.011 or subsection 279.02(2), 279.03(2), 286.1(2), 286.2(2) or 286.3(2) with respect to another

Mr. Dechert, would you like to speak to amendment G-3?

Mr. Bob Dechert: Thank you, Mr. Chair.

As with the previous two amendments, this is also a technical amendment.

Clause 10, as you know, proposes amendments to section 172.2 of the Criminal Code, which prohibits entering into an agreement or arrangement with another person in order to commit any of the enumerated child sexual offences, including the existing child prostitution offences.

Our proposed amendments would remove the references to subsections 212(1), 212(2), 212(2.1), and 212(4), and for the reasons I provided in the previous two amendments, we would support this.

There would also be no gap in the law. An accused person would always be charged under the law as it existed at the time they allegedly committed the offence.

For all those reasons, Mr. Chair, we'll be supporting this amendment.

The Chair: Is there anything else?

Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: If I'm not mistaken, as with the other two cases, this is a technical error that you're now fixing with this amendment.

[*English*]

Ms. Nathalie Levman: Yes, it was an unnecessary addition, so we're removing it.

The Chair: Is there anything further to the amendment?

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

(Clause 10 as amended agreed to)

The Chair: Clause 11 has no amendments.

Are there any comments on clause 11?

(Clause 11 agreed to on division)

(On clause 12)

The Chair: We do have an amendment.

It's the first amendment from our independent member. This committee has operated such that I will read the amendment and then I'll rule on whether it's admissible or not, and why. If it is admissible, the mover, because you are an independent, will have approximately one minute to talk about your amendment, and then we will proceed to vote. Obviously, you are unable to vote on it.

The motion reads that Bill C-36, in Clause 12, be amended by adding after line 17 on page 7 the following:

(3) Subsection 197(1) of the Act is amended by adding the following in alphabetical order:

“prostitution” means an act by which a person provides or obtains sexual services for consideration;

I'm assuming you're moving that, Madame Mourani. I'll give you a minute or so to speak to your amendment.

It is in order as Bill C-36 does not have a definition of “prostitution” and this wording is not the same as the previous wording, which dealt only with the sale. This definition deals with selling and buying, so it is in order.

Madame Mourani.

● (0955)

[*Translation*]

Mrs. Maria Mourani (Ahuntsic, Ind.): Thank you, Mr. Chair.

I thank the committee for allowing me to present amendments and to speak to them.

I didn't present a lot, since I chose to focus on the aspects that I felt could help this bill pass the constitutional test.

I think it's very important for us to define prostitution in the bill, because if we don't, the justice system will use the common definition of prostitution, which is to provide sexual services for payment. However, this bill also addresses the purchasing of prostitution or sexual services.

I think it's very important that we show the Supreme Court and the justice system that the legislator's intention is to criminalize the purchase of sexual services. With a clear definition, we'll send a message to the justice system to consider that definition and not to consider the common definition found in dictionaries.

[*English*]

The Chair: Thank you very much for that explanation.

We have a number of comments to the amendment.

Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

My question is for Mrs. Mourani.

I am still waiting for a definition of the term “sexual services,” even after four days of meetings. In light of your amendment, what do you think those terms mean, exactly? A definition might be necessary.

However, if the terms in the definition are broad, are we meant to use Bill Clinton's definition or someone else's definition? Would “sexual services” include lap dances? That's not my area of expertise. Will it include services provided in massage parlours? What, exactly, are we talking about?

Mrs. Maria Mourani: I really wanted to provide a definition for “prostitution”. I didn't specify the notion of “sexual services” because I thought that should be left to jurisprudence. There is already quite a bit of jurisprudence on this matter. There have been a number of cases dealing with prostitution.

My definition is rather broad. I would include almost everything, whether or not it refers to full sex, whether it happens in strip clubs or somewhere else. My definition could be quite broad. In this specific case, I chose not to focus on this issue and to give the justice system as much latitude as possible and to leave room for jurisprudence. That's why I didn't want to do that.

However, I did want to give an overall definition of prostitution. I wanted to tell the justice system directly that, even if the dictionary defines prostitution as providing sexual services for payment, the legislator wants the justice system to take into account another participant—the john—who is purchasing the service. The john is part of the system and helps keep it going. That's why I wanted to include this.

If we don't, judges, prosecutors and lawyers will have all kinds of leeway to use the common definition of prostitution, which is what happens now. What's different about this bill is that it introduces a new player in this game in a more direct manner. Johns were covered a bit by the former law. However, this bill is clear and there are sentences associated with that crime.

I think it's important to have that definition, to ensure that the justice system is even more clear about the intent.

[*English*]

The Chair: Do you have anything further to add, Madame Boivin?

[*Translation*]

Ms. Françoise Boivin: Now might be the time for our experts from the Department of Justice to respond to these comments.

I get worried when I hear that the courts will determine this or that. This could mean that before there is any real jurisprudence by which some courts would have to abide, it would be a free-for-all for a little while. That's what will happen until a higher court, such as the Quebec Court of Appeal or the Supreme Court of Canada, hands down a definitive ruling. For example, the Quebec Court of Appeal could rule on this issue.

Isn't there a danger when the definition is so vague?

● (1000)

[*English*]

Ms. Nathalie Levman: I would direct the committee's attention to the technical paper that was tabled by the Minister of Justice on the first day of committee hearings, in particular, to page 5, which goes over all of the extensive jurisprudence on the meaning of “sexual services for consideration” and “prostitution”, which, of course, is defined as “the exchange of sexual services for a payment”. So we do have an extensive body of jurisprudence. I've spoken to the crown, and they feel that the jurisprudence satisfactorily circumscribes the scope of that phrase, while also giving a certain amount of flexibility to courts to adjust to new ways in which prostitution is affected.

I hope that all the case law referred to on page 5 will enlighten the committee on what is and is not included in the terms “prostitution” and “sexual services for consideration”. I would direct your attention, in particular, to the fact that activities not related to prostitution, such as acts related to adult pornography and stripping, have been read out of that definition.

Ms. Françoise Boivin: But you see that it's not exactly the definition from Madam Mourani.

Do you think this definition of prostitution by the member of Parliament is necessary, or do you feel confident that the technical briefing is okay?

Ms. Nathalie Levman: Prostitution has been interpreted by the Supreme Court in its 1990 prostitution reference. I would just note that Bill C-36 doesn't propose to use the term “prostitution” other than in its preamble.

Ms. Françoise Boivin: Okay.

The Chair: Do you have anything further to add? No? Okay.

Mr. Dechert, go ahead.

Mr. Bob Dechert: Thank you, Mr. Chair.

The government does not support the amendment.

We thank Mrs. Mourani for bringing it forward. In our view, it's unnecessary to define prostitution because the Criminal Code would no longer use that term if amended by Bill C-36. Rather, Bill C-36 focuses on the relevant aspect of the prostitution transaction, such as obtaining sexual services for consideration.

Moreover, the amendment could cause some confusion, as it proposes that prostitution be defined in part VII, which refers to “Disorderly Houses, Gaming and Betting”, and Bill C-36 would place most of the new prostitution offences in part VIII, which are “Offences Against the Person and Reputation”.

For those reasons, we'll be opposing the amendment.

The Chair: Is there anything further to the amendment?

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

The Chair: There are no other amendments to clause 12.

Does anyone have any further comments on clause 12?

Madame Boivin.

Ms. Françoise Boivin: Briefly, just to be clear so that people know what is being done, if I understand correctly—and I am asking the department specialist this—it's actually the article that removes “prostitution” from the definition of “bawdy house” that would be in line with the Bedford decision. Am I correct?

Ms. Nathalie Levman: You are.

Ms. Françoise Boivin: Okay, thanks.

The Chair: Is there any further discussion on clause 12?

(Clause 12 agreed to)

The Chair: Now to the next clauses.

(Clauses 13 and 14 agreed to)

(On clause 15)

The Chair: I believe we have three amendments to clause 15.

The first amendment has been put forward by Madame Boivin:

That Bill C-36 be amended by deleting Clause 15.

The Chair: I am ruling, as the chair, that this—

● (1005)

Ms. Françoise Boivin: May I present it first before you rule on it?

The Chair: Well there is no discussion. It's out of order. It's inadmissible, so no.

It's inadmissible and here is why. In this case it's very simple. If you can, as a committee member, vote against a complete clause, you do not need to move an amendment to remove it.

Your action to vote against automatically removes.... So it's an inadmissible amendment to actually try to remove it. It's just the rules of the system about deleting a complete clause. You can delete lines within a clause, you can add lines in a clause, you can add a clause, but you cannot, through amendment, delete a clause. You need to vote against a clause, as it has the same effect.

That is my ruling.

Ms. Françoise Boivin: Just a question....

The Chair: If it's a procedural question....

Ms. Françoise Boivin: Yes, it is.

The Chair: Okay.

Ms. Françoise Boivin: Previously in reviewing other bills, we presented amendments and you ruled if they were admissible. The person presented their amendment and at the end of the presentation, you would rule if it were admissible or not admissible. It's the first time, Chair, and I say this in all due respect, that you have proceeded this way.

The Chair: Here is my answer to that question. This amendment is inadmissible because you're removing a clause. When we come to the actual clause itself, you'll have time to speak to why that clause should be removed.

Ms. Françoise Boivin: Okay, that's fair.

The Chair: The only other thing you can do in terms of procedure, just so that everyone knows, is that you can challenge the chair and then we would ask.... But at this point if there is no challenge, we are moving on because NDP-1 is inadmissible.

Now we're on to NDP-2 to clause 15:

That Bill C-36, in Clause 15, be amended by deleting lines 6 to 15 on page 8.

As I just mentioned, you're able to amend by removing or adding lines within a clause without removing a complete clause.

Madame Boivin, you are the mover of the motion so the floor is yours.

The only other item I want the committee to understand is that if NDP-2 passes, it affects G-4, and G-4 would then be out of order because of what would have previously happened to the lines as of NDP-2.

The floor is yours, Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

I'm not surprised about my NDP-1 amendment. That may have been pushing a bit too far.

However, I'd like the NDP-2 amendment to be clear for everyone, since it has to do with clause 15. This is the clause that witnesses probably talked about the most last week with clause 20 and the \$20 million amount. That's essentially what they talked about last week.

We especially heard about the premise of the preamble of Bill C-36. That's part of the bill, and we'll see it later on. The witnesses—regardless of where they stood on the issue of prostitution—told us that sex workers are victims.

I repeat. This means that someone cannot be both a victim and a criminal for the same action. We need to be consistent. When it came to specific questions from most of the witnesses who support the government and Bill C-36, unequivocally—with the exception of a few reservations for moral reasons, which I respect—this appeared to be an aspect in support of the bill.

I think that we need to be consistent, at least with this bill, and we need to ensure that we don't revictimize the people involved in prostitution. That's the very essence of the NDP-2 amendment. It's a matter of making it consistent, at the request of almost everyone. It even seemed to have the support of Conservative members of this committee.

• (1010)

[*English*]

The Chair: Is there anything further to this?

Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

I simply want to thank Madame Boivin for the amendment. The government will not support the amendment. In our view it's inconsistent with one of the main objectives of the bill, which is to protect children from prostitution's harms.

We believe that, as drafted, Bill C-36 balances competing interests, including the interest of protecting sex workers from unreasonable harm. We think it addressed those in appropriate and reasonable ways in full compliance with the opinion of the Supreme Court of Canada.

We also believe that vulnerable people, minors in our communities in general, also have a right to be protected. Children, Mr. Chair, have a right not to be exposed to prostitution. They have a right not to be put in a situation where they could be recruited into prostitution.

We heard very unfortunate stories from survivors of the sex industry, who talked about being recruited into the business in high school. We were told that, unfortunately in this country on a relatively regular basis, young girls are recruited in high school hallways into the business.

We need to send a clear message to the pimps and the johns, and everyone else involved in the sex trade that the schoolyard, the playground, the day care centre, and other places where children are, are off limits.

We believe children, at the end of the day, Mr. Chair, have a right to their innocence, and it's our obligation as a society to protect that right as well. We believe we're balancing those interests, and for those reasons we will not be supporting this amendment.

The Chair: Madame Péclet, to the amendment, and then Madame Boivin.

[*Translation*]

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): Thank you, Mr. Chair.

It's important to note that children need to be protected, and I understand that. However, what we're talking about here is the criminalization of victims, regardless of the situation.

I want to point out that the government was clear in its approach with Bill C-36 and in the questions it asked to witnesses: the majority of women who are involved in prostitution are victims. We're talking about the interests of victims here. Furthermore, since we are talking about criminalization, I think that children should be protected. Do we need to criminalize people to ensure a balance between interests?

Furthermore, witnesses unanimously agreed that the government shouldn't criminalize women or victims when it's balancing interests, since we also need to protect these women.

[*English*]

The Chair: Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: This is what I understand of the parliamentary secretary's comments.

We're talking about being open to amendments. We're talking about a substantive amendment, something that affects the substance of what we have heard here and not technical errors in how the bill was drafted before being introduced. What I understand is that the part of this bill called the Protection of Communities and Exploited Persons Act has more to do with protecting communities. The parliamentary secretary made a point to confound the concepts of child prostitution and what is targeted by clause 15 and our amendment. This would decriminalize the victims themselves, meaning the ones we are talking about in this bill and who would be, as the witnesses said, sex workers and prostitutes, pursuant to section 213.

Now I see that this government wants to ensure that my amendment is defeated. I understand that it will just narrow the notion of what is considered public. That's the extent to which the Conservatives are prepared to go.

People will continue to be victimized, and I find that extremely sad and inconsistent with what we've heard and what we're hearing from Conservative members.

•(1015)

[*English*]

The Chair: Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

With respect to my colleague, I just want to remind her that Bill C-36 addresses the exact concerns of the three litigants who started that litigation seven years ago.

When they were out on the street, they were in danger. But the laws that were struck down prevented them from carrying on their business in a safe indoor location, where they could have security and properly screen their clients. Bill C-36 allows them to do that.

We know that all forms of prostitution are inherently dangerous. We've heard it over and over again from some of the very brave survivors of the sex trade, who told horrendous stories about the torture, the rape, the abuse, the beatings, and the assaults they endured for many, many years.

Some of them were recruited in the schoolyard and ended up in that trade. They were trapped in that trade and were treated as slaves long after they ceased to be children, once they were adults. Many of them were enticed into it later in life.

We know that being out on the street is the most dangerous thing one could possibly do in this trade. We are simply saying to them that there are certain places in Canada where these sorts of things are not welcome, inappropriate, and off limits. They are: schools, playgrounds, day care centres, places where young people are every day. We're simply saying, "Do not look for your clients in the schoolyard."

I think that's a reasonable limit, under section 1 of the charter, Mr. Chair. I am very comfortable in stating to you that in my considered opinion, the Supreme Court would agree with that.

We have given them exactly.... Ms. Bedford, Ms. Lebovitch, and Ms. Scott asked to be able to carry on their business, not outside in any location, not in the schoolyard, but indoors. They can advertise. They can hire security and they can be safe. That is what they should do.

For all those reasons, we will not be supporting this amendment.

The Chair: Hopefully, the final word, Madame Boivin.

Ms. Françoise Boivin: What do you mean "hopefully"? It will depend on the parliamentary secretary. He talks, I talk.

This is not a recruiting section. This is an actual doing section, where they can and where they can't.

[*Translation*]

I think that it's wishful thinking to think that this clause meets the criteria set out in the Bedford decision, when the bill allows someone to exchange or provide sexual services in a private location but not to purchase them. However, we can debate that later in another clause.

Once again, I think that the parliamentary secretary is confused about recruitment. I challenge him to tell me which witness told us that prostitution was going on in schoolyards or behind churches. I

didn't hear a single witness talk about that. Perhaps I missed part of it. Nevertheless, I didn't hear many witnesses talk about that.

I see a danger there. It's wrong to claim that people could do it comfortably in their own homes, with a security guard. No one will be able to purchase these services, since purchasing will be illegal at all times. On the contrary, those people will head into public places, which are dangerous.

I do understand the Conservatives' argument, and it shows just how open they are to amendments.

The Chair: Thank you, Ms. Boivin.

Mr. Dechert.

[*English*]

Mr. Dechert.

Mr. Bob Dechert: Briefly, to respond, my honourable friend will remember that we did in fact hear from witnesses, who said that not only does solicitation go on near schools, young girls are actually prostituted in school bathrooms. That's horrendous. That actually happens in Canada sometimes. I hope it doesn't happen very often, but we did hear that.

It's not simply about the ability for children to be recruited, although that is a very important thing. If the pimps are around the schoolyard, we know from the witness testimony that the customers are looking for younger and younger women all the time. Youth is one of the main things that they're selling in this business. When one of the prostitutes they are forcing to be out on the street is working in front of the schoolyard, they'll be scanning the schoolyard to see who the next one might be. So recruitment is important.

In addition, Mr. Chair, children have a right to their innocence. They have a right to be in those places, those very few places in Canada, and not have to see prostitution, or the communication for the purposes of prostitution, going on in front of the swing sets, the sandbox, or the slide. That is what we're asking this committee and all members of Parliament to consider in their deliberations.

Again, on that basis, we cannot support this amendment.

Thank you.

•(1020)

The Chair: Thank you.

Madame Péclet.

Ms. Ève Péclet: I think it's an awful example that the parliamentary secretary used, talking about young girls being prostituted in the school bathrooms, because under those provisions they would be criminalized. I think the example is an awful one because it actually proves to the committee that criminalizing those victims won't pass the test.

I think it's an awful example. All we're saying is that criminalizing the women won't help the government achieve its goals. That's it. I think we heard unanimously from the witnesses that criminalizing women would not only put them in more danger but would also affect the relationships. We heard that from former police officers, that the relationships between the victims and the police officers are key for targeting prostitutes and human trafficking.

Any form of criminalization will just harm the government's goal, whatever goal they want to have. It would harm the victims and it would harm the women. That's all we're saying. The awful example of kids being prostituted in schools, well, under those provisions in Bill C-36, they would be criminalized. All I'm saying is that with whatever goal the government has, criminalizing victims won't help them, and they know it. We've heard it for four days in a row.

The Chair: Madam Smith, go ahead.

Mrs. Joy Smith (Kildonan—St. Paul, CPC): Thank you, Mr. Chair.

Quite clearly, Bill C-36 is the first bill we've ever had in Canadian Parliament that is compassionate towards the victims of prostitution and human trafficking, and for the first time, money is there to help them exit.

In Canada, or in any other country, children are the perpetrators' prime targets. Why? Because they get a higher price. All the components around this bill support and are really well aware of the victimization of the prostitutes and trafficked people. That's the whole essence of this bill. That, and the targeting of the johns and pimps, criminalizing the johns and pimps for buying sex.

It's a great step forward, one that I think this committee can be extremely proud of. I commend Madam Boivin for talking about victimization because that's precisely what Bill C-36 is aimed at preventing. It will also prevent pimps and the johns having the opportunity to help prostitutes solicit in front of schools. In actual fact, in many cases that I've personally worked on, children have been solicited in school, on school grounds. There have even been narcs put in the school itself to look for the vulnerable people so that the traffickers could traffic them. I had an incredible case, out of Edmonton, of a young girl trafficked to Toronto just from that. She was a victim. But she was forced into prostitution from the school itself.

It is a very wise, balanced move for this bill to say, very specifically, that schoolyards and places where children are, are just off limits. Nobody can do that. It's not harming the prostitutes at all. In fact, very few police forces today arrest prostitutes because they recognize them as victims. They ask them to move along.

As MP Dechert, the parliamentary secretary, said, children have a right to their innocence and they have a right not to be targeted by the johns. Johns don't care. They don't ask how old a person is. And they do target the younger ones, the younger-looking ones.

I think that this is a well-balanced way. The argument that it's victimizing the prostitutes is absolutely absurd. For the first time, this whole bill, and the essence of this whole bill, recognizes the tragedy these victims go through.

In closing, I think we have to be very mindful that we don't want anything like this around our schools. It's just not something that we want to happen. Having the provision where we single-out places specifically where children are is a very wise and balanced move for the Canadian public.

This is a very well written, well-balanced bill, in both these regards.

● (1025)

The Chair: Mr. Wilks, go ahead.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Chair.

I want to continue on with what Ms. Smith had been saying with regard to vulnerable children. Having served as a police officer for some time, certainly, the areas in which young children normally congregate are in those areas where they feel comfortable, where they feel protected, and where they feel they have some sense of innocence left. That would be, certainly, school grounds, playgrounds, and day care centres, where their parents have left them for the day to ensure they are taken care of by those that have been put in their hands.

We've heard testimony and understand that those that start to target these young girls at very young ages go to areas where they know they will be, and where they know they will be less watched because they will be in a group with their friends. A lot of times that's when these young kids let down their guard because they are amongst friends, they are amongst their peers, they are having some fun in a place which they believe is one place where no one will come and harm them.

I think that by expressing to the Canadian public that there are certain places that no one, and I mean no one, can start to target our children, sends a very clear message that this government will ensure that children are the top priority, and that would be in schoolyards, playgrounds, and day care centres.

There's another hinge to this, Mr. Chair, as well. I look at it as the small box that we're talking about, and the small box is that section to which the parliamentary secretary has alluded to with regard to playgrounds, schoolyards, and day cares, but there's a larger box.

The larger box is what we have brought forward in this bill with regard to targeting johns and pimps. That box includes, for all intents and purposes, all of Canada. It brings it all in. There isn't a place in Canada to which a john or a pimp is going to be able to do anything without having the law come to their full brunt.

I believe that is what encapsulates this bill. We recognize, as Ms. Smith has said, there is no argument that prostitutes and those that have been brought into that trade unwillingly are victims. We must be very cognizant of that, but there are places no one should be going to do that type of activity, and that would include schoolyards, playgrounds, and day cares.

● (1030)

The Chair: Madame Boivin.

Ms. Françoise Boivin: I definitely hear Ms. Smith and Mr. Wilks. We are not, I repeat, on the trafficking or recruiting section.

It says in proposed subsection 213(1.1) of clause 15 that:

(1.1) Everyone is guilty of an offence punishable on summary conviction who communicates with any person—for the purpose of offering or providing sexual services for consideration—in a public place, or in any place open to public view, that is or is next to a place where persons under the age of 18 can reasonably be expected to be present.

This is the clause that touches on the prostitute, the sex workers, solely. It's not the recruiting. It's who we've heard about from every side of the equation as being victims.

If I hear Mr. Wilks correctly, they're victims up to a certain point. If they cross the line and do it in a public place, that they define as a school, a church, and so on

[*Translation*]

a day care centre, schoolyard or playground nearby,

[*English*]

in their amendment G-4, then they're not victims any more.

That's basically what we have to understand. All the rest is covered in other sections, either through Bill C-36, against the pimps, the johns, or through the trafficking sections that are in the Criminal Code, either with some amendments in Bill C-36 or the actual case.

So as for all of the explanations that I heard from Ms. Smith, of course nobody wants to see a kid being prostituted in a school, but this is not what it is about. It's about whether or not we want to victimize the person in one of these aspects. That's the question we have to ask ourselves as committee members. What I'm hearing from the government is clear. Finally it is clear: prostitutes are not victims any more when they do it at that point in time.

While Ms. Smith says that policemen do not usually arrest prostitutes, that might be true in certain parts of Canada.... Not necessarily, because when there is the actual section.... We heard some of your witnesses come to the committee on the last day and say that they wanted section 213 to stay for the sole reason that it would help

[*Translation*]

investigation. They could catch the person. If they can't arrest them, it could be hard to know who is behind them, who was the john, who was the pimp, and so on.

Some police officers would like to have that provision at their disposal, since it could be useful for them. Except that almost all the witnesses told us no. They told us that these are victims.

At least the message is clear. I can't fault you since your message is clear. These people are victims, to a certain point, as long as it doesn't interfere with protecting communities and it isn't conducted in certain well-defined areas.

What a ridiculous concept. I think we've heard everything on this subject.

[*English*]

The Chair: Okay.

We continue with Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

I certainly don't want to repeat very much. I believe we're getting close to having had a full discussion on this point. But Madam Boivin keeps making the point that it's not about recruitment, that there are other provisions in the Criminal Code and in this bill that refer to recruitment.

She's missing, with respect, the point that children have a right not to see it, not to be exposed to it. A 10-year-old child has a right to go to the playground, to their school, and for a small part of their life not to know that prostitution is out there, that it doesn't even exist.

Can we not give them that little place? Can we not say to the women who choose to continue to go out in the street and do something that everyone tells them is extremely dangerous, "Please, not in the school yard, not in the playground, not in front of the daycare centre? Give those innocent children that little space to be children, so they don't have to see prostitution going on in front of them."

Is that too much to ask?

Thank you.

• (1035)

The Chair: Thank you, Mr. Dechert.

That is the end of my speakers list on amendment NDP-2.

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

The Chair: We are now on to amendment G-4.

Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

I would like to ask the committee members for their indulgence for a few minutes so that I can confer with my colleagues before we...[*Technical difficulty—Editor*]

The Chair: On the amendment?

Mr. Bob Dechert: Yes, on the rest of the bill.

If we could just take a break for 15 or 20 minutes, I'd appreciate it.

The Chair: Okay.

We'll suspend for 15 minutes.

• (1035)

(Pause)

• (1105)

The Chair: I call this meeting back to order after suspension.

All non-stationary cameras have to be removed.

The next item on the agenda is G-4, that Bill C-36, in clause 15, be amended by replacing lines 13 to 15 on page 8 with the following:

open to public view, that is or is next to a school ground, playground or daycare centre.

Does the government want to talk to G-4 or move it, whatever—

Mr. Bob Dechert: Thank you, Mr. Chair.

I am very pleased to be able to move the amendment G-4 to clause 15 of Bill C-36.

Mr. Chair, in my considered view what we heard from the majority of the witnesses last week is that Bill C-36 is a paradigm shift in how Canada views and deals with prostitution.

We heard horrendous stories that should never have happened in our country. I think of Bridget Perrier, Timea Nagy, and Katarina MacLeod, and all the others who came forward and told us the awful, terrible stories of what happened to them, what went on for years and years. Timea Nagy told us how she desperately hoped that somebody would rescue her.

There are victims and I am convinced that many of the women and young men who are engaged in this practice are victims. I believe it could be a majority. We certainly heard significant stories. But even if it's a minority and not the majority, we can't sit idly by, Mr. Chair, and not do something.

The Supreme Court put it to us, as members of Parliament, that we have the right to do something. It's for Parliament to devise a new approach, that's what we're here today to do. By criminalizing for the first time in Canadian history the purchase of sexual services, the commodification of the bodies of the unfortunate people who are trapped in this trade, we're finally addressing this ugly situation that has gone on in Canada for far too long.

I have no doubt that there are those who freely choose to do this. I have no doubt that there are some who have all the necessary power in the relationship with their client to do it in a safe way. In my view, those individuals will now have an opportunity to do it in a safe way, and that's directly in response to Bedford.

But if one Bridget Perrier is out there today, we have to do something. All we're talking about in clause 15 is a tiny piece of real estate in this vast country of ours, I believe the second largest country in terms of geography in the world, and one of the least densely populated countries in the world. We're saying to those individuals who choose to go out on the street because for some reason they don't wish to go inside where they could do it safely, in these narrow circumstances, let our children have their space.

We heard from many technical experts who said there was some vagueness, there was some opportunity for misinterpretation of the provision as it's currently drafted. What we did was listen to those experts, Mr. Chair. Although we heard from the Assistant Deputy Minister of Justice, a person I have great respect for, who is a criminal law specialist who said that the distinction around where persons who are under the age of 18 may reasonably be expected to be present is a relatively narrow distinction and one that it well understood in law, we have taken steps today to clarify, in response to those who said that there was some vagueness, some ambiguity.

What we're saying today is that there are some places in Canada that are sacrosanct, and I do not wish to make any woman who is trapped in this ugly trade, a victim. We're saying to them—and we're giving them good notice—stay out of the playgrounds, stay out of the schoolyards, and stay away from the front of the daycare centres. If you go there we're going to ask the law enforcement officials of this country to remove you. That's a simple request. I don't think it's hard to understand.

●(1110)

My friends over on the other side say that the only people we heard from who need this power are the police. Well, guess what? They are 50% of the equation here. When we have done our job here, when this bill becomes law, we are all going to go home, and then we're going to ask the law enforcement officials of Canada to enforce this law. They need tools to do their job. We heard from them; they are not interested in targeting the victims here. They want to help the victims, and sometimes the victims need to be removed from a dangerous situation.

I'm sorry I had to learn about this, that I had to know that when women are being forced to do this by an abusive, violent pimp, he's not standing right next to her on the street, because that would scare off the customer. He's around the corner. He's in the vicinity, and he's watching. If she willingly speaks to the police officer, she's going to be beaten up later, because that drives customers away, and that's not good for business.

In those circumstances, the police need every tool we can give them to separate that person and take them in. Sometimes it will be obvious to the police officer that the person has been injured, obvious to them that they are under the influence of drugs or alcohol, that they are not making good choices. If they just go up to them and say "I want to help you; work with me", the pimp is going to beat them up. That pimp is going to do terrible violence to them and continue to force them into this trade. But the tools we're giving them in clause 15, in the new section 213, will allow police officers to take them out of that situation, take them to a safe place, and introduce them to people who can help them.

Talk about fairies dancing on the head of a pin. My goodness gracious—only in school grounds, playgrounds, day care centres.... And my friends on the other side don't even want to go there: they are happy that the prostitutes stroll through the playground at 3 p.m. looking for customers.

I have news for them. I don't think the customers are going to be there. The whole concept that customers are going to be driven away into the dark shadows.... In my view, Mr. Chair, the customers are always in the shadows, because they don't want their family, their friends, their co-workers, or their neighbours to see what they are doing. Nothing that we do here today is going to make it okay, from the perspective of the purchaser of sex, to be out on Wellington Street this afternoon, or on Yonge Street in Toronto, or on Robson Street in Vancouver. They are not going to go there. They are already in the shadows.

What we need to say to the sex workers is to do it in a safe way: get off the street; make a choice. If you have free choice—and we hear that they have free choice, but everyone tells us that being out on the street is the most dangerous thing you can possibly do—please choose to do it in a safe way. We're giving you that power. The police are not going to harass you for being in your own apartment, for advertising your own services, but this provision is about giving the innocent children of Canada a place to be children, where they don't have to see sex transactions being negotiated a few feet from the swing set.

We're trying to make it tighter, and we're trying to respond to those who said there's a concern about how the courts would interpret this provision. In my view, the amendment that is before us here will do that; it will make it easier for the courts to interpret, and therefore give the police the tools they need to rescue victims who need to be rescued.

For those reasons we'll be supporting the amendment.

• (1115)

The Chair: Thank you, Mr. Dechert.

Madame Boivin.

Ms. Françoise Boivin: My God, there's so much to say.

I would understand the argument, if it were all about the buying close to the school and so on. The problem with the clause is that they are victimizing the prostitute, even if they limit the description of where they're going to be victims.

I now understand that this amendment is solely on the basis of the people, especially children, who might be in school or

[*Translation*]

in a day care centre or on a playground.

[*English*]

It's to avoid these people—these young children—seeing what is going on.

But, again, the disposition reads: Everyone is guilty of an offence punishable on summary conviction who communicates with any person—for the purpose of offering or providing sexual services for consideration—in a public place, or in any place

—and then comes in the suggested amendment of the government

open to public view, that is or is next to a school ground, playground or daycare centre.

I'm surprised that the parliamentary secretary learned about what happening in the world with trafficking here at committee. The stories of Ms. Perrier and others that we heard are stories that, if you open your papers and see how human trafficking and prostitution in those circumstances are happening everywhere in the world, are humongous. There are billions of dollars—we heard about it in the committee—that circulate in that industry.

I hate to use the word “industry”, when it's such a criminal action. This is something that happens for which we need to provide our law enforcement officials with tools to address it.

This is not what it's about. The way they are recruited into that situation is more about whether we believe they are victims or not.

When are they victims and when do they stop being victims? That is the problem with the logic of the government on that issue.

• (1120)

[*Translation*]

The Supreme Court said that the legislator had the power to make decisions about where and how prostitution may be conducted. We need to look at the full context. Every provision of the bill needs to be read in its entirety.

The government tells us that it was listening to the Supreme Court and that it wanted to get people off the street because in the Bedford decision, it was shown that street prostitution was by far more dangerous than prostitution carried out in a person's home, behind closed doors. This type of prostitution provides an environment in which prostitutes can get information on the type of clients they are meeting, conduct checks and maybe even have security guards. We want to ensure that the definition of pimp isn't as broad and vague as it was before.

The Supreme Court did not give us, as legislators, the mandate to do whatever we wanted, as though we'd been given a blank check. The court said:

Concluding that each of the challenged provisions violates the Charter does not mean that Parliament is precluded from imposing limits on where and how prostitution may be conducted, as long as it does so in a way that does not infringe the constitutional rights of prostitutes. The regulation of prostitution is a complex and delicate matter.

This is the proof of that. It's up to the legislator to act if appropriate.

I want to make a point of saying this because the impression always seems to be that members on the front bench had the duty to introduce a bill by December 2014 if they felt it was appropriate. They certainly felt it was appropriate to come up with a new approach. However, does this new approach integrate the various aspects of the current system, as requested by the Supreme Court?

I'd like to point out another very important passage from the Supreme Court decision. The court talked about the notion of qualitative instead of quantitative. I'll explain. We know that a large percentage of prostitutes don't necessarily participate voluntarily. I don't have the exact figures, and it also depends on what statistics you look at and the models used.

We know that the vast majority of people who work in this field are under the control of a pimp or are addicted to drugs or alcohol. No one has denied that.

However, in its decision, the Supreme Court said that it is a matter of protection—even of a single person. You have to read all of these provisions. I think that there's a danger when you start picking and choosing what to read, as the parliamentary secretary is doing.

They are saying that they simply want to prevent young people from witnessing prostitution in their schoolyard, near a playground or elsewhere. It's hard to say that anyone is against that, but I want to clarify for those listening that this isn't what the clause says. It doesn't reference that at all. Instead it asks whether someone is being victimized. That's the only question asked.

The Conservatives' wonderful bill is supposed to push people to conduct these activities in private, but we'll have to see what happens with the provisions on advertising, which may not necessarily be a big deal, and we'll have to see what happens with the fact that johns will not be able to purchase these services. They can't purchase these services, unless the parliamentary secretary tells me that what goes on behind closed doors is private and that police officers won't be showing up wherever the prostitute is. This is creating a rather strange system.

In short, the government is choosing to victimize sex workers with its amendment. Even though it has limited the victimization, in this context, prostitutes will still be victims.

[*English*]

The Chair: Thank you very much.

We're on G-4, the government amendment to clause 15, and I see no other speakers to the amendment.

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

The Chair: Is there any further discussion on clause 15 as amended?

(Clause 15 as amended agreed to)

• (1125)

The Chair: Now we move to NDP-3. This is actually a new clause 15.1.

NDP-3 would amend Bill C-36 by adding, after line 15 on page 8, the following:

15.1 The Act is amended by adding the following after section 213:

213.1 (1) The Minister of Justice must, at the end of each year, prepare a report that includes

(a) a general summary of the impact of the Act on the health and safety of those who engage in prostitution;

(b) statistics on prostitution in Canada; and

(c) details on the funding provided by the federal government for prostitution exit programs and programs in support of the health and safety of those engaging in prostitution.

(2) The Minister must cause the report to be laid before each House of Parliament on or before March 31 following the end of the year or, if a House is not sitting, on any of the next 15 days that it is sitting after that date.

That is in order. It is a new clause.

The floor is yours, Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

I think that'll be very important because, as they say:

[*English*]

The writing is on the wall.

[*Translation*]

It's quite clear where Bill C-36 is headed. Nevertheless, we'll keep working to try to get the Conservatives to listen to reason. This is a very important issue, so it's important to have this type of report—a summary of the impact of this legislation on the health and safety of prostitutes.

This follows up on the essence of the Supreme Court of Canada's decision in *Bedford*, which is the health and safety of prostitutes.

Since the government did not think it was a good idea to declare all forms of prostitution illegal—whether it's the purchase or sale of sexual services—it's leaving the door open and it often uses the argument that they can do this in this place or that place. We need to read between the lines that prostitution is partially allowed. We'll have to see what the impact will be.

It'll be interesting to see statistics on prostitution in Canada. When I say prostitution, I don't mean human trafficking. I mean prostitution in Canada. This will certainly bring about increased awareness of the agencies that are working together—the provinces and territories, as well as police forces. With clear statistics, we'll be able to see where we're going.

There are no doubts about financing. Although the \$20 million in funding is not part of this bill, it's still a way to include the notion of what funding the federal government will provide for programs to encourage prostitutes to give up prostitution and to promote their health and safety.

That would be a good way for us to include this aspect, which was mentioned several times by witnesses we heard from last week, regardless of whether they came from or what their position on this issue was.

As for transparency, it'll be very important to find out what the \$20 million over five years will be spent on, who will benefit from this funding and what impact it will have on prostitution. The minister has the ambitious objective of putting an end to prostitution in Canada. That'll give us a good idea about whether that can be achieved before 2020, 2050 or 3000.

The minister could send a copy of the report to every member, so we could see and so we could do what's necessary. I think that's prudent and it doesn't hurt anyone. It would show that the government is following up on this issue, especially since we have heard so much about the victims of prostitution in Canada. It's important to have this kind of information.

• (1130)

The Chair: Thank you, Ms. Boivin.

[*English*]

On this new clause, Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

I want to thank my colleague for proposing this amendment.

In my view, this amendment is impractical and unnecessary. The Criminal Code only exceptionally requires annual reporting, in relation to provisions that are surreptitious by nature, such as wiretap and terrorism offences.

It is not appropriate, in my view, to legislatively require annual reporting of statistics, research, and funding. Moreover, I'd point out that it's unnecessary to require annual reporting on funding because funded projects over \$25,000 are proactively disclosed every three months, in accordance with Treasury Board policies, and other funding information is always available on request. For those reasons, we will not be supporting this amendment.

The Chair: Thank you.

Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you, Mr. Chair.

I would like to add, as my colleague said, that the much talked-about \$20 million over five years is not actually part of the bill. The majority of witnesses, from all sides, told us that it is a drop in the bucket. That \$20 million needs to be increased.

They also told us that there need to be adequate social measures that touch on mental health, addiction, poverty and affordable housing.

Thank you, Mr. Chair.

[*English*]

The Chair: Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

I am having a hard time understanding the parliamentary secretary.

We may have some information, but it would be even more clear and precise if we knew the impact that the government thinks Bill C-36 will have on protecting communities and those who are being exploited.

I would like to point out to the parliamentary secretary that the preamble, which will in no way be included in the Criminal Code, will serve only as a guideline. It provides an explanation and gives an overview. It will surely serve as a guide for the courts when they have to rule on the practical aspects in criminal proceedings. It will be useful in that way.

In fact, it is part of our powers. Committees, and the Standing Committee on Justice and Human Rights in particular, have fairly far-reaching powers. We are the legislative committee that acts as a shield of sorts for the Minister of Justice and Attorney General of Canada. He has very clear obligations with respect to the Constitution and protecting the rights set out in the Charter.

It is legitimate to ask that the Minister of Justice produce this report, which seemingly exists, according to some of what my colleague was saying. I think it would be important to compile all of this in a report so as to provide some clarity about what the government aims to do, namely the short-term abolition of prostitution, pure and simple. I hope that is the case, for him at least.

It is surprising to see that someone is opposing virtue in the context of Bill C-36.

[*English*]

The Chair: Madame Péclet.

[*Translation*]

Ms. Ève Péclet: I would simply like to add to what my colleague said.

If the government is certain in its approach, saying that prostitution will not be as prevalent under this bill, then as parliamentarians, we cannot determine if the law will be effective unless we know whether the government's approach and the bill's objective are working. We have a right to know. It is important.

We often talk about transparency. It is important to show that we want to work towards increased transparency. We want to know, for

this bill as it stands and based on the government's consultations, whether this approach will help the government reach its goal, be it to abolish prostitution or decrease its prevalence. However, no matter what the objective, Canadians and parliamentarians have the right to know if the measures being taken by the Conservatives and the legislation they choose to pass will really work.

• (1135)

[*English*]

The Chair: Mr. Casey.

Mr. Sean Casey: Thank you, Mr. Chair.

I support the amendment. The government's position in this regard—give them credit for this—is consistent. We tried to get before this committee the benefit of some social science research that the people of Canada paid for, and the minister and the committee members opposite suppressed it.

We now have before us a motion that requires the collection of data that will better inform future governments, future committees, in a matter such as this, and the government opposes it.

What we know is that this law is going to pass. It's going to be on the books until it's amended or withdrawn by this or a future government, or until it's struck down by the courts.

Until those things happen, I would suggest it makes good sense to collect evidence on the effectiveness of the measures that are being brought into force, so that future legislative efforts are better informed. It's called evidence-based public policy. It's something we support and we will continue to support.

The Chair: Is there anything further to amendment NDP-3?

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

(Clauses 16 and 17 agreed to)

(On clause 18)

The Chair: Are there any comments?

Yes, Madame Boivin.

Ms. Françoise Boivin: I want to use clause 18, first of all, to thank our Bibliothèque du Parlement for all of their work. Especially when we're talking about mandatory minimum sentences, I'm always curious to see the jurisprudence on the issue and what type of sentences have already been awarded and so on.

Thank you to Dominique and his colleague for their great work in a fast-paced fashion, in giving me that information, to show me that there is a wide variety and range on trafficking. It could go anywhere from between two years to seven or eight years, and so on.

I think that everybody around this table strongly detests

[*Translation*]

—anything that has to do with human trafficking. Mrs. Smith can speak to that. If I am not mistaken, when she introduced her bill a few years ago, the House passed it unanimously. I say that without prejudice but, in any case, it received our full support. There is nothing more disgusting than one individual who exploits another. Every provision in the Criminal Code that addresses this type of situation and this scourge is important and deserves our support. The sentences need to be solid.

I am always distraught when I see that sentences vary between two and eight years. There needs to be more consistency at times. I am not a fan of mandatory minimum sentences because they do not allow the courts to be analytical. They also take away the courts' ability to use discretion. I am not talking about being able to do whatever they want; I am talking about applying the facts of the case to the person who committed the crime and so on.

However, there are crimes that are not that easy to forgive. It is not surprising that offences involving kidnapping or human trafficking are subject to stiffer sentences. People need to know that. In this case, we have been talking primarily about prostitution, but there are aspects of these amendments that touch on human trafficking and sentencing. That leads me to another comment.

When I spoke about slowing the process down, I was not talking about slowing it down for no reason in particular. There are many parts to Bill C-36. I have the impression that it has been reduced to stating what prostitution is exactly. That's it, that's all. There has not been much focus on the concept of human trafficking in Bill C-36. There is also the issue of the DNA that will be collected. There are many other aspects that we will not have time to cover during our analysis because of the time we have and the number of witnesses we have heard from. That is, perhaps, my only regret.

All of that said, I would like to thank you. You are doing a wonderful job helping us with this so that we can better understand the legal aspects. The work of the Standing Committee on Justice and Human Rights is quite legal in nature.

• (1140)

[*English*]

The Chair: Thank you very much for those comments.

Are there any other comments to clause 18?

(Clause 18 agreed to)

The Chair: On clause 19, is there any discussion?

(Clause 19 agreed to)

(On clause 20)

The Chair: Now we have a number of amendments to clause 20, starting with NDP-4, that Bill C-36, in Clause 20, be amended by replacing line 21 on page 10 with the following:

286.1 (1) Everyone who, in any place, while committing an offence under section 266, 267, 271, 272, 279, 279.01 or 279.011

This is in order. As happened a few minutes ago with G-4, I wouldn't say there was a defining or narrowing, but an understanding of the scope of where the clause—in that case, clause 15—was

related. This also does a scoping or a narrowing, and it relates to other offences that are listed in the Criminal Code.

Madame Boivin, the floor is yours.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

I would like to thank you for finding that this amendment was in order. I appreciate that. After everything that has happened in committee and after hearing from witnesses, this allows me to come back a bit to the crux of some of my concerns.

We spoke earlier about section 213. This section is found in Part VII of the Criminal Code, which deals with disorderly houses, gaming and betting. I realize that the government has changed the heading, but this is not a new part of the legislation. It still falls under Part VII, which deals with disorderly houses, gaming and betting.

I am trying to understand what the government set out to do with Bill C-36, apart from protecting communities and ultimately putting an end to prostitution. Solicitation and communication under section 213 falls under the part of the Criminal Code that deals with disorderly houses, gaming and betting. Although it is being said that such behaviour is an offence against the person, it remains in that part of the legislation.

Clause 20 of the bill comes after section 286 of the Criminal Code. Now we are really talking about Part VIII, which deals with offences against the person and reputation.

There is something rather fascinating about the government's approach. Section 286 of the Criminal Code, to which clause 20 is being added as a new provision, reads:

In proceedings in respect of an offence under sections 280 to 283, it is not a defence to any charge that a young person consented to or suggested any conduct of the accused.

This is how the current Part VIII, which deals with offences against the person and reputation, ends. Then, there are a number of new provisions.

Perhaps I misunderstood the government's vision. However, I get the impression from witnesses, particularly those on the government's list, that buying sexual services is clearly an offence in the context of human trafficking, abduction and kidnapping, which is the purpose of this new provision. The offence can be prosecuted in two ways: by summary conviction or simply by an indictment with sometimes fairly harsh sentences.

I believe that committee members will unanimously agree to condemn the act of purchasing sexual services from anyone who has been the victim of human trafficking and exploitation.

We would like to clarify something that the government was not clear about, despite the fact that it told us that it would allow safe forms of prostitution, as defined in the Bedford case. We really want to stress that we are talking about sexual services that are purchased in the context described in section 279 and subsequent sections under the heading that deals with kidnapping, trafficking in persons, hostage taking and abduction. I imagine that means something if an amendment was made to a provision.

It just seems logical to me. It seems to go without saying that purchasing sexual services in a context of exploitation and human trafficking is fundamentally wrong.

• (1145)

[English]

The Chair: Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

Once again, I thank Madame Boivin for proposing this amendment.

In my view, the amendment misses the main purpose of Bill C-36, which is to, for the very first time in Canada, criminalize the purchase of sexual services from any individual, to say quite clearly and loudly to all those who are considering doing this, that we don't condone it, that doing so unreasonably puts sex workers themselves at risk. We've seen it over and over, and over again, with the brutal stories we've heard.

In my humble and considered opinion, Mr. Chair, this is not a business just like any other. It's unique; it's different. Far too many people are victimized by it. The demand is what drives it. The demand is what powers it. If the money weren't there to buy the services in the first place, there wouldn't be women trafficked into it. There wouldn't be young men trafficked into it.

As I mentioned earlier, and we heard it from witness after witness, this is a paradigm shift in the way we deal with this. Some may disagree, and I understand that. It may mess up their business plan. There are businesses that we don't allow to happen in Canada.

There are people who can use heroin for years and apparently not suffer significant negative medical impacts from it. But we know that most do, so although there are people who earn a living from selling heroin—and, yes, it still goes on even though it's been illegal for a very long time—we say that's not something that should happen in Canada.

We can't allow more of these kinds of stories to happen. I don't want to sit here 10 years from now and hear about the next generation of Bridget Perrier's story. It's incumbent upon us as elected officials to do something about this.

In my view, this amendment misses the mark. It would make the criminalization of the purchase of sexual services far too narrow to say we're only going to arrest and charge you for communicating for the purposes of purchasing sex while you're intimidating, holding a gun to the head, assaulting, or exploiting somebody.

It makes it ridiculously narrow and, therefore, to no beneficial effect, in my view. If they are holding a gun or a knife to the throat of the sex worker, of course, the police are going to move in and they're going to be charged with serious aggravated sexual assault. That's what's going to happen. This provision is not for that. There are many provisions in the Criminal Code that deal with that. That's not what's at issue today.

What we're saying to all those who would purchase sexual services of another person in Canada, "We don't agree." It's not a business like any other. We strongly advise you not to do it. If you choose to, the police just might be there to put you in the back of

their car, and then you'll deal with the consequences. Then your family will know what you're doing, as well as your co-workers and neighbours.

Only by doing that will we ever get at the nub of this issue, will we ever be able to look Bridget, Timea, and Katarina, and all those other women in the face and say, "We did something. We heard you and we're not going to let this happen to the next generation of young Canadians".

As I said, it's inconsistent with the main objective of the bill, which is to reduce demand. I don't think it would effectively address the demand for prostitution. I also don't believe that any witness asked us to do this. They were on one side or the other. They said, "Criminalize the purchase, tell people, especially the men, that women's bodies are not for sale in Canada. It's not right and we don't condone it".

Or "*Laisser les bons temps rouler.*" Every community in Canada will be a red-light district. We've got lots of willing purchasers just across the border in the wealthiest country in the world who are willing to come on in and take advantage of those services. For those who are able to do it in an equal, power-sharing way, having made a personal choice to provide their services, my goodness, there will be a lot of money out there for them. They're going to do very well. That's a great business model, you know.

• (1150)

If it were not for the fact that people get killed in this business every day, it might be something people might want to look at investing in. But, unfortunately, it's not just like any other business.

I don't suggest people invest in the drug trafficking trade, although that is also a very profitable trade that some people choose to do and people on the other side choose to inject heroin into their veins.

In the same regard, we're saying that's not something that we believe should happen in Canada. We don't think it's good for Canadian society and for all those reasons we'll not be supporting this amendment.

The Chair: Thank you very much.

Madame Boivin.

Ms. Françoise Boivin: Well, I think the parliamentary secretary missed my point, that point being that it's all about consent. If you're dealing with and buying somebody who is coerced and exploited, that is the main infraction.

That being said, I'm a bit surprised, because I find it's a complete reversal of the speech we heard from the parliamentary secretary on Bill C-213. The argument on Bill C-213 was that we want to get them off the street, because Bedford was all about the danger surrounding the street practice of prostitution, plus the fact that we don't want kids to see that.

Fine. They can go and do that in a much safer place, which is their own place. But he just said no, you're missing our point on Bill C-36. We want to criminalize any individual in every circumstance who buys.

So what the hell can they sell and to whom? That has been my question from day one. Maybe they would have been better to agree with Ms. Mourani who was plainly asking for them to abolish it, to call a spade a spade and say that the act of buying and the act of selling is wrong. But they're not doing that.

Maybe the officials can answer my question then. What can they sell and to whom, based on Bill C-36? Is there anybody who cannot buy sexual services except criminally, by virtue of Bill C-36?

Also, has your department thought of maybe using the notwithstanding clause based on section 7 of the Charter of Rights and Freedoms to say the whole thing is illegal, that we don't want prostitution?

That's what I heard from the parliamentary secretary, that we want this done and over with, so no selling and no buying at some point in time, because what good is it to sell something that cannot be bought by anybody?

• (1155)

Ms. Nathalie Levman: As the parliamentary secretary says, the main objective of Bill C-36 is to reduce the prevalence of prostitution with a view to ultimately abolishing it to the greatest extent possible. In no way does Bill C-36 seek to facilitate, allow, or condone prostitution.

It doesn't criminalize the sale, that's true. There's no specific provision that criminalizes the sale. You have been reviewing the provision that criminalizes the purchase. The blanket criminalization of purchasing sexual services is consistent with the main objective of the bill, which is to reduce the prevalence of prostitution.

Back to my first point where Bill C-36 doesn't intend to facilitate prostitution. It's not allowing the sale by failing to criminalize it, it's immunizing the person who sells from prosecution for any part that they may play in any of the prostitution offences.

Ms. Françoise Boivin: So when they hear arguments around the fact that they'll be safer, actually what is not said in that sentence is that they'll be safer because nobody will buy it.

Ms. Nathalie Levman: Well, Bill C-36 posits that the best way to reduce the harms of prostitution is to not engage in it. That's true. That said, Bill C-36 recognizes that its ultimate objective will take time to realize, and during that time it has been informed by the decision of the Supreme Court of Canada in Bedford.

It doesn't prevent implementation of certain safety measures that the Supreme Court of Canada found were extremely important to the safety of those who sell. So those measures have been considered today, I believe, including moving indoors and working indoors independently and cooperatively—

Ms. Françoise Boivin: With whom?

But that's my point. Moving indoors, working indoors, but with whom? Because if the person they work with is going to be criminalized.... I'm trying to understand that point.

Ms. Nathalie Levman: That goes back to the initial position, the objective of the bill. It's not trying to facilitate prostitution.

[*Translation*]

Ms. Françoise Boivin: Okay.

[*English*]

Ms. Nathalie Levman: That said, it doesn't criminalize the implementation of certain safety measures. It doesn't prevent people who sell from implementing those safety measures that Bedford has outlined. We always have to go back to the main objective of the bill. It posits that prostitution is a form of sexual exploitation. Because so many people who sell are women, it's also considered to be a form of violence against women. In no way does Bill C-36 seek to facilitate the practice of prostitution, be that through the purchase or the sale of sexual services.

The Chair: Thank you very much.

Is there any further discussion?

Yes, Mr. Dechert, go ahead.

Mr. Bob Dechert: I promise I'll be very brief.

I apologize to Madam Boivin and to anyone else who thinks that I was not clear previously. I'll just state it as clearly as I possibly can.

Yes, it is our intention to make illegal the purchase of sexual services or the communication for the purposes of purchasing the sexual services of any person in Canada, anywhere, anytime—wherever you can think of in Canada: in the light of day; in the darkness of the shadows; inside or outside; up a tree; down a rabbit-hole; in a beaver den—yes, one hundred percent.

We're going to go after those purchasers, and we're going to tell them that this is not right. Our purpose in responding to the Supreme Court was to say that we understand that this will go on for a time. We hope not forever. Maybe we'll never be able to totally eradicate it. We know people still use heroin. However, we're going to give the sex worker the right to choose to operate in a way that is safe, which is exactly what those three women asked the court for, and this responds directly to them. We want to give them that opportunity, but it is not our purpose and intention to encourage or make it easier for them to sell their sexual services. We're not trying to make it easier. We're not trying to make the business bigger. Unfortunately, this is not what we think of as a growth industry. We don't recommend it as a solution to youth unemployment. It's not our intention to make this part of the tourist industry of Canada. Yes, we're hoping that it will be reduced, over time. Our interests are contrary to the economic and commercial interests of those who operate this business.

I hope I've been clear, and I'll be happy to try again if I'm still being unclear.

•(1200)

The Chair: Is there anything further?

Madame Boivin, go ahead.

Ms. Françoise Boivin: Very briefly, that has the merit of being very clear. I wish your bill was as clear as what you just said. I hope everybody who's going to be in court will quote Mr. Dechert and not the law, because basically you didn't say all that, in the law. But that's all I'll say on the issue.

The Chair: Thank you very much.

Madam Péclet, go ahead.

Ms. Ève Péclet: I'd like to add that it is very sad that the parliamentary secretary's discourse has changed throughout the day, because at the beginning we were talking about victims without a choice, and now we're talking about people who have a choice. Even his position is not clear on whether people are victims or are consensual because his discourse has changed throughout the day.

He has not once mentioned the Bedford decision and the clear indication of the court that said we need to protect sex workers and whether or not he thinks that is key or bad. He hasn't even talked about the Supreme Court's conclusions, and about safety and section 7 of the charter.

So yes, maybe his personal opinion about prostitution and different subjects may taint his judgment, but he should know that as a government representative and as a legislator, he should at least address the Bedford decision.

Thank you.

The Chair: Thank you very much.

Is there any further discussion on NDP-4? Seeing none, we will vote on the amendment to clause 20.

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

The Chair: Ladies and gentlemen, it is exactly 12:02. I would like to suspend for lunch.

I'm suggesting that we come back at 12:45—or do you want it quicker than that?

An hon. member: No, that's fine.

The Chair: Okay.

I will be hitting the gavel, and hopefully everybody will be sitting in their spot, at 12:45.

Thanks very much. We'll suspend.

•(1200) _____ (Pause) _____

•(1245)

The Chair: Okay.

Ladies and gentlemen, I call this meeting of the justice and human rights committee back to order. We're doing the clause by clause on Bill C-36.

When we suspended for lunch, we were just about to begin with NDP amendment number 5, that Bill C-36, in Clause 20, be amended by replacing line 29 on page 10 to line 2 of page 11 with the following:

- (i) for a first offence, a fine of \$1,000, and
- (ii) for each subsequent offence, a fine of \$2,000; or

Madame Boivin, the floor is yours on your amendment.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

To come back to the context, what we were trying to do is to simplify paragraph 286(1)(i) and make it more consistent. In that regard, we heard witnesses raise all sorts of issues about how the meaning of this part of the bill is not clear. It reads:

...in the case where the offence is committed in a public place, or in any place open to public view, that is or is next to a park or the grounds of a school or religious institution or that is or is next to any other place where persons under the age of 18 can reasonably be expected to be present...

It then goes on to describe the sentences that can be imposed in such cases.

The amendments that the NDP is proposing eliminate that aspect. We do not think that it is very smart to have a Criminal Code with provisions that are left open to be interpreted, clarified or defined any which way. We believe that we must try to be clear from the outset. That is why it seems much more precise to remove line 29 on page 10 to line 2 on page 11.

The article should read:

Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than five years and a minimum punishment of...

We would continue as follows:

- (i) for a first offence, a fine of \$1,000, and
- (ii) for each subsequent offence, a fine of \$2,000...

We just want to remove the aspect that witnesses described as very hard to explain and interpret. We do not want provisions like that in the Criminal Code.

[English]

The Chair: Merci, Madame.

Would you like to respond, Mr. Dechert?

Mr. Bob Dechert: Thank you, Mr. Chair.

I thank Madam Boivin for the amendment.

The government will not be supporting the amendment. In our view, it defeats the purpose. This would reduce the penalties on the purchasers where they are doing it in a place where children are or are likely to be—we clarified it earlier today—the schoolyard, the playground, and the day care centre. If the purchasers go to those places to purchase sex, we think they deserve a higher penalty. The children are the people we are trying to protect in that instance.

For those reasons, we will not be supporting this amendment, Madam Boivin.

The Chair: Okay.

Madame Boivin.

Ms. Françoise Boivin: I gather that the government is okay with the fact that we're talking about "next to any other place where persons under the age of 18 can reasonably be expected to be present". We all heard that the bill was lacking in clarity in this regard. I understood that it was mostly because we made.... Well, it's pretty much on par with what is already covered in the Criminal Code: \$1000.

What I'm understanding from the government side is that it's bad but that it could be worse. That's basically the argument.

Okay, thank you.

• (1250)

The Chair: Okay.

Is there anything else on NDP-5 to clause 20?

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

I remind everyone that we are on clause 20, which was the clause we left on when we took our break.

Now we're on the second amendment by the independent member. Ms. Mourani has an amendment, which she has appropriately put forward within the timeframe required by the House of Commons, that Bill C-36, in Clause 20, be amended by replacing lines 38 and 39 on page 12 with the following:

(4) Subject to subsection (5), subsection (1) does not apply to a person who receives

—and by replacing lines 13 and 14 on page 13 with the following

— who commits an offence under subsection (1) if that person

This is an order, and it's removing one of the elements of the exception rule that's been in place in the bill.

Madame Mourani, you have a minute or so to explain your amendment.

[Translation]

Mrs. Maria Mourani: Thank you, Mr. Chair.

The purpose of this amendment is quite simple. When we look at the bill in its current form, we see that some exceptions are being made when prostitutes are working for themselves. They are then allowed to have a driver or a body guard, for example. These people would not be prosecuted because they are indirectly living off the avails of prostitution.

I agree up to that point.

However, the problem is that the same thing is being done with regard to child prostitution. Yet, the prostitution of children and adolescents can be nothing other than sexual exploitation. No exceptions can be made for individuals who act as body guards, drivers or in any other capacity related to child prostitution.

Without exception, every case of child prostitution constitutes exploitation and the government's goal is to protect children and adolescents who are being sexually exploited. We cannot imagine that children would prostitute themselves nor can we accept it because the government is responsible for protecting children and youth. The government can therefore not make exceptions for anyone connected with this type of prostitution because those individuals have a duty to speak out against such prostitution, not make a living from it.

There is therefore a lack of consistency between the need to protect children from prostitution and exploitation and making exceptions for those who would live off the avails of prostitution.

Thank you.

[English]

The Chair: Thank you very much.

Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair. I thank Madam Mourani for the amendment. The government does not support it. In our view, it's inconsistent with the policy of Bill C-36, which is to ensure that individuals who sell their own sexual services can develop legitimate family and business relationships on the same basis as anyone else.

For example, it could mean that a roommate who shares rent and other living expenses, which is a legitimate living arrangement, with a person under the age of 18 who sells their own sexual services would be guilty of an offence. That's what this could mean and that's not what we intend. Such an approach would have a negative impact on the most vulnerable persons who are exploited through prostitution, and in our view may be contrary to the Supreme Court of Canada's findings in Bedford. So on that basis, we will not be supporting this amendment.

The Chair: Is there anything else to this amendment, Independent amendment 2?

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

Still dealing with clause 20, now we're off to NDP-6, that Bill C-36, in Clause 20, be amended by adding after line 11 on page 13 the following:

(e) in consideration for a service or good that relates to the protection of the health or safety of the person providing sexual services.

This is an addition. It is in order.

The floor is yours, Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: I think that the wording is fairly clear. It involves adding “in consideration for a service or good that relates to the protection of the health or safety of the person providing sexual services.”

It is directly related to the Bedford case, which deals with the health and safety of the people in this dangerous line of work.

• (1255)

[*English*]

The Chair: Mr. Dechert, would you like to respond?

Mr. Bob Dechert: Thank you, Mr. Chair, we will not be supporting this amendment. In our view, it's unnecessary because both the third and fourth exceptions of the material benefit offence would apply to persons who provide the types of services or goods mentioned in the amendment. Specifically if the service or good were offered to the general public, the third exception would apply such as in the case of a pharmacist. If the service or good were not offered to the general public, the fourth exception could apply, as in the case of a friend who offers protective services. That my colleague will find in proposed paragraph 286.2(4)(d) of the bill, which says:

in consideration for a service or good that they do not offer to the general public but that they offered or provided to the person from whose sexual services the benefit is derived, if they did not counsel or encourage that person to provide sexual services and the benefit is proportionate to the value of the service or good.

In other words, we're removing the exploitation part of any such arrangements and if the person providing the services to the individual sex worker is doing so on reasonable commercial terms at fair market value, they would not be criminalized in that situation.

So on that basis, Mr. Chair, we will not be supporting this amendment.

The Chair: Madame Boivin, go ahead.

Ms. Françoise Boivin: Very briefly, it's all fine and dandy, but at the same time, we heard from numerous witnesses that it was not that clear. I know that's what the parliamentary secretary spinned over and over during panels and here at committee, but it's not clear that it would be interpreted...in the sense that our amendment was really precise, to the point.

When you say, “in consideration for a service or good that relates to the protection of the health or safety of the person providing sexual services”, that's pretty much the only inference to Bedford we would see in the bill, which wouldn't be that wrong in a bill having 40-some clauses.

To leave it to interpretation, when words can mean what they mean.... And I want to rely, in the least way possible, on a preamble that will not exist in the Criminal Code. I want the text to be as clear as possible. I think that would have been way clearer.

The Chair: Thank you very much.

Is there anything further on NDP-6?

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

The Chair: Now we move on to NDP-7, clause 20: That Bill C-36, in Clause 20, be amended by deleting lines 20 to 28 on page 14.

This is in order. It's not deleting a whole clause, just lines within a clause.

Madame Boivin, go ahead.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

I am glad that I now know about this technicality, which involves removing lines to try to accomplish our designs, namely, to simply request that the clause:

be amended by deleting lines 20 to 28.

People need to understand that we are talking about everyone who knowingly advertises an offer to provide sexual services for consideration. Such individuals are guilty of an indictable offence and liable to imprisonment for a term of not more than five years or of an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months.

We heard a number of witnesses talk about the importance of the Bedford case, which I recommend that the government party members read. Clearly, this could be one way of ensuring safety. In fact, as one witness said, sometimes, sex workers are unfamiliar with the environment and it is somewhat disconcerting; however, they are saying that they have codes and that they want telephone numbers that are not blocked. That sort of advertising is important. It may be the only way to make this whole thing safe and keep it out of the sight of children and members of the public who would be offended by it. It would be a way to ensure safety. That is why we proposed amendment 7.

[*English*]

The Chair: Thank you very much.

Mr. Dechert, go ahead.

Mr. Bob Dechert: Thank you, Mr. Chair, and thank you to my friend for the amendment.

In our view, this amendment defeats part of the main purpose of the bill. In our view, the advertising offence is consistent with the bill's main objective of reducing the demand for prostitution, and to delete it would be inconsistent. The advertising offence complements the purchasing offence, whose main objective is to reduce the demand for prostitution by targeting the promotion of prostitution through advertisements for the sale of sexual services.

What it seeks to do, quite clearly, I believe, Mr. Chair, is to criminalize those who exploit the sex workers, the third parties who are often the people who hold over their heads the power to run these advertisements—and we've heard about them. They have benevolent names for them, but I just call them “pimps”. They're the ones who profit, who charge far too much for the advertising services they provide.

In our view, that behaviour adds to the demand for the sale of sexual services, which is contrary to the objective of the bill. It's clear, in our view, that individuals may advertise their own services, alone or in a cooperative. There are specific exemptions allowing that. For these reasons, we oppose the amendment.

In case my friend is not clear on this point, I want to assure her that we have all read the Bedford decision, and we are clear and comfortable in our position that everything we are doing here today falls squarely within the test set out by the chief justice in her decision in the Bedford case, and that we believe it is in compliance with the Charter of Rights and Freedoms in every regard.

Thank you.

•(1300)

The Chair: Thank you, Mr. Dechert.

Madame Boivin.

Ms. Françoise Boivin: Well, I'm glad to hear they read it, but just in case, I will pursue a little part of the decision.

The chief justice says:

[*Translation*]

[That] does not mean that Parliament is precluded from imposing limits on where and how prostitution may be conducted, as long as it does so in a way that does not infringe the constitutional rights of prostitutes.

A closer look at the decision shows that the Supreme Court also said that:

The analysis is qualitative, not quantitative. The question under s. 7 is whether *anyone's* life, liberty or security of the person has been denied by a law that is inherently bad; a grossly disproportionate, overbroad, or arbitrary effect on one person is sufficient to establish a breach of s. 7.

It is good to know that the government is pleased about this and clearly thinks that its text will make the cut. However, if I am not mistaken, 240 lawyers wrote the Prime Minister a letter saying that they had serious doubts in this regard.

I will end on that note.

[*English*]

The Chair: Thank you very much.

Is there any further discussion on NDP-7 for clause 20?

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

(Clause 20 agreed to)

The Chair: There are no amendments to clauses 21 and 22.

Is there any discussion?

(Clauses 21 and 22 agreed to)

(On clause 23)

The Chair: We have an amendment submitted from the government side to amend Bill C-36 in clause 23 by replacing lines 6 to 12 on page 17 with the following:

(c.03) an offence under any of paragraphs 212(1)(a) to (h) (procuring) of this Act, as they read from time to time before the day on which this paragraph comes into force,

Basically, this amendment is dropping paragraphs 212(1)(i) to (j). It's deleting a line, which is allowed and admissible as an amendment.

The floor is yours, Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

As with several of the other amendments proposed earlier by the government, this is a technical amendment to clause 23 of Bill C-36.

Clause 23 proposes to amend the list of offences included in the definition of "primary designated offence" and "secondary designated offence" for the purpose of forensic and DNA analysis. The DNA provisions authorize the taking of a DNA sample in two situations: where persons are convicted of designated offences, and pursuant to a warrant where police have reasonable grounds to believe a designated offence has been committed.

The proposed changes at clause 23 are consequential to the proposed repeal of existing prostitution-related offences, notably section 212 of the Criminal Code and the proposed enactment of the new prostitution offences in clause 20.

Furthermore, clause 23 as currently drafted would include section 212 offences as historical offences for the purposes of the DNA scheme, including paragraph 212(1)(j), living on the avails of prostitution. The need to amend clauses 8, 9, and 10 to address their listing for historical offences purposes identified the need to delete the specific reference to paragraph 212(1)(j) in clause 23.

This would make it clear that a warrant for DNA could not be issued for a historical offence investigation in relation to paragraph 212(1)(j) initiated after Bill C-36 comes into force. The operational impact of this deletion would be minimal. If after Bill C-36 comes into force a warrant is sought to collect DNA to investigate an historical procuring offence alleged to have been committed before Bill C-36 comes into force, police would be able to rely upon other listed procuring offences as set out in paragraphs 212(1)(a) through (h).

For those reasons, we're proposing this amendment and will be supporting it.

•(1305)

The Chair: Thank you very much.

Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Unless I am mistaken, this long text is a bit like the first three amendment proposed by the government. We are dealing with a technicality that has nothing to do with the hearings that took place last week. We are going to be consistent.

I see another problem with clauses 23 and 24. They have not really been examined by the committee, particularly with regard to the issue of DNA. I am concerned about how quickly we examined this bill. It is a complex bill and it cannot be summarized by a single word, the word "prostitution".

It is unfortunate, particularly when I see that technical errors were made before this work was even done. I believe that we might find others if we looked more closely. Over the years, provisions may be amended.

[*English*]

The Chair: Thank you for those comments.

Is there anything further concerning amendment G-5?

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

(Clause 23 as amended agreed to)

The Chair: We now have a series of clauses with no amendments proposed.

(Clauses 24 to 33 inclusive agreed to)

The Chair: We have an amendment from the New Democratic Party, amendment NDP-8. It is to insert a new clause, which would be clause 33.1.

The amendment proposes that Bill C-36 be amended by adding after line 17 on page 24 the following new clause: TRANSITIONAL PROVISION

33.1 For the purposes of the *Criminal Records Act*, the record of a person who has been convicted of an offence under subsection 213(1) of the *Criminal Code* for stopping or attempting to stop any person or in any manner communicating or attempting to communicate with any person, for the purpose of engaging in prostitution, is, in respect of that offence, suspended.

This is an addition, and it's in order.

The floor is yours, Madame Boivin.

• (1310)

[Translation]

Ms. Françoise Boivin: Thank you, Mr. Chair.

I am pleased that this amendment is in order. It seems to me that we all heard witnesses talk about this aspect of the issue, which involves decriminalizing the work of prostitutes and sex trade workers—to please everyone. That is what people were looking and asking for.

If we are consistent, I think that there should be some openness since the preamble of the Conservatives' bill states that we want to protect these people. That seems obvious to me. In short, I do not think there should be a major problem with this because the government is decriminalizing this aspect and criminalizing another.

As you can see, we did not ask for the criminal records of people who buy such services to be erased or suspended. That proposal seems to be consistent with Bill C-36. I therefore do not see why our Conservative friends could not move in that direction.

[English]

The Chair: Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

I thank my friend for the amendment. We do not support it, for a number of reasons.

The motion proposes a substantive amendment that would effectively eliminate the need to seek a record suspension through the Criminal Records Act. It would grant an amnesty to individuals who sell their own sexual services, if convicted under subsection 213(1)—that is, I point out, as amended today—of offences both before and after the coming into force of Bill C-36.

There is no time limit on this proposed amnesty; therefore, the provision is not transitional in nature.

Persons convicted under subsection 213(1) may apply for a record suspension under the existing rules under the Criminal Records Act, pursuant to the criteria outlined in that statute; namely, that five years have elapsed since the expiration of the sentence and that the Parole

Board—and this is very important—is satisfied that the applicant is of good conduct and that the conviction should no longer reflect adversely on the applicant's character.

In our view, Mr. Chair, this provision would significantly reduce the deterrent effect of the provision itself. It is, in our view, unprecedented in the sense that it retroactively suspends criminal records in all cases, without any due consideration. We point out that there is a process that is built on appropriate principles with respect to the behaviour of convicted persons.

I am informed by my colleague, who is very well versed in these things, that this would also require an amendment to the Summary Convictions Act, which we don't see here. Therefore, it is fundamentally flawed in that regard.

For all those reasons, we will not be supporting this amendment.

The Chair: Madame Boivin and then Mr. Casey.

[Translation]

Ms. Françoise Boivin: Thank you, Mr. Chair.

This is different from what we heard throughout last week. We were being told that there would be no criminal record. I am happy to hear that the parliamentary secretary now recognizes that those people will indeed have a criminal record once they have been found guilty. They are told to apply for a record suspension, as they can no longer apply for a pardon.

Instead of saying flat out no, to try to respect what we have heard from witnesses—including those from the government—the parliamentary secretary may be able to find a way to clarify this in the form in order to at least provide that amnesty requested by individuals the government has referred to as victims throughout the week.

Today, I'm not hearing the Conservative benches use the word “victim” a lot. It seems that these people really are criminals. I think that is a bit unfortunate. I would have liked to suggest that they take another 10 minutes to think about this.

I'm not sure I would accept the comments on summary conviction, when we know that this probably comes from the member who had the least belief in criminal records and the obligation to answer relevant questions from employers.

If the idea is to lift people out of poverty and their surroundings, it is important for them to have a job. Witnesses have come to talk to us about this. When people have to indicate that they have a criminal record and when that criminal record takes more and more time to be expunged—thanks to Conservative measures adopted a few years ago, including Bill C-10—they are kept in a straight jacket they will not easily get out of.

In sum, it will take you a bit longer to help people leave prostitution.

• (1315)

[English]

The Chair: Mr. Casey.

Mr. Sean Casey: Just a comment, Mr. Chair. It strikes me as manifestly unfair that someone would have a criminal record for an offence that has been found by the court to be unconstitutional.

The Chair: Is there anything further on amendment NDP-8?

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

The Chair: We are now on clause 34. Is there any chance that the committee would be interested in lumping clauses 34 to 45 together, or do you have comments on some of them?

An hon. member: One by one.

The Chair: One by one. Okay. Happy to do it.

We're on clause 34.

(Clause 34 agreed to)

The Chair: Are there any comments on clause 35?

(Clause 35 agreed to)

(On clause 36)

The Chair: Madame Boivin.

Ms. Françoise Boivin: On the section that follows, and there are a couple of them, it's another part that we haven't necessarily reviewed because we are in the National Defence Act. I know it's an adjustment of certain clauses, but at the same time, we have never really seriously reviewed it. So again, I have some problems with the way this committee has carried out its legislative mandate.

The Chair: Are there any further comments?

(Clause 36 agreed to)

The Chair: Are there any comments on clause 37?

(Clause 37 agreed to)

The Chair: Are there any comments on clause 38?

(Clause 38 agreed to)

The Chair: Are there any comments on clause 39?

(Clause 39 agreed to)

The Chair: Are there any comments on clause 40?

(Clause 40 agreed to)

The Chair: Are there any comments on clause 41?

Madame Boivin.

Ms. Françoise Boivin: This is a clause on corrections and conditional release that brings the definition of a sexual offence involving a child in line with new offences, namely, persons under 18 in clause 21. Every time we touch a question that surrounds kids or trafficking, obviously you will have the unanimous consent of this committee.

The Chair: Okay.

Is there any further discussion on clause 41?

(Clause 41 agreed to)

The Chair: Is there any discussion on clause 42?

(Clause 42 agreed to)

The Chair: Is there any discussion on clause 43?

(Clause 43 agreed to)

The Chair: Is there any discussion on clause 44?

(Clause 44 agreed to)

The Chair: Is there any discussion on clause 45?

(Clause 45 agreed to)

(On clause 46—*Bill C-13*)

The Chair: Now we're at a new clause. It's an amendment by the NDP. It's in order because it is a brand new clause.

It is that Bill C-36 be amended by adding after line 30 on page 30 the following new clause, including a title:

REVIEW AND REPORT

45.1 (1) Within two years after this section comes into force, a comprehensive review of the provisions and operation of this Act shall be undertaken by such committee of the House of Commons as may be designated or established by the House for that purpose.

(2) The committee referred to in subsection (1) shall, within a year after a review is undertaken pursuant to that subsection or within such further time as the House may authorize, submit a report on the review to the Speaker of the House, including a statement of any changes the committee recommends.

The floor is yours, Madame Boivin.

• (1320)

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

I can't believe the Conservatives would say no to this. This is a prudent measure that has already been used in other bills. Not so long ago, a relevant study was carried out concerning official languages in courts, such as the language used by the accused, and so on. This was a prudent measure. It was applied in Bill C-13 regarding cyberbullying. If the government ordered its members not to try to improve the bill, there should at least be a way to make them accountable. The other elephant in the room—besides the Supreme Court of Canada's Bedford decision, which we don't often hear Conservatives talk about—is provincial involvement.

With the exception of the Government of Manitoba, whose representatives came to testify here, it's certain that, with such a quick process, not all the provinces were necessarily available or prepared to come speak within such a short timeframe on issues as profoundly complex as human trafficking, sexual exploitation and prostitution.

Yet it is clear that, on the ground, it will be up to the provincial authorities to enforce three quarters of, if not all, the provisions that will be passed under Bill C-36.

[English]

I do believe strongly that we need to be able to do that review within two years of the adoption. How it's going to be carried out by the provinces, by the territories.... We all know that it is going to be.... What we decide here is always fine and dandy, but what I hear on the ground from crown attorneys, from prosecutors, and from defence attorneys is that they are left with the mess. It's not always easy to apply what comes out of this Parliament.

That being said, I think it would be prudent that we do a review on how all of this went. It will permit the committee in two years' time to maybe contact all the provinces and territories to see how it has been lived in the different courts, how many cases there were, and whether these were more on sex traffic or prostitution, and so on and so forth. I think this is at least the amendment that everybody should support if we are serious about the work we are doing.

The Chair: Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

I thank Madam Boivin for putting forward this amendment. I'm happy to say to her that I do believe this is a good idea. I believe that a review is always reasonable. I think, as she points out, we have done it in many other situations, in many other bills. And it would be useful in this case especially, where we have what we all agree is a brand new approach to the way we deal with prostitution. That's what the Supreme Court suggested we attempt to do, and that's what we're doing.

We've heard many people say this is a paradigm shift in the way we deal with the complex issue of prostitution in our country, so I believe that it is fair and reasonable in this situation. I note that it has been done in other countries where similar changes have been made.

I would suggest one small change, which is to change the review period from two to five years. That would be consistent with many other bills and I think would give a reasonable time for evidence to be accumulated so that the committee, in five years' time, would have reasonable information to review in its deliberations.

The Chair: Are you moving to change from two years to five, as a subamendment?

Mr. Bob Dechert: I'm moving to change it from two years to five.

The Chair: Speaking to the subamendment is Madame Boivin.

Ms. Françoise Boivin: Speaking to the subamendment, I think this was done on Bill C-13, if my memory serves me correctly. It was passed from two years to five, or from five to seven.

• (1325)

Mr. Sean Casey: We asked for three years, and they demanded seven, and we compromised at five years.

Ms. Françoise Boivin: Anyway, I just find that to be in error and to for five years is really long.

Very shortly, if we do our job right and if every partner of the federation does its job, and the police as well, in this era of *informatique*, when data can circulate really quickly....

I know it's going to be five years, that this is going to be adopted. I might be NDP, but I know how to count. But I still say that five years is far too long. I think two years....

We saw it, Bob, with the *langue officielle* of the accused. Even though we had a specific deadline, we didn't exactly do it in that deadline.

I think we should send a strong message that we need to make sure, if some readjustment needs to be done, that five years.... By the time it's over in five years—and then a year to do the report makes six years.... It's not that I insist on being one of the people who will be doing it in two years, but six years might be too long to foresee.

Anyway, that's my point. I think, again, that this is just dragging it out. I appreciate that you will at least get into a review, so praise whatever, but at the same time, why can't you just say yes completely, once?

Some hon. members: Oh, oh!

The Chair: Okay. You guys can discuss that after the meeting.

The subamendment is to move from two to five years. Is there any further discussion on that change?

(Subamendment agreed to)

The Chair: The amendment now reads, Madame Boivin, “within five years”.

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

The Chair: Now we're on clause 46.

There are no amendments to clause 46. Is there any discussion?

(Clause 46 agreed to)

(Clause 47 agreed to)

(On clause 48—*Bill C-36*)

The Chair: We're on clause 48, and there is an amendment, G-6. I think it might be their final one. It is that Bill C-36, in Clause 48, be amended by replacing, in the English version, lines 6 to 9 on page 35 with the following:

this subparagraph comes into force, if the conduct alleged would be an offence referred to

I believe it's some sort of technical amendment, and I'll leave it to you to explain.

Mr. Bob Dechert: You took the words right out of my mouth, and you're obviously very skilled at this.

It is indeed a technical amendment. The government is proposing the amendment to clause 48 of the bill, as you pointed out. It is a coordinating amendment between Bill C-36 and Bill C-32, An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts. Coordinating amendments determine which amendment, as between two pieces of legislation, governs in the event that both are passed into law.

In this case, the coordinating amendment at subclause 48(6) relates to section 486.4 of the Criminal Code, which governs the issuance of publication bans in cases involving sexual offences.

Our proposed amendment is to the English version only and would correct a discrepancy between the English and French versions of subclause 48(6). This is a technical amendment, as I pointed out, to ensure that the English version accords with the French version, as the French version properly coordinates the amendments.

For those reasons, we are proposing and will support this amendment.

The Chair: Thank you very much.

Are there any questions or comments?

Madame Boivin.

Ms. Françoise Boivin: I have a brief comment. If I understand correctly your motivation, this is a technical amendment to make the French

[*Translation*]

be consistent with the English. Is that right? It's that simple.

[*English*]

There was an error from the start.

That's excellent.

• (1330)

The Chair: Thank you very much.

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

(Clause 48 as amended agreed to)

(On clause 49—*Thirty days after royal assent*)

The Chair: Now to clause 49

(Clause 49 agreed to)

The Chair: We're off to the short title first.

Shall the short title pass?

(Clause 1 agreed to)

The Chair: Now we get into an area that's a little more tricky for me, and that's the preamble. I have never had to deal with amendments to this area before.

I have my colleagues here, the clerks from the Legislative Branch, who can help me with the understanding of what is and what isn't admissible.

Let me start with amendment NDP-10. The same arguments apply to NDP amendments 10 and 11, so hopefully I only have to say this once.

If I read the amendment first, I think it will help identify why it's inadmissible, that Bill C-36, in the preamble, be amended by (a) adding before line 1 on page 1 the following:

Whereas the Supreme Court of Canada decided in *Attorney General of Canada v. Bedford* that certain provisions of the *Criminal Code* have a grossly disproportionate effect on persons who engage in prostitution by putting their health and safety at risk and making them more vulnerable to violence;

—(b) by replacing, in the English version, line 1 on page 2 with the following—

Whereas the Parliament of Canada is

—(c) by adding after line 3 on page 2 the following—

Whereas the Parliament of Canada acknowledges the fundamental importance of addressing poverty, housing conditions, health-care needs and other socio-economic issues impacting women who enter prostitution without a meaningful choice;

Whereas all Canadians deserved to be governed by laws that protect their health and safety and prevent exploitation;

And whereas the Parliament of Canada recognizes that violence against women in Canada remains a serious issue that needs to be addressed through concerted government action;"

This is part of the preamble. In a sense, it would be front of the preamble that's there now. So that part would be legal, but my ruling is that this amendment seeks to make substantial modification by adding new elements to the preamble that are not reflected in the actual body of the bill in the clauses that we have just dealt with. There were some amendments put forward that you could argue would relate to this addition to the preamble, but they did not pass.

As *House of Commons Procedure and Practice*, Second Edition, states on page 770:

In the case of a bill that has been referred to committee *after* second reading, a substantive amendment to the preamble is admissible only if it is rendered necessary by amendments made to the bill. In addition, an amendment to the preamble is in order when it's purpose is to clarify it or to ensure uniformity of the English and French versions....

That was in the technical amendment we just had.

In the opinion of the chair, and in discussions with my colleagues here, the proposed amendment is substantive and is therefore inadmissible. I will point my colleagues to the text just after (c), in particular, where it says "Whereas the Parliament of Canada acknowledges the fundamental importance of addressing poverty, housing conditions, health-care needs and other socio-economic issues impacting women...". That issue is important, no doubt, but it is not reflected in the actual clauses of the bill. So that amendment is substantially different and, therefore, is inadmissible.

This is something new. It applies to both this amendment and the next one, so I'll give you a few minutes to talk about it. But at the end of the day, we're not voting on it unless you challenge the chair and I lose.

Ms. Françoise Boivin: I know. I might get to that and don't take it personally.

Mr. Chair, I understood that a lot of it would depend on the amendments that are adopted. I appreciate that you pointed that out when we talked about addressing poverty, housing conditions, health care needs, and other socio-economic issues impacting women who enter prostitution without a meaningful choice. This is much of what we heard and that's what we're trying to bring into the preamble, which was pretty silent on those issues.

I have a question for the Chair, actually. Could I move a subamendment to my preamble and remove that reference?

I still say, especially if that is the only aspect—and I think we can move on the fly here—I would move to remove that section that you deem inadmissible. But I do think that by adding, “Whereas the Supreme Court of Canada decided in *Attorney General of Canada v. Bedford*...”

I do think that those—if I understand the logic—are legal. It would say what it says. Especially at the end, also, “deserve to be governed by laws that protect their health and safety and prevent exploitation”—this is in direct correlation with the bill as amended or not amended—“and whereas the Parliament of Canada recognizes that violence against women in Canada remains a serious issue that needs to be addressed through concerted government action.”

Although I'll be heartbroken if we don't insert this fundamental...I think everybody agreed that it's a big part of why some people enter prostitution. It is the poverty, it is the housing conditions, and so on.

I will stand corrected on this.

• (1335)

The Chair: Here's my answer to that question.

Being that I've ruled it inadmissible, to amend an inadmissible piece on the fly, I think, would be tricky.

However, just to remind you, we will eventually get back to the preamble, and we do accept amendments from the floor at the time we discuss the preamble, which will be in a few minutes.

Ms. Françoise Boivin: Count on me to do just that.

The Chair: So if you have it worded in such a way that you'd like to move it at that particular time, when we deal with the main motion on the preamble—

Ms. Françoise Boivin: But first I will contest your decision and just see how my colleagues vote. If they are willing to.... I don't know, you just said yes to the previous, so who knows, maybe I'm on a streak.

The Chair: You never know.

The Chair has been challenged on the ruling on the inadmissibility, at this point, of NDP-10, which will apply to NDP-11.

The motion will be to sustain the Chair's decision. If you vote in favour, you're in favour of my decision. If you vote opposed, the decision of the Chair will be overruled and the amendment will be up for debate.

(Ruling of the chair sustained)

The Chair: The Chair's ruling is sustained. Sorry about that, Madame. That applies to NDP-10 and NDP-11.

For the flow of the actual bill, my intention was to do all of the preambular amendments and then we would deal with the preamble as a whole. Since the two inadmissible NDP motions have been defeated, the mover has indicated that she will re-submit something. This would be in conflict, then, if Madame Mourani's amendments pass.

To provide a clearer way as we go, because we go by which lines come first, I'm going to give you the floor, Madame Boivin.

If you want to move your motion now and if it passes, it will affect Madame Mourani's amendments. If it does not pass, we'll go back to Madame Mourani, and we'll continue on.

[*Translation*]

Ms. Françoise Boivin: Excellent.

To help my colleagues with their reading, I will mention part of amendment NDP-10. It reads as follows:

That Bill C-36, in the preamble, be amended

(a) by adding before line 1 on page 1 the following:

“Whereas the Supreme Court of Canada decided in *Attorney General of Canada v. Bedford* that certain provisions of the *Criminal Code* have a grossly disproportionate effect on persons who engage in prostitution by putting their health and safety at risk and making them more vulnerable to violence;”

(b) by replacing, in the English version, line 1 on page 2 with the following:

• (1340)

[*English*]

Whereas the Parliament of Canada is...

[*Translation*]

There is then another “whereas”.

[*English*]

All Canadians deserve to be governed by laws that protect their health and safety and prevent exploitation;

And whereas the Parliament of Canada recognizes that violence against women in Canada remains a serious issue that needs to be addressed through concerted government action.

So I removed the section that the chair had deemed as irreceivable:

Whereas the Parliament of Canada acknowledges the fundamental importance of addressing poverty, housing conditions, health-care needs and other socio-economic issues impacting women who enter prostitution without a meaningful choice;

—because it seems that it is not really important.

On that note, that would be the new preamble I would submit on the fly.

The Chair: You are adding that in advance of the line one that is now there, is that correct? It is part of the preamble but at the start of the preamble.

Ms. Françoise Boivin: Exactly.

The Chair: So based on my discussion I have a choice to make and I'll allow it to stand as something that can be discussed and voted on, as the most egregious parts, or whatever parts didn't meet the bill, have been removed. It's more bigger statements. So it's debatable. So we'll leave that on the floor. It has been moved by Madame Boivin and the NDP.

Mr. Dechert, would you like to speak to it?

Mr. Bob Dechert: Thank you, Mr. Chair.

I regret to inform my colleague that we will not be able to support this amendment. We think it's wholly unnecessary. I would simply point out that the title to the bill is actually An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts. I think it is very apparent what the act is about, as it is specifically referenced in the title, which is in fact part of the bill and will be cited in any litigation in the future. So for those reasons we would not support this amendment.

The Chair: Thank you for that input.

Madame Boivin.

Ms. Françoise Boivin: Just to discuss my own amendment, it's in the official title, which the government doesn't use very often because it talks more about Protection of Communities and Exploited Persons Act, which is the short title. So very soon the government will have forgotten that it's an act to amend the Criminal Code in response to the Supreme Court of Canada decision. It's probably the only time that the government recognized that it is following a decision from the Supreme Court.

I don't think there's anything wrong with adding certain aspects of the decision that were key to the decision, because that's why we are here and we are passing such great days all together to review these clauses.

I don't know why the government would be scared to say what exactly the court has said in its decision, especially since they claim that all their clauses fit exactly what the Bedford decision has said. So they should be proud to quote the Bedford decision and to say that the Parliament of Canada recognizes that violence against women in Canada remains a serious issue that needs to be addressed through concerted government action.

Their claim is that Bill C-36 is addressing that so they should, again, be proud. I'm sure my colleague, Ms. Smith, who fought for women being exploited and trafficked and violently, what's the word in English?

[Translation]

The word is “violenter”. That's even more comprehensive than what the preamble states very coldly, and that would somewhat humanize this bill.

[English]

The Chair: Thank you, Madam

Anything further?

Madame Péclet, you do this every time. You don't have to do that every time.

Ms. Ève Péclet: Yes, I know that whatever I say, the government won't agree, but I want to point out that your ruling—thank you, Mr. Chair—actually proves our point that the bill does not reflect the decision. The decision was clear, as you know, that we need to address the issue of women entering prostitution and protect them.

•(1345)

[Translation]

We have to ensure their safety.

[English]

I think this just proves our point that this bill is not consistent with the Bedford decision.

Thank you very much.

The Chair: Thank you for that, Madame Péclet, but in fact my ruling is a procedural ruling and not on the merit of any amendment, as is the case with any amendment any side has.

But thank you.

Ms. Ève Péclet: No, I'm sorry. But procedure gives us enlightenment.

The Chair: Yes, okay.

Is there anything further to the amendment moved by Madame Boivin on the preamble?

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

The Chair: We are still in the preamble, but we are dealing now with independent amendments IND-3 and IND-4. I'm going to treat them basically the same.

I will read the first one and then I'll read what the decision is. Then I'll also give Madame Mourani a moment to comment, since we are in the preamble.

Amendment IND-3 is to move that Bill C-36 in the preamble be amended by replacing line 11 on page 1 with the following: discouraging prostitution, which is unlawful and has a dispro-

I'm not sure what the next line is.

Amendment IND-4 adds after line 12 on page 1 the following: Whereas it is important to denounce and prohibit prostitution;

My ruling is simple. It's the very same as the previous ruling. It is that the amendment seeks to make substantive modification by adding new elements to the preamble that are not reflected in the body of the bill. *House of Commons Procedure*, Second Edition, states on page 770 what a substantive amendment is. In my opinion, both of these amendments are substantive and therefore inadmissible.

They are substantive—and I want to explain why I believe so—in that nowhere in the bill that I can read in the clauses are we actually saying that prostitution is unlawful and that the selling of sex.... There is matter dealing with the purchase but not the selling.

There are lots of opportunities, based on the clauses that are actually in the bill about “in private” and so on.... There are some prohibitions about “in public” that have passed and are in there concerning school properties and parks and day cares. But this is a substantive change to what the actual bill is: it is not saying that prostitution is unlawful and does not prohibit prostitution.

For that reason, those two amendments to the preamble are in my opinion inadmissible.

That is my ruling, but I will give Madame Mourani a couple of minutes to talk about why she thought they were important in the preamble.

[*Translation*]

Mrs. Maria Mourani: Thank you, Mr. Chair.

I must admit that I am very surprised. I thought the Minister of Justice was very clear. The government's long-term goal was to abolish prostitution. The government also wanted to prohibit the purchase of sexual services, pimping, and so on. The whole point of my amendments is to clarify the government's true intention for its bill.

Since the members are rejecting my amendments, I am now sure that this bill will be struck down by the Supreme Court. I am very sure of that and I will tell you why.

In its Bedford decision, the Supreme Court worked from the premise that prostitution is legal in Canada. This means that, as legislators, we don't have the right to prohibit and criminalize the practice of a legal activity because that practice endangers those involved in it.

However, the Supreme Court never forbade us, as legislators, to change the framework of that activity. What does “change the framework” mean? It means to clearly establish that prostitution is illegal in Canada—that the government prohibits and denounces the practice of prostitution. Starting from that premise, we can criminalize the purchase of sexual services, pimping and all practices surrounding prostitution.

I am now convinced that this bill will be challenged—that much is obvious—and that it will not pass the test of the Supreme Court because you took up the same principle. You did not prohibit prostitution, but you did criminalize related practices. So we are going back to the beginning, and that's too bad because criminalizing the purchase of sexual services was a very good step. I'm sure that we will be having this same discussion here, in this House of Commons, in a few years.

• (1350)

[*English*]

The Chair: Thank you. Thank you for that explanation of those.

That concludes our dealing with the amendments to the preamble.

We're dealing with the preamble unamended. Any further comments on the preamble unamended?

Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

I will use this opportunity even though we cannot speak to the amendment.

This is what we have been saying since the beginning. I'm not too pleased with this. That's not the impression I want to give my colleague, Mrs. Mourani.

We did feel that prohibition should be prohibited. That wasn't anywhere in the legislation. Despite the attempts, it was not there. Of course, the preamble says what it says, but then the legislation says something else. That's really unfortunate.

I know many groups that will be extremely disappointed. They had literally pinned their hopes on this bill, whether or not we agree with the solutions proposed. They basically invested their hopes in this legislation. I know that because I met many of them before. Since the Bedford decision, I have been meeting all sorts of groups—advocating decriminalization, legalization, criminalization, abolition and so on.

It was clear to me when the government introduced its bill that people would be disappointed. The minister was saying that he was open to amendments. As we have seen today, only one of the six Conservative amendments concerns the substance of the bill. The only substantive amendment is the attempt to criminalize. It was clear from the beginning that people would be extremely disappointed, given the preamble and the actual legislation.

This is not the first bill our committee is studying. The past is an indication of the future. People who asked me questions thought we were defeatists, but that has nothing to do with this. It has everything to do with the committee's methods and procedures, which yield mere peanuts in terms of results. I don't feel that the amendment calling for a review is peanuts, although a five-year review almost is.

This is unfortunate. It was so predictable and very sad.

[*English*]

The Chair: Thank you very much.

Anything further on the preamble? Seeing none, shall the preamble pass?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry as amended?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

Ms. Françoise Boivin: Can you do it in five years?

The Chair: No, I'll do it in the first week back in September.

Shall the bill be reprinted?

Some hon. members: Agreed.

The Chair: Ladies and gentlemen, that is our discussion of Bill C-36 at committee.

I want to thank everyone involved, including the clerks, the researchers, and the officials who are here today. I also want to say a thank you to the members of the committee—and I know Mr. Casey did it the other day. I thought it was a very respectful and honest and forthright discussion—not a lot about politics, but about making what we think is good law for Canada. I appreciate everyone's patience and professionalism on this committee.

Thank you very much.

The meeting is adjourned.

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