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Chair: Ms. Iqra Khalid



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• (1110)

[English]

The Chair (Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.)): Good morning, everyone. Welcome to the last meeting of the year, maybe, for our justice committee.

I call this meeting to order.

Just before we get into clause-by-clause today.... All of the members have been emailed an operational budget for Bill C-6. I would like to get that approved by your consent so that we can get into clause-by-clause.

Are there any questions or clarifications with regard to the operational budget that was emailed to you?

[Translation]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): If I may, I have only one question, Madam Chair.

Can you explain to me how this budget differs from the one we previously passed? What is new here? The numbers are not huge, that's not the problem. However, we already had a budget. Is this one over and above?

[English]

The Chair: I will pass the floor to the clerk.

[Translation]

The Clerk of the Committee (Mr. Marc-Olivier Girard): Thank you for your question, Mr. Fortin.

I believe we may be mixing this budget up with another one that actually was passed two weeks ago. It was to study Bill C-7, while this one is to study Bill C-6.

Mr. Rhéal Fortin: Okay. Basically, the items in this budget have already been spent. It's for our work so far, isn't it?

The Clerk: Yes, you could say that. We've already begun to receive invoices and will continue to pay them in the coming weeks.

Mr. Rhéal Fortin: Okay, I understand. I thought it had already been settled, but I am probably wrong, as you say.

So everything's fine, no problem.

The Chair: Thank you, Mr. Fortin.

[English]

I hope that clarifies it.

I thought I saw a couple of hands up, but I think they've gone down now.

Mr. Moore, is your hand raised for the operational budget for Bill C-6?

Hon. Rob Moore (Fundy Royal, CPC): Just on a.... It's been an ongoing issue, Madam Chair. The first five seconds when you're talking, I'm hearing nothing.

I'm on English, and I can hear a translation of everybody who's speaking French, but then when it switches over to you.... It's not like it's a one-second thing. Virtually everything you're saying is.... Unless every time someone stops talking in French we're going to quickly switch over to no interpretation, we're really missing quite a bit.

I know others have raised it, and I've raised it in the past. I would think there has to be a solution. I really only notice it on this committee. On other committees, in the chamber when we're in question period, and in other Zoom meetings that I have, it hasn't been an issue at all. I'm only noticing it on our committee.

The Chair: Is this better?

Hon. Rob Moore: I did hear you say "Is this better?", so it must be.

The Chair: I changed my interpretation to the floor, so perhaps I'll try that until we run into any more challenges. Thank you for raising that, and please continue to raise any technical challenges that you have. I appreciate that.

Are we okay with approving this budget?

Some hon. members: Agreed.

The Chair: Okay, wonderful.

Thank you, everybody, for your co-operation.

I will now go into clause-by-clause for Bill C-6, pursuant to the order of reference made on Wednesday, October 28. I would like to—

[Translation]

Mr. Rhéal Fortin: I have a point of order, Madam Chair, before we get into clause-by-clause consideration of the bill.

May I speak?

[English]

The Chair: Absolutely, Mr. Fortin. As you know, whenever you would like to say something, you can just raise your hand, and I'm more than happy to recognize you.

Go ahead, Monsieur Fortin.

[Translation]

Mr. Rhéal Fortin: I'm sorry, I always forget where you have to click to raise your hand.

Madam Chair, I am a little unhappy with the way we are doing this. I consider this bill to be very important. I feel all members of the committee have worked very hard on this bill over the last few days. Certainly, several of us in my office worked on it, and I'm sure the same is true for the other members. Similarly, I am sure that the people who submitted briefs or came to testify also spent many hours preparing and sending them to us. As we all know, most of these briefs were sent to us yesterday and today. We were still receiving some this morning. My assistant has counted 246 briefs. We have not been able to read all of them. We have read about 50 of them and we are still working on them. Does that mean that, even though we have invited hundreds of people to submit their views on this bill, we will not even hear them all?

I know it's not bad faith on the part of anyone on this committee, but it still shows a lack of respect for those individuals. No one has disrespected the witnesses directly, but if we do a clause-by-clause study of the bill and vote on it this morning before we have even read all the briefs, that will be a form of disrespect. Unless someone has an exceptional gift, which I would love for them to pass on to me, I'm sure none of us has read all of the 246 briefs we received.

That was a long preamble on my part, Madam Chair. In a word, I propose that we give ourselves time to look at all of these briefs. We may find other proposals for amendments, because that's actually what this process is all about. When people write to us and tell us what they think, sometimes we respectfully tell them that we disagree and that we will not be acting on their proposals, but sometimes—

• (1115)

[English]

The Chair: Monsieur Fortin, I'm so sorry. I'm going to interrupt you for a second. There is a technical glitch with the interpretation on the phone lines. We just want to make sure that it is resolved.

Give us a quick second while we look into it.

Hon. Kerry-Lynne Findlay (South Surrey—White Rock, CPC): I'm told that, on the phone line, on the English channel there is no translation coming through.

The Chair: I would suggest to those who are on the phone lines to perhaps use ParlVU as an alternative in the meantime while we look into the interpretation.

Mr. Fortin, please continue.

[Translation]

Mr. Rhéal Fortin: I don't know when the technical glitch happened, but I was explaining that we received such a large number of briefs that we have been unable to read them all. The fact that we

received so many and that so many people wanted to come and testify is a sign of success, and we should not complain about it. It means that the public is interested in the bill.

Therefore, in our thought process, we must consider what people have told us. We will agree with some and disagree with others. In some cases, the proposals they submitted may prompt us to introduce amendments to the bill. One thing is for sure, out of respect for those who have written to us and come to testify, we should postpone clause-by-clause study of the bill to a meeting after we come back in January. It will give all of us the time over the holiday season to read the briefs, reflect on them and propose amendments if we think it is appropriate.

For example, I personally have not seen much done to clarify the proposed definition in clause 5 of the bill. I'm really concerned about that definition. All of the witnesses we heard from, regardless of their background, agree that the definition is unclear. Obviously, we all need to think about it.

When I had my practice, lawmakers were seen as godlike figures. Here, however, I find we are being a bit sloppy by doing a clause-by-clause study of the bill when we have not yet had time to read the briefs, thoughts and comments that members of the public have sent us.

For all these reasons, I suggest that we postpone the clause-by-clause study to a meeting after work resumes in January.

[English]

The Chair: Thank you, Monsieur Fortin.

I have Mr. Virani next with his hand raised.

Go ahead, sir.

[Translation]

Mr. Arif Virani (Parkdale—High Park, Lib.): My thanks to Mr. Fortin for his comments. However, let us not forget that we have made arrangements and planned the committee's schedule accordingly, as this is an important study for all Canadians, particularly for the LGBTQ2 community.

We have indeed received many briefs. However, we can start reviewing them today and continue at later stages. Yes, the briefs could have an influence on different points of view during our debates in the House at third reading and when the Senate is considering the bill. Even if we go ahead today with clause-by-clause consideration of the bill, it doesn't mean that the briefs and other documents we have received will not have an impact, because it will still be possible for them to influence the debate throughout the parliamentary process in either the House or the Senate.

• (1120)

[*English*]

The Chair: Thank you, Mr. Virani.

Mr. Garrison, go ahead.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Madam Chair.

I'd like to point out that there is a procedure for raising amendments at report stage that were unable to be considered at committee. Should there be proposals for amendments in the briefs that came in late, which I know we will all look at in the intervening period, it would be possible for Monsieur Fortin to make those amendments at report stage. I think he would have a very good argument, for the reason was the volume of submissions that came in and the inability to consider them before then.

However, I would say that I would like to proceed today. I think this is an important bill, especially to the sexual orientation and gender identity community in this country. The longer we go on in a minority Parliament, the more we are in danger of bills being lost to an early election. I think we've had a wide range of witnesses before the committee. We have a good selection of amendments in front of us, and I would like to proceed today.

Hon. Kerry-Lynne Findlay: I have a point of clarification.

The Chair: Yes, Madame Findlay, go ahead on a point of clarification.

Hon. Kerry-Lynne Findlay: I'm not sure whether Monsieur Fortin is putting forward a motion or whether he's just commenting.

The Chair: It sounds like he's commenting, but I'll clarify. Thank you, Madame Findlay.

Monsieur Fortin, the question for clarification is this: Are you moving a motion not to study clause-by-clause today, and if so, what is the text of your motion?

[*Translation*]

Mr. Rhéal Fortin: Yes, I would like to put forward a motion about it. However, just before I do that, I would simply like to clarify something about what Mr. Virani said.

I totally agree with him, it's an important bill. That is why we have received so many briefs. However, in my view, the major importance that the bill is being given also requires that we not rush into it or try to move faster. We should instead take the time to study it properly. Time must serve us as we make better laws; time must not force us to make laws too quickly or in a way we might regret later.

I therefore move that we postpone the clause-by-clause study of the bill to a meeting after we resume our work in January.

[*English*]

The Chair: Thank you for clarifying that, Monsieur Fortin.

As you draft the language of whatever motion you'd like to present, I'm going to go down the speakers list until I come back to you so that you can move it in proper form.

Mr. Virani, I see your hand raised next.

Mr. Arif Virani: Sorry, I'm just a bit confused. Are we voting...? I understood that on points of order you can't move motions. Are we now dealing with a motion that we're planning to vote on? I just want some clarification.

Thank you, Madam Chair.

The Chair: To clarify, Madame Findlay asked if there was a motion before us, and I turned to Monsieur Fortin to ask if, indeed, he was going to be putting forward a motion. Monsieur Fortin has clarified for the committee that, yes, he intends to put forward that motion.

You're absolutely right; he cannot move a motion on a point of order. His hand is raised, so I will go through the speakers list until we get to him, and at that time he can table his motion in whichever way or speak to it.

Does that clarify things for you, Mr. Virani?

Mr. Arif Virani: Yes, thank you.

The Chair: Mr. Moore, I have you next on the list.

• (1125)

Hon. Rob Moore: Madame Findlay asked the question I was going to ask.

I know, for myself and all committee members.... I received a number of briefs last night, and then I received a number of them even today. I do think when there's a lot of interest.... There's some merit in what Monsieur Fortin is saying, because there seems to be a lot of interest. There were certainly diverse views on the bill itself at the three meetings that we had on it, so I do sympathize. Mr. Virani said it's important to study this bill, and it is, but part of studying is hearing from Canadians and hearing from different groups and witnesses.

Madame Findlay asked the question, but since I have the floor, I will take a moment to commend our translation services, because the volume of work that they would have had to go through to translate all of those is unbelievable. I'm sure they had to have been working through the night when we see the volume that we received, so hats off to them.

Mr. Rhéal Fortin: I agree.

The Chair: You're absolutely right, Mr. Moore. I think our translation services and all at the Library of Parliament have done a phenomenal job in getting the translation for that high number of briefs, not only for Bill C-6 but also for past legislation. We're really, really blessed to have them support us in our endeavour.

Monsieur Fortin, I have you next, and I'm hoping that you have the exact wording of the motion that you'd like to propose.

[*Translation*]

Mr. Rhéal Fortin: The motion will read as follows:

That clause-by-clause consideration of Bill C-6 be postponed to a subsequent meeting, when work resumes in January 2021.

[*English*]

The Chair: Thank you.

I don't see any hands raised, so I'll call the question on Monsieur Fortin's motion.

(Motion negatived: nays 6; yeas 5)

The Chair: We will now continue into clause-by-clause.

Thank you, everyone.

I will introduce our witnesses today who will help us in deliberations for clause-by-clause. From the Department of Justice, we have Carole Morency, director general and senior general counsel, criminal law policy section; Nathalie Levman, senior counsel, criminal law policy section; and Caroline Quesnel, counsel, criminal law policy section. From the Department of Canadian Heritage, we have Fernand Comeau, executive director of the LGBTQ2 secretariat.

Welcome to our witnesses.

I remind members that if you have any questions about any of the amendments that are proposed to us, you are always welcome to refer to the department for clarification and to any of our witnesses.

Going into clause-by-clause, as you know, pursuant to Standing Order 75(1), consideration of the preamble will be postponed until the end.

Right now I call the question on clause 1.

Since there were no amendments proposed for clause 1, I call the question on clause 1, unless somebody wants to raise their hand. I don't see any hands raised at this time.

(Clause 1 agreed to: yeas 7; nays 4)

The Chair: We now move on to clause 2. As there are no amendments proposed for clause 2 and I don't see any hands raised for discussion, I will call the question.

(Clause 2 agreed to: yeas 7; nays 4)

(On clause 3)

• (1130)

The Chair: We will now move on clause 3 and the first amendment before us, which is PV-1.

Just for members to understand, the vote on PV-1 will also apply to PV-2. If PV-1 is adopted, that means PV-2 will also be adopted. Therefore, NDP-1, NDP-5, NDP-6, NDP-7, NDP-9 and NDP-10 could not be moved, because they are consequential to one another.

I will now turn to Mrs. Atwin to speak to PV-1.

Mrs. Jenica Atwin (Fredericton, GP): Thank you very much, and I thank everyone for their time today.

What we propose is:

That Bill C-6, in Clause 3, be amended by replacing line 14 on page 4 with the following:

“(liii.1) section 320.102 (conversion therapy),”

In order to protect the fundamental rights of all individuals targeted by the cruel practice of conversion therapy, we are of the opinion that this practice should be completely banned and that we should not leave the option for it to exist. Therefore, we deem it essential that the motive or the willingness of an individual to take part in these therapies does not preclude the harm it's causing to so-

ciety as a whole and the proliferation of hateful and discriminatory values and myths among certain groups in Canada. To reflect that opinion, the word “forced” should be removed.

I would like to add that I have been carefully following the testimony on this and I appreciate so much the amendments and efforts put forward by Mr. Garrison in particular and the NDP. Very much, this amendment reflects that same kind of sentiment.

I would turn to some of the testimony from some of the social workers who appeared before this committee. They mentioned that it's important to note that all conversion therapy is inherently fraudulent, coercive and dangerous and that the government legislation should apply to all ages without exception.

That is my justification for this amendment. Thank you very much.

The Chair: Thank you, Mrs. Atwin.

Mr. Garrison, I see your hand raised.

Go ahead, sir.

Mr. Randall Garrison: Thank you, Madam Chair.

I want to thank the Green Party for this amendment. I know it was originally put forward before we actually had any testimony before the committee, but I know Mrs. Atwin has been following along.

Of course, I support the goal of this amendment. I have an amendment to the same section that proposes a different way of accomplishing the same thing.

We heard much testimony and concern, in particular from the Minister of Justice, that we should have a conversion therapy bill that would withstand any possible court challenge. In the amendment that we will deal with immediately following, if this one is not adopted, I proposed a different strategy, which was to add the word “adult” alongside “child”, rather than simply making the bill a flat ban. I know this is a technical and legal point, but what it does is leave room for courts, if they chose to strike down the ban on conversion therapy for consenting adults, to leave the rest of the bill intact.

While I obviously support the same goal, I am going to vote against this amendment because I think there's a better legal strategy for accomplishing the same goal.

• (1135)

The Chair: Thank you, Mr. Garrison.

We will now go to Mr. Zuberi.

Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.): I would like to support what Mr. Garrison just said. We know there are a number of other amendments coming forth from both the Green Party and the NDP. I would like us to give those full consideration.

As the chair mentioned, if we vote on this now, then we won't be giving full consideration to the other amendments. For the reasons that Mr. Garrison just mentioned and other reasons, I would like us to evaluate those amendments.

For this reason, I am personally voting no on this particular question.

The Chair: Thank you for that, Mr. Zuberi.

I don't see any more hands raised on PV-1. I will call the question and remind members that the vote on PV-1 also applies to PV-2.

(Amendment negated: nays 11; yeas 0)

The Chair: So PV-1 and PV-2 are defeated.

We'll move to NDP-1.

For members' clarity, the vote on NDP-1 also applies to NDP-5, NDP-9 and NDP-10, because they are consequential to each other. As well, if NDP-1 is adopted, NDP-6 and NDP-7 cannot be moved because of the line conflict.

I will turn to Mr. Garrison to speak to NDP-1.

Mr. Randall Garrison: Thank you very much, Madam Chair.

I did explain briefly the difference between the Green Party amendment and mine. I just want to echo what Mrs. Atwin said. We heard very powerful testimony that the professionals who deal with mental health issues and who deal with identity issues have universally said that conversion therapy is inherently harmful and a fraudulent practice. Therefore, the argument that someone could actually consent to being defrauded, or consent to being harmed, is not something that would be strongly supported anywhere else in the Criminal Code.

I would like to add the word "adult" alongside "child", as I said, and create what would in effect be a ban on conversion therapy completely in this country. I won't go on with a very long argument about that. I think we heard very clear testimony. I think perhaps members' views are quite well known on this already. I would hope to have the support of a majority of the committee for a complete ban on conversion therapy.

Thank you.

The Chair: Thank you, Mr. Garrison.

Mr. Virani, go ahead.

• (1140)

Mr. Arif Virani: First of all, I want to say welcome to the officials from the Department of Justice and from the Department of Heritage. Thank you for joining us.

Thank you to Mrs. Atwin for participating and suggesting amendments, and thank you to Mr. Garrison for moving this point.

It's a difficult issue. What I can indicate in terms of my thinking on this—and I think it reflects a number of people, including my fellow Liberal colleagues—is that we're trying to ensure that we address conversion therapy in its most pernicious form and addressing those who are most vulnerable. That's the first point.

Second, we're trying to carefully balance the bill, and in carefully balancing it, although one can never guarantee matters, we're trying to diminish risk from a constitutional perspective. What I would say to those who want to ensure that the ban that currently exists in the law, which is vis-à-vis children, and, as it's currently stipulated in the bill, it also talks about a ban with respect to adults who are participating in conversion therapy against their will.... Put that aside for a second, because I think that language can be improved, and there are some amendments on the table that relate to that. But when you remove the ability of adults to voluntarily participate in this, we do risk potential exposure on this legislation, and I think that would be to the detriment of all Canadians, particularly LGBTQ2 Canadians, because having this bill struck down would serve no one's interest.

I think the bill tries to craft a careful balance, protecting those who are vulnerable from the harms of conversion therapy but also protecting the rights and freedoms of those who may choose different types of interventions based on their own autonomous choices. A complete ban would be inconsistent with that balancing we're trying to achieve. I think where we've landed right now, where there is an outright ban for children and including a ban where adults are coerced or influenced against their will, is important. I do think that we can improve the language on adult protections, and I think we'll get to that later on during the course of our discussions at clause-by-clause.

So, not to risk jeopardizing this important protection, which would be neutered, effectively, through a successful constitutional challenge, my view is that we should oppose this amendment to keep it where it is subject to further protections for non-consenting adults, which we'll deal with later.

I will be voting against this proposed amendment.

Thank you.

The Chair: Thank you, Mr. Virani.

Madame Findlay, go ahead.

Hon. Kerry-Lynne Findlay: Thank you, Madam Chair.

I think we're all struggling here somewhat, because we're faced with legislation with very vague definitions. I haven't heard anyone in favour of coercive conversion therapy, but we're left with vagueness overall as to what that even means, whom it affects and how that will play out.

This is why Monsieur Fortin's suggestion that we read the 300 briefs that have come to us, which we've had no time to read, and that we actually pay attention more carefully to what is being put forward and what's presented to us, would have made sense. We're sitting here, going through clause-by-clause, trying to gerrymander and add in bits and pieces with a piece of legislation that has fundamental flaws in it from the beginning. It's difficult, very difficult, for us as legislators for a bill where the overall intent is something I agree with, to be forced into a situation where we're being asked to vote on a very flawed piece of legislation clearly put together too vaguely, too broadly. It will be challenged in the courts, probably successfully, and we'll be right back where we started, and it's unfortunate.

Thank you.

The Chair: Thank you, Madame Findlay.

I don't see any other hands raised at this time, so I will call the question on NDP-1.

Just so members are aware, the vote on NDP-1 also applies to NDP-5, NDP-9 and NDP-10, because they are consequential. If NDP-1 is adopted, then NDP-6 and NDP-7 cannot be moved.

Shall NDP-1 carry?

(Amendment negatived: nays 9; yeas 1 [*See Minutes of Proceedings*])

The Chair: NDP-1 is defeated, and consequentially NDP-5, NDP-9 and NDP-10 are also defeated.

Now I call the question on clause 3, seeing there are no more amendments.

Shall clause 3 carry?

(Clause 3 agreed to: yeas 7; nays 0)

The Chair: On clause 4, would any members like to speak to clause 4?

Not seeing any, I'll call the question on clause 4.

• (1145)

(Clause 4 agreed to: yeas 8; nays 0)

(On clause 5)

We will now move on to clause 5 and amendment NDP-2.

As a note to members, if NDP-2 is adopted, NDP-3 and CPC-1 cannot be moved because of a line conflict.

We'll go to Mr. Garrison now to move NDP-2.

• (1150)

Mr. Randall Garrison: Thank you, Madam Chair.

The lines involved here actually raise several issues. I understand that there may be another amendment from the floor from the Liberals on these same lines. I am prepared to defer to the floor amendment from the Liberals, because I think it might make more sense to discuss that before NDP-2.

I believe Mr. Virani has such an amendment, and I would be prepared to defer to hear his floor amendment.

The Chair: Mr. Virani, would you like to speak to that?

Mr. Arif Virani: Yes, Madam Chair, and thank you to Mr. Garrison.

The lines that are in question in Bill C-6 relate to clause 5, lines 30 to 32. I think there's a meeting of the minds here between ourselves and the NDP with respect to the importance of emphasizing the need to protect not only sexual orientation and gender identity, but also gender expression.

The language we would be proposing by way of either a new amendment or an amendment to what Mr. Garrison is suggesting is simply to insert "gender expression" into lines 32 and 33.

I can read it to you. In what we have in front of us, lines 32-33 currently read, "gender identity to cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour." That is followed by the two words "For greater". The idea would be to insert "gender expression" into those two lines, so it would now read, "gender identity or gender expression to cisgender, or to repress or reduce non-cisgender gender expression, or non-heterosexual attraction or sexual behaviour. For greater".

The insertion is basically a total of eight words. The words "or gender expression" would be inserted, and the words "non-cisgender gender expression, or" would be inserted as well.

That is to address what we heard in testimony, what we've heard from stakeholders and what we've read in written briefs, to ensure that this bill is as comprehensive as possible. It also tracks with other instruments, including human rights legislation and so on, in terms of its language and verbiage, that we have not only reference to sexual orientation and gender identity, which is currently in the bill, but also reference to gender expression.

I think that is where we have an understanding with the NDP with respect to the necessity of that type of change, so I would move that this language be used in lines 32 to 33 on page 4, in clause 5.

Thank you, Madam Chair.

The Chair: Thank you, Mr. Virani.

Can you please email us that language so that all members are very clear as to exactly what you're proposing? I wonder if you have it in both languages as well.

As we wait for that email to be circulated, I'll turn to Mr. Moore, who has his hand raised.

Go ahead, sir.

Hon. Rob Moore: Thank you, Madam Chair.

If you ask me, this is absolutely astounding of the government, together with the NDP. I remember that when the minister was here, I guess it was last week, he said he had the brightest and best minds around the drafting of the definition. We've been talking about the definition and the importance of getting it right. The minister assured us that it was bang-on and in no need of any changes whatsoever, and any other changes would be just redundant.

What Mr. Virani is proposing here is not what I would view as a friendly amendment to Mr. Garrison's amendment. They do two different things. Mr. Garrison's removes some of the language, from my read of it, around "cisgender", for example, and adds in "gender expression". Mr. Virani's reinserts that language and maintains adding in "gender expression".

Madam Chair, you can just interrupt me if I'm wrong on this, but I think I heard you say that if we adopt NDP-2, as amended perhaps, then CPC-1 would be dropped. For that reason, I do want to speak to CPC-1 really quickly because we won't get a chance to do so otherwise.

Because of the lack of clarity around the definition of "conversion therapy", what CPC-1 would do, as opposed to NDP-2 as amended by the government, would be to explicitly say it's "as part of an effort to change a person's sexual orientation or gender identity." I think we need to be clear that this is what conversion therapy is. It's an effort to change a person's gender identity or sexual orientation.

The amendment that the government is proposing further muddies the waters. I much prefer the amendment we're proposing, and for that reason, I would not be supporting the government's amendment.

• (1155)

The Chair: Thank you, Mr. Moore.

Before I go to Mr. Garrison, I'll advise members that the phone lines are now working with interpretation.

Mr. Garrison, please go ahead.

Mr. Randall Garrison: Thank you very much, Madam Chair.

I do appreciate Mr. Moore's comments. These lines are critical in the bill, and that's why, after discussions with Mr. Virani, I have agreed.... Well, I would like broader changes in that section, and the government is not prepared to entertain those. For me, the most important goal here is to make sure that gender expression is part of the bill and that we are protecting Canadians against attempts to change their gender identity or their gender expression.

Being a realist, I'm prepared to accept that his changes here are in the spirit of what I was trying to do to ensure that inclusion. Of course, I prefer my own language in the two amendments that follow, but I'm prepared to accept this and I think it's an important expansion of protections in the bill.

Thank you.

The Chair: Mr. Virani, we're still waiting for that language so that we can have clarity.

My understanding is that there's a bit of discrepancy around the line numbers. I think you referred to lines 30 to 32, whereas I think the amendment might be to lines 31 to 32. However, we are waiting for that email just so members can be very clear as to what the new language would look like.

Mr. Arif Virani: Madam Chair, I apologize if I misspoke. Looking at the English version of the text, I believe the amendment would be to lines 32 and 33 of the documentation.

There are two ways we can go about this. It's literally eight words that I'm inserting. We could employ the assistance of legislative counsel, who I believe is in the committee room with you, in terms of what the French language words should be for those eight words that I'm choosing to insert, or we can wait. I'm having a translation worked up as we speak, and we could perhaps move on to other amendments that aren't related to this and dispose of them and return to the discussion of this amendment once the translation is available.

I'm in your hands in that regard.

• (1200)

The Chair: To confirm, Mr. Virani, is the translation being done by somebody from our legislative team or is it separate from that?

Mr. Arif Virani: The translation would be vetted by the legislative counsel, obviously, but the translation is being worked on by people who have a better facility in French than I do.

Hon. Rob Moore: Madam Chair?

The Chair: Go ahead, Mr. Moore.

Hon. Rob Moore: I do find this astounding. The minister appeared here, and I guess it takes a certain amount of hubris.... I have a lot of respect for the minister, but any time you come and present a bill to a committee and basically indicate that it's perfect and there's probably no need to hear from any witnesses because you did such a bang-up job drafting it, and now, at the eleventh hour....

This is a government bill. We're in the opposition. We do not have the resources of government. We have to listen to witnesses when it comes to drafting amendments. All of us around this table work very hard at that as parliamentarians. We do not have the resources of government.

Why at the eleventh hour...? This should have been in our hands. Why on earth would the government be putting forward an amendment that, in my view, alters the bill? We would have heard at best conflicting evidence on an expansion to include "gender expression", but this shouldn't be new to the government. They should be aware of these things, and if they want this, they should have had it in the drafting of the bill, and not literally in the moment proposing amendments.

I could understand that if it was coming from the Green Party, the Bloc, NDP or even ourselves. Yes, sometimes with a compressed time frame like we had—of only four days—something could come up in witness testimony that we might want to react on, but for the government itself to be proposing a change....

I'd guess I'd like to hear from some of the lawyers with the Department of Justice on what this change in wording would mean in practice, because we don't have.... We all sat here in testimony where it's not clear what has been captured definitively by the government's definition of conversion therapy. What we do know is that the minister has used words in the introduction of this bill that we've urged them to include in the legislation. The government chose not to do that.

Now we see that at the eleventh hour—or past—the government is scrambling to make changes. I think they have the wording, of course, that Mr. Virani is proposing in front of them. In law, what is the change that we are now being asked to contemplate, literally on the fly?

The Chair: Thank you, Mr. Moore, for that.

I will defer to the witnesses, but first I feel that we need to suspend as we wait for this language to come in, and I do need to confer with the legislative team over here as well on that wording.

We'll suspend for a couple of minutes as we get clarity on this amendment.

• (1200) _____ (Pause) _____

• (1215)

The Chair: I call this meeting back to order.

Thank you for your patience, members. Just to confirm, have members all received the new proposed language? Just show me a thumbs-up if you've received it. I'm just checking to see if you've received the email with the new language for NDP-2.

As members are reviewing that language, I'll pass the floor on to the legislative clerk to speak to what would be the easiest process to insert this language.

Go ahead, sir.

• (1220)

The Clerk of the Committee (Mr. Jacques Maziade): Okay. Just to be sure—

Hon. Rob Moore: I have a point of order.

The Chair: Yes, Mr. Moore.

Hon. Rob Moore: Madam Chair, before you suspended, I had asked a question of the government witnesses on the language that's being proposed. Before we hear about how we would mechanically do this, I'd like to hear what the language does. How is it different from what the minister came here last week and proposed, which was A1, ready to go? It seems to me a significant departure from what the minister presented, and the fact that it's coming from the government I find surprising.

I'd like to hear an explanation of how this would change the law in Canada versus what was originally presented.

The Chair: Thank you, Mr. Moore.

I will turn to the department. I understand that you do have the language in front of you.

Mr. Arif Virani: Madam Chair, I'll speak to the same point of order.

Mr. Arif Virani: I just think it's a bit erroneous to leave the record reflecting that the minister wasn't open to amendments. He clearly indicated in his testimony before this committee two weeks ago that he was open to amendments, and I believe the issue of entrenching gender expression was directly put to him by Mr. Garrison. I think the record should reflect that. That's what this amendment seeks to do—insert “gender expression” into the definition of

what would constitute conversion therapy under proposed section 320.101.

Thank you.

The Chair: Yes, go ahead, Mr. Virani.

The Chair: Thank you, Mr. Virani.

We'll now go to the department for comment on this language.

Ms. Nathalie Levman (Senior Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): Thank you, Chair, for the question.

I will comment on the impact of the amendment that is before you. I do have it before me as well. What it would do is amend the definition to include “practices, treatments or services designed to change gender expression to cisgender and practices, treatments or services designed to reduce or repress non-cisgender expression.”

Doing that would expand the scope of the definition to include an additional way of showing that a particular intervention, practice, treatment or service constitutes conversion therapy, as I've just explained. This approach would assist in preventing conversion therapists from seeking to avoid criminal liability by arguing that their interventions are not designed to make a person cisgender but only to reduce or repress certain forms of expression, even though changing identities is their true objective.

I would also note that this is criminal legislation, so it has to be narrowly interpreted with reference to the legislation's overall objective, and that objective is to target interventions that are known to cause harm because they're designed to change identity, as explained in the bill's preamble.

Thank you.

The Chair: Thanks very much for that.

The Chair: Sorry, Mr. Moore. Is that on a point of order? I don't see your hand raised, but I do see Madame Findlay's hand raised.

Hon. Rob Moore: Madam Chair, on that. I think—

Hon. Rob Moore: I'm sorry. Go ahead.

The Chair: Go ahead, Madame Findlay.

Hon. Kerry-Lynne Findlay: I'm not even sure of the procedure here. It's just a point of clarification for the last witness. I have a question on what she just stated.

Thank you for your statements. You actually said, when it is someone's true intention to do otherwise. I don't understand how you can get into the intention of a person based on the language. I don't understand how you can say that's what it means. Isn't intention a matter of a combination of fact and law, depending on the circumstances of the case in front of you?

• (1225)

Ms. Nathalie Levman: Madam Chair, may I respond?

The Chair: Yes, please.

Ms. Nathalie Levman: Thank you for that question.

Perhaps I wasn't clear when I was explaining the amendment. I first attempted to explain the legal scope of the amendment, so that you would understand what it captures in law. I then attempted to explain what I understand to be one of the main objectives of including a separate way of showing that a particular intervention is conversion therapy.

I was in no way commenting on the scope of the law. I was commenting more on what objective the amendment may be trying to achieve, as I understand it from those who have made comments before this committee about their concerns in respect of gender expression.

I hope that clarifies it for you. I would welcome any further questions you may have.

Hon. Kerry-Lynne Findlay: If I understand you right, it was your interpretation of the intention of those putting it forward, but that's not a comment by you on what it actually says. You're going further in what you're saying to give your interpretation of what you believe the reasons are for putting it forward. Is that correct?

Ms. Nathalie Levman: Based on testimony you've heard before the committee and on briefs I've read about the concerns in respect of the lack of inclusion of gender expression in the definition, it is my understanding that the goal would be to avoid opportunities for avoiding criminal liability by simply saying they weren't really trying to change a person's identity; they were just trying to reduce certain forms of expression.

We know that reducing non-cisgender gender expression often forms part of conversion therapy that's aimed at changing gender identity to cisgender. From the witnesses who have come forward and raised this as a concern, I consider it to be an evidentiary issue.

My understanding is that this amendment is trying to address that evidentiary issue in the same way that the other branch of the test, in respect of non-heterosexual attraction and sexual behaviour, is intended to address evidentiary issues associated with proving that a particular conversion therapy intervention is aimed at changing sexual orientation to heterosexual.

Hon. Kerry-Lynne Findlay: Thank you.

I think we agree that you're speaking to an evidentiary issue.

The Chair: Thank you, Madame Findlay.

We'll now go to Mr. Moore. I see your hand raised.

Hon. Rob Moore: This last-minute change by the government is extremely problematic to me.

I don't accept that this narrows the scope because it is criminal. We've been saying all along that a Criminal Code sanction is a government's most serious sanction, so it's important that we get it right. It's important that we know what is captured.

Originally, this bill, even in the preamble, purported to identify conversion therapy as dealing with trying to change someone's sexual orientation from cisgender, or gender identity. Now we're adding gender expression. I think it's important to hear from experts, because we did not hear this at committee. We did not hear a clear definition of how to define "gender identity" and how to de-

fine "gender expression" and how they are distinct, so we're adding new language to this legislation.

Again, it's on the fly. I'm not saying whether it's good, bad or indifferent. I'm saying that it's shocking that we're seeing this the day we're doing clause-by-clause. This could have been brought up at any time by the minister, but he did not bring this up, and it's being added.

Within the Criminal Code, we're going to perhaps have a new definition of conversion therapy. We heard from a number of witnesses who said that this definition of conversion therapy does not mirror other definitions that have been used in other legislation. For the purposes of the Criminal Code, how do we define "gender identity" and how do we define "gender expression" to show that...? The minister raised great concerns about redundancy. He was concerned about any effort to further clarify the definition, when I raised that with him.

What is the distinction that the minister is proposing on "gender identity" versus "gender expression"?

• (1230)

The Chair: Thanks, Mr. Moore.

We'll go to the department for clarification on that.

Ms. Nathalie Levman: Thank you for the question.

You'll know that the terms are not defined in the Criminal Code. They are defined in various places for different purposes and their meaning is understood. Admittedly, "gender expression" is a very broad term. It's about how one expresses one's own gender to the world.

I've acknowledged in my comments that this amendment would broaden the definition, and it's my understanding that this is for evidentiary reasons. I also note that the terms "gender expression" and "gender identity" are used in other places in the Criminal Code and in human rights legislation, and they do have meaning in law.

I hope that answers your question.

The Chair: Thank you.

We'll go to Monsieur Fortin.

Hon. Rob Moore: Do I still have the floor, Madam Chair?

The Chair: No. Perhaps you can raise your hand again, as Mr. Fortin has been waiting for a while as well.

Go ahead, Monsieur Fortin.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Madam Chair.

I also find that the difference between gender expression and gender identity is unclear. I know there is a difference, but it's not easy to understand.

The Department of Justice website states that “gender expression is the way in which people publicly present their gender. It is the presentation of gender through such aspects as dress, hair...” If I go back to the text defining conversion therapy, I understand that the bill would prohibit any practices, treatments or services designed to repress that.

Here is the example that comes to my mind. Let's say that, in the morning before going to school, an eight-year-old boy decides to wear a dress. His mother might say yes, or she might say no. Either way, if we use that definition, it would be a criminal offence for a mother to tell her son that she does not want him to wear a dress and to force him to wear pants. That's the definition we are about to adopt, and I see a problem with it.

Can the analyst help us sort this out?

[English]

The Chair: I'll defer to the department on that question, please.

[Translation]

Ms. Nathalie Levman: I'm going to answer in English, if it's okay with you. I apologize, but it will be easier for me.

[English]

It's an excellent question. I think, though, we'll have to remember that there are two parts to the definition, and that the intervention really has to amount to “a practice, treatment or service”.

We heard the minister explain the meaning behind those terms and what they imply during his opening remarks before this committee. They do require some kind of formalized intervention, so merely saying to your male child, as you have suggested, “You can't wear a skirt to school” would not amount to “a practice, treatment or service”, and therefore, in my view, would not be caught by the definition, including its expanded version.

The Chair: Thank you.

We'll go to Mr. Virani now.

Mr. Arif Virani: I have several comments to make.

I think Ms. Levman's response is absolutely accurate. I think it strains credulity to think that a conversation between a parent and a child about what to wear on a given day—conversations that I have with my children on any given day, usually related to the weather—would actually amount to a treatment, service or practice pursuant to the Criminal Code. There is an axiom that most lawyers on this committee would recall, which is that the law does not concern itself with trivial things. I would go so far as to say that's quite a trivial concern.

With respect to many of the things that have been raised here by Ms. Findlay and Mr. Moore, first of all, I think Mr. Moore may have misspoken when he said that it sounds like it's narrowing the scope. This amendment is not narrowing; it is expanding. Let's be crystal clear about that.

Second, there was some reference to whether department officials were imputing motive or speculating about why such an amendment would be made. The objective of this amendment is to capture exactly what was articulated, which is different types of

therapy masquerading as something they are not, to try to escape criminal liability. That is informed by the testimony we heard from many witnesses, and that is critical. I think Mr. Moore referred to the fact that we need to hear from more experts. I would put it to him that we actually already have.

I would put it to him that I think it's a bit erroneous to assert that somehow we are being surprised by the insertion of “gender expression” at clause-by-clause. Repeated amendments, including my own to the preamble, refer to the term “gender expression”. The term is known to committee members in terms of already being in the clause-by-clause package. It's known in law under the Criminal Code and the Canadian Human Rights Act, and it is certainly known to all of us who went through the committee study, because we heard it repeatedly from witnesses. On that basis, I would think we are more than ready to exercise a decision as to whether this amendment is worthy of pursuit and whether it should be carried into legislation.

Thank you, Madam Chair.

● (1235)

The Chair: Thank you, Mr. Virani.

Madame Findlay, go ahead.

Hon. Kerry-Lynne Findlay: Thank you, Madam Chair.

I understand what's before us, and I understand that I now can make my own decision as to whether I support this amendment or not, but when Mr. Virani speaks to things being confirmed by testimony.... We heard some testimony on gender expression. We heard conflicting testimony on gender expression, but because it wasn't before us in this clause, we didn't know that we would be considering it within this clause.

I find it difficult to understand that an amendment is dropped on us on the floor for which we had to suspend the committee for several minutes. It was dropped without translation, clearly known to Mr. Garrison ahead of time, clearly known to Mr. Virani ahead of time, because Mr. Garrison, with all due respect, stepped back and said he would give the floor to his friend Mr. Virani, his colleague, so that he could put this forward.

Why are we dealing with it in committee, trying to get translations, being told to suspend—which was the appropriate thing for you to do, Madam Chair, in the circumstances—when clearly they had conversations either in the last few days or last night, this morning, I don't know when, yet we only get it here dropped on us at the last minute, changing a definition, expanding the definition?

Yes, I agree with Mr. Virani. It is an expansion of the definition. It's a large expansion of the definition. They can belittle Mr. Fortin's example by saying it's trivial. He was just throwing something out there, in my view, as an example—yes, a trivial one—not actually meaning that specific issue necessarily. He's just trying to understand it, because we don't understand it when it is dropped on us in this way.

For us to be put in a position of having to assume definitions now on an expanded definition makes it very difficult to deal with. It is not the way we normally should proceed, and not the way the government should proceed on a piece of government legislation that is so important. This is a very important bill. There are a lot of Canadians wanting to see how this turns out.

We, on the Conservative side of the House, in our attempts to get some clarity and some comfort for those who are concerned about these expanded definitions, or any definitions, are being shut down, while at the same time we're having expanded versions dropped on us at the last minute, putting us in a very difficult position.

• (1240)

The Chair: Thank you, Madame Findlay.

I will clarify that the amendments that were emailed to members today from the floor did have translations, so they were in both official languages.

Hon. Kerry-Lynne Findlay: Once we got them, Madam Chair, but when this first started, we did not have translations and we had to suspend the committee for several minutes—I don't know how long it was in the end—in order to get them emailed to us sitting here, with translation. That could have been prepared ahead of time. That's my point.

Clearly, the government members and the NDP member were talking outside this committee, or they wouldn't have known what they were about to do. We were left not knowing. That's not acceptable.

The Chair: Thank you.

Monsieur Fortin, I have you next on the list, sir. Go ahead.

[Translation]

Mr. Rhéal Fortin: Thank you, Madam Chair—

[English]

Mr. Mike Kelloway (Cape Breton—Canso, Lib.): I have a point of order, Madam Chair. I'm having a difficult time hearing. I don't know if anybody else is. There's an echo on my end from you and the last speaker, MP Findlay. I'm just wondering if anybody else has that problem.

The Chair: Is that the case for other members as well?

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): I couldn't hear it either.

Hon. Kerry-Lynne Findlay: I can always start again, Madam Chair.

Some hon. members: Oh, oh!

Mr. James Maloney: But I got the gist of it.

Hon. Kerry-Lynne Findlay: That's all I need, Mr. Maloney, just so you get the gist.

The Chair: Let's try again.

Mr. Fortin, please go ahead, sir.

[Translation]

Mr. Rhéal Fortin: Thank you, Madam Chair.

Our colleague Mr. Virani's comment about the trivial or insignificant nature of my example seems a little strange to me. I don't feel that the example I gave is insignificant. If Mr. Virani takes a little time to read law reports, he may find that many things he feels are trivial have nevertheless caught the courts' attention, sometimes as far as the Supreme Court. My remarks were not insignificant, and neither were his. His proposed amendment is far from insignificant. It's important, and I believe it's also worthy of discussion.

I would like to go back to the answer provided to me by Department of Justice senior counsel Ms. Levman, because I take issue with it. I know that a parent's intervention is not a treatment, a psychotherapy service or anything like that; we can agree on that. I do, however, believe it could be considered a practice. If Ms. Levman feels it's clearly not a practice, I'd like her to explain the distinction she makes between “practice”, “treatment” and “service”. One of the principles for interpreting statutes is that the legislator does not speak in vain. In my view, we need to find different definitions for “practice”, “treatment” and “service”.

According to my humble interpretation, which may differ from Mr. Virani's, but which I do not find insignificant, it could easily be argued that it is a practice when a parent, guardian or even a neighbour tells a little boy play to wear pants or, conversely, tells a little girl to wear a dress.

I remind you that the Department of Justice's definition does not refer only to clothing. I had stopped quoting at that point, but to support the argument, perhaps I should repeat that definition. It says that a person's gender expression includes “such aspects as dress, hair, make-up, body language, and voice.” So, many things are included in gender expression. Gender, as understand it, includes quite a few behaviours.

I confess that, as a parent, I have told my daughter that she should not wear so much make-up. From what I understand, by engaging in that practice—and I do feel it can be considered a practice—I would have committed a criminal offence. I'm sure no one wants that.

I am not naive or stupid. I am concerned by the fact that we are drafting provisions of law that can lead to extreme interpretations of that kind, which we do not want when we try to interpret them. I am sure the Minister of Justice doesn't want that, nor do my Liberal, Conservative and other colleagues.

Since we began our work, I have been thinking that clause 5 of Bill C-6, which introduces section 320.101 of the Criminal Code, obviously needs to be rewritten, because it contains the most ambiguous definition ever on such an important subject, and that deserves more attention.

To sum up, I would like someone to explain the distinction being made between a practice, a treatment and a service. Could intervention by someone who is not a professional be considered a practice? We don't mention health professionals anywhere, we keep it in general terms. I know that, for a treatment or service, it has to be a professional, such as a psychologist or physician. However, anyone can engage in the practice of telling a young man that he should not use make-up or wear dresses, or of telling an eight-year-old girl that it's not appropriate to wear so much make-up and that she should wear sneakers to school instead of three-inch heels, for example. These are things that teachers, parents, guardians or friends might say to a young person, and some could interpret them to be a practice prohibited under the Criminal Code. So it would be a criminal offence, which I remind you is a very serious thing.

Thank you.

• (1245)

[English]

The Chair: Thank you.

Ms. Nathalie Levman: Madam Chair, may I reply?

The Chair: Yes, go ahead, please.

Ms. Nathalie Levman: Thank you.

I would like to say at the outset that Monsieur Fortin and I are in agreement on the expansiveness of the term “gender expression”. I don't disagree with anything he said about its meaning.

In terms of the term “practice”, I do acknowledge that it's broader than the other terms of “treatment” or “service”. As the minister explained in his comments, it means an action that happens habitually or regularly.

I would just take note that every word has to be interpreted in its context and purposively and consistent with the overall objective of the bill, which is to target harmful practices, practices that we have evidence cause harm, and these concern changing gender identity to cisgender and sexual orientation to heterosexual. The terms need to be interpreted in that light.

Courts may also look to places where those terms have been used in other contexts, and in all of those contexts, whether it's the Criminal Code or provincial health care legislation that deals with conversion therapy, we are looking at some kind of formalized intervention. I note that “practice, treatment or service” is used in certain provincial/territorial legislation dealing with conversion therapy.

The overall objectives of the bill are going to influence how those terms are interpreted. Then it's up to the courts, of course, to apply the definition to specific circumstances, to the facts of each case.

Those are my comments on the scope of the definition and in particular the meaning of the term “practice”.

Thank you.

The Chair: Thank you.

We'll now go to Mr. Moore.

Hon. Rob Moore: You know, the more I'm hearing, the more problematic this is. The one thing I'll agree with Mr. Virani on is that this is an expansion of the definition of conversion therapy. It's introducing new language that the government did not put forward originally. I'm going to ask the department.... I think this certainly opens up the legislation to a charter challenge more than the original wording.

What bothers me, Madam Chair, with all due respect to everyone around the table, is that now it seems plain to me that the intention was always.... And again, all the resources of government, which we in opposition do not have.... This isn't a new bill. It was introduced before the Prime Minister prorogued. It has been brought back. They've had all the time in the world to work on it.

Last night, at the end of the day—I think it was around 5:30 here Atlantic time, so it would have been 4:30 eastern time—we received a government amendment to their own legislation. Did it amend this clause? No. It amended the preamble to include “gender expression”. I thought at the time, “Why are they amending the preamble to include gender expression but not amending the bill to include gender expression?” It would have been nice to have that amendment last night. We didn't.

Now we fast-forward to today, when we're trying to do clause-by-clause on what is an important bill, and the government table-drops this amendment without an explanation, without hearing witness testimony on what this amendment would do, how it broadens the bill or what the effect would be. To me, it's completely unacceptable that we would conduct ourselves that way. It would be more excusable if it came from an opposition party, because we don't have the resources of government.

All of us were told to get our amendments in on time, which we all did. The Green Party—and they certainly don't have the caucus resources of the larger parties, let alone government—got their amendments in, as did the NDP, and we put forward amendments to this bill, on time. Then last night, at end of day, we get a government amendment to the preamble that doesn't make any sense, because it doesn't align with the legislation.

Then, midway through clause-by-clause, they table-drop an amendment. That is 100% unacceptable. I don't know how they expect opposition parties to be able to deal with that. They come to the table without a clear explanation of what the bill does or what the change does, only to say it's more expansive and it's going to capture more things. Of course it does. Originally it said “sexual orientation” and “gender identity”. Now it says “gender expression”, but we as parliamentarians do not have a clear idea of what that is going to capture in our Criminal Code legislation.

I'm really disappointed. It's completely unacceptable. I don't know why we didn't receive the government's amendment last night when we received the amendment to the preamble.

Anyway, it is disappointing, and I would like an answer on this. In my view, a broadening of what is captured in the definition will almost certainly result in a greater chance of the legislation being struck down under the charter.

Maybe we could get an answer on that. Thank you.

• (1250)

Ms. Nathalie Levman: Madam Chair, I assume that's over to me.

Hon. Rob Moore: I'm sorry, yes. Through you, Madam Chair, it's for the department lawyer. Thank you.

I don't mean to put you on the spot. It might not be fair to you either, because.... Through you, Madam Chair, to the Department of Heritage and the Department of Justice lawyers, I can only assume that's not how they would conduct themselves, because they would have had this in the original legislation or it would have been presented to us in a timely manner.

Unfortunately, at the eleventh hour yesterday, the government decided to amend the preamble, and then today we find out why, when we're in the middle of our meeting. The government table-drops an amendment to their own legislation.

The Chair: Thanks, Mr. Moore.

We'll just go to—

Mr. Randall Garrison: I have a point of order, Madam Chair.

Mr. Randall Garrison: There's just a little untruth in what's being said here.

NDP-2 and NDP-3, which were in the amendment package, both propose adding “gender expression”, so the topic we're talking about here was included in the package, and members should have been prepared to deal with it.

We heard testimony on that numerous times in the debate on this bill, so, no, there was no collusion away from the table. I did not see the text of this amendment, but what I did do was continue to advocate for the most disadvantaged, the most discriminated elements of our population, who are transgender and non-binary Canadians. The government said they would listen, and they did listen, but this topic has been in the amendment package from the very beginning.

The Chair: Yes, Mr. Garrison.

The Chair: Thank you, Mr. Garrison.

I'm not sure if that was a point of order, though, so we'll just quickly go to the department to comment on Mr. Moore's question. Then we have Mr. Cooper next on the list, and then Mr. Garrison.

Go ahead.

Ms. Nathalie Levman: Thank you, Madam Chair.

I would just note that the charter issues or considerations that are raised by the bill are outlined in the charter statement that is available on the department's website.

We do know, based on what the minister has said and even on what some witnesses have said before your committee, that the bill does attempt to strike a balance between the equality and dignity of LGBTQ people on the one hand, and the rights and freedoms of individuals who may choose to receive or provide conversion therapy on the other.

We have to remember that a court's analysis is going to be very much shaped by its interpretation of these provisions. I can't stress

enough how important it is that criminal legislation be read narrowly—that is a fundamental principle of statutory interpretation—and with respect to its overall objectives. The overall objective that this bill is trying to achieve is to stop certain types of interventions that we know cause harm—we have evidence of it—and those interventions are designed to change who a person is, their identity, to match societal norms. I anticipate that the legislation's provisions will be interpreted according to those rules.

The fine balance that the legislation seeks to achieve, I would also note, is not just in the actual definition but also in the nature of the offences themselves. I know you're going to turn to that shortly, and I'm sure you'll have a good discussion on the scope of those offences.

Thank you.

• (1255)

The Chair: Thank you very much.

Mr. Cooper, I have you next, and then Mr. Garrison, Mr. Virani and Madame Findlay.

Go ahead, Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Madam Chair. I'll be brief.

I wish to echo my dissatisfaction of having this dropped upon us at the very last minute, in the middle of clause-by-clause, an amendment that fundamentally changes the bill in terms of the definition, a definition that I believe, based upon quite a bit of evidence before our committee, is already vague and overly broad in its scope. Certainly Criminal Code sections that are vague and overly broad cannot stand. They're contrary to fundamental justice.

Monsieur Fortin, I think, rightfully raised questions about who's going to be captured by this. What circumstances might arise in which this section of the code is going to come down upon them and they're suddenly charged with an offence?

The Supreme Court of Canada, in the Mabior decision, was clear that one has the right to know whether or not the act they're engaging in constitutes a crime, and I don't even know, frankly, at this point, what we're voting on or not voting on, because we have such a change to the language of the definition, a definition that I reiterate is problematic, without the benefit of hearing from witnesses to press them in a substantive way on this substantive change.

On that basis, I won't be able to support the amendment.

The Chair: Thank you, Mr. Cooper.

We'll now go to Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Madam Chair.

I just want to state again that I have certainly been asking questions during all the hearings on this about adding gender expression to this bill, and it was part of this amendment package.

In terms of the—I'm trying to choose my words carefully—objections about not knowing what gender expression means, gender expression was put into the Criminal Code of Canada, in the hate crimes section. It was put into the Canadian Human Rights Act more than five years ago. It is well established in law what these terms mean. We know what they mean.

I guess I'm trying not to use the word “petulant” but that's the word that comes to mind. When you see what's going on in the community with regard to transgender people and non-binary people, this debate is somewhat shameful, I think, and if you doubt that, I'll share some of the—

• (1300)

Mr. Michael Cooper: That is ridiculous.

Hon. Kerry-Lynne Findlay: That is a ridiculous statement.

The Chair: Hold on, Madame Findlay and Mr. Cooper.

Hon. Kerry-Lynne Findlay: That is most disrespectful of everyone here. I'm really shocked.

Mr. Michael Cooper: That's absolutely shameful.

The Chair: Mr. Cooper, thank you.

Mr. Garrison, I advise you to please choose your words a little bit more carefully.

Mr. Randall Garrison: I would like to continue.

I'll volunteer to share the more than 200 personal attacks on me in social media, including threats that I've received this week, for defending the rights of transgender and non-binary Canadians. If any of you think this is not a serious matter in our society, I'll be happy to share those with you. I—

Hon. Kerry-Lynne Findlay: I'm sure it's not from anyone on this committee, Madam Chair.

Mr. Randall Garrison: Madam Chair, I did not interrupt anyone else here.

The Chair: Mr. Garrison, the floor is yours.

I'll remind members that there are ways they can get the floor: by raising their hands or raising points of order.

Right now, the floor is Mr. Garrison's. Go ahead, sir.

Mr. Randall Garrison: I have no problem with having substantive debate on this, and I accept that there will be differences of opinion, but to say that we don't know what we're talking about, that we don't know what these terms mean.... That's what I'm referring to.

These are well-established terms in law. These are well-established principles that we've established in the Canadian Human Rights Act and in the hate crimes section of the Criminal Code. Therefore, when some members say this makes it more likely not to survive a charter challenge, that's patently false, as these things are already part of rights in Canada and have been for some time.

Thank you, Madam Chair.

The Chair: Thank you, Mr. Garrison.

I have Mr. Virani and then Madame Findlay.

Go ahead, Mr. Virani.

Mr. Arif Virani: Madam Chair, I have a couple of points.

The language “gender expression” was injected into Canadian statutes in Bill C-16 in the last Parliament, of which Mr. Cooper, among others, was a member. Again, to purport that people aren't familiar with the term “gender expression” or what it denotes or defines is completely and patently inaccurate.

I reiterate that “gender expression” is used in the actual motion that we're debating right now, which is NDP-2 and my suggested changes to NDP-2. It's also used in NDP-3 and in the final amendment to the preamble. Again, to purport that there is somehow some element of surprise here is patently inaccurate in terms of the documents that are before the committee.

The third point is that somehow it has been imputed that having discussions with other members of Parliament and other parties is somehow untoward. I would put it as a bit of a straightforward fact that in a minority Parliament there are always discussions, as there should be, with other members of Parliament and other parties with respect to where consensus can be achieved.

What has transpired here is that we, as government members—my Liberal colleagues and I—saw an amendment, NDP-2, that referenced “gender expression” but also went beyond that. What we tried to do was find some common ground as to how to ensure that gender expression and the protections that follow therefrom are entrenched in this important piece of legislation, but all the time maintaining the careful balance that this legislation seeks to strike.

If there are those in this committee who have trouble with that sort of approach, I would put it to them that this violates the spirit of co-operative parliamentary functioning in a minority Parliament. Second, the bottom line is—and I hope that all of us believe this—that the rights of trans and non-binary Canadians are as important as those of all the other groups we seek to protect through this bill. That's the motivation behind proposing the amendment.

Thank you, Madam Chair.

The Chair: Thank you, Mr. Virani.

Madame Findlay, I have you next on the list.

Hon. Kerry-Lynne Findlay: Thank you, Madam Chair.

I have absolutely no objection, particularly in a minority Parliament, with members of this committee or any committee having discussions with members from parties other than their own. That is the spirit of co-operation and I think that's good. My problem is with selecting those you speak to and leaving others out of the equation, so that they are surprised by what is coming before them. That is a problem. Out of respect for all of us trying to grapple with a difficult piece of legislation, we should all be included in those kinds of discussions, or at least be given some notice, as opposed to a select person or persons being given notice and the rest of us being left to figure it out.

On that note, yes, I am aware that the term “gender expression” is in Bill C-16. What I was trying to understand—and this is probably a question for the Department of Justice officials—is that I don’t believe the term “gender expression” is, in fact, defined anywhere in the Criminal Code of Canada. It is used in Bill C-16, but I see no definition there. In fact, I believe it was expressed at the time that it should be left to courts and tribunals to define it.

My question is whether or not the term “gender expression” is defined in the Criminal Code of Canada. Is the term “practice” defined in the Criminal Code of Canada? If they are defined already, that gives us something to go on. If they are not already defined in the legislation, then I have a problem with inclusion in this bill when, in the testimony we have heard from many witnesses.... We all heard the same testimony. Some people wanted it included specifically. Others didn’t want it included specifically because they weren’t sure what it means.

We are not talking about just any legislation. We’re talking about amendments to the Criminal Code of Canada that carry with them criminal sanctions. That is the whole point of contention in this bill. I don’t even think it’s the overall idea of the bill. It’s the fact that we are dealing with criminal sanction against certain behaviours that are in this bill without sufficient definition.

My question is for the Department of Justice officials. Where in the Criminal Code of Canada is “gender expression” defined? Where is the term “practice” defined? I would appreciate those definitions being pointed out to me.

Thank you.

• (1305)

The Chair: Ms. Levman, go ahead.

Ms. Nathalie Levman: Thank you, Madam Chair.

Neither term is defined, but, as I’ve stated before, they are used in other contexts. In fact, Mr. Fortin has given quite an excellent definition of gender expression today. The terms are used in many different contexts. We understand what they mean based on the contextual or purposive interpretation where they appear.

I would note that these terms in particular—“practice, treatment or service”—are used in relation to conversion therapy in other pieces of legislation that refer to conversion therapy without definition, because they are understood to have clear, ordinary meaning in that context. I believe not just the rules of statutory interpretation support that, but also the minister’s comments when he appeared before this committee support that as well.

Thank you.

Hon. Kerry-Lynne Findlay: Madam Chair, can I respond here to what she is saying?

The Chair: If you don’t mind, I will address the other members who have raised their hands. I’ve made a note to come back to you after Monsieur Fortin.

Go ahead, Mr. Maloney.

Mr. James Maloney: Thanks, Madam Chair. I’ll be brief.

I have just a couple of points. First, I appreciate what Ms. Findlay said about consulting with other members of the committee. I wholeheartedly agree with you, but there are times when a representative from one party will speak on behalf of his or her colleagues when dealing with other members of the committee. Mr. Virani did this on this occasion. I’m sure it happens in your party, too, whether it’s Mr. Moore, you, Mr. Lewis or Mr. Cooper.

There was nothing sinister there, which is really the point I want to get at. Mr. Moore has suggested that, out of the blue and unbeknownst to anybody, Mr. Virani showed up today and dropped something on the committee that was outside the scope of anything we had talked about. It couldn’t be further from the case. Ascribing any sort of sinister objective to Mr. Virani is not only wrong, but it’s a little bit offensive, frankly. The issue was on the table in more than one amendment proposed by Mr. Garrison. We heard ample evidence from witnesses on the subject. I don’t think there’s anything inappropriate about the procedure whatsoever. We’re having a discussion on an issue that’s clearly on the table. It was part of the amendments proposed.

As for the minister coming here, I was here when the minister came to the committee and I never heard him say once that this bill is untouchable. He’s always, of course, open to amendments. He respects the committee and the process. He respects all the members regardless of what party they are in. He’s open to listening to suggestions on amendments.

Thank you, Madam Chair.

• (1310)

The Chair: Thank you, Mr. Maloney.

M. Fortin, go ahead.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Madam Chair.

I would like to come back to the answer to my question the counsel provided earlier. What sticks with me from her answer is that the term “practice” does indeed have a broader scope than the term “treatment”. Treatment, just as practice, is different from service, but it’s not clear. There is a grey area between those three definitions. I think the meaning is fairly broad when practice is in question. I also think that, in her opinion, if a parent told their daughter she should put less makeup on or their son not to wear high heels to school, that parent could win the case if they were accused of practising conversion therapy on their child.

I will give you another example, which is fairly frequent. A number of us have had children or still have children at home. As we know, a parent may decide that their child should consult a psychologist for all sorts of reasons. I have known a lot of parents who did this, be it because their child was wetting the bed during the night, because they were bullied at school, because they had behavioural problems or for any other reason.

In that context, let's take the example of an eight-year-old child consulting a psychologist. Let's say that the parent asks the psychologist to look at another issue they observed—in other words, that their son, in addition to wetting the bed, wants to put on make-up and high heels to go to school. Obviously, he is getting teased or beaten by other boys when he shows up to school in high heels. The parent finds the situation frightening and would like the psychologist to talk to their son to make him understand that it is not a good idea to dress this way at school.

In doing so, wouldn't the parent be committing another crime by inciting a professional to commit one, as it would now be considered a crime for a psychologist to tell an eight-year-old child that putting on makeup and high heels to go to school is not a good idea? That would actually be a crime, as it would constitute treatment provided by a health professional to restrict the child's gender expression.

First, I would like to know whether asking a health professional to intervene with the child in such a case would be considered a crime. I would like counsel Levman to tell me what she thinks.

Second, I would just like to make a point. I listened to Mr. Garrison earlier. I completely agree with him on protecting transgender individuals, among others. I have no problem with that, and I want to specify that we at the Bloc Québécois want conversion therapies to be banned. I think the definition is the problematic part. By trying to do too much, we are casting the net too wide.

Aside from the situation I described to Ms. Levman, I would just like to remind you that the issue here is not the protection of individual rights. Our charters prohibit discrimination on the basis of sexual orientation issues, and discrimination based on gender expression could also be prohibited, for example. That's one thing. However, we seem to sometimes forget that this is the Criminal Code, as Ms. Findlay and a number of you have pointed out. The individual—whoever they may be—charged with an indictable offence will carry that charge their entire life, whether they are acquitted or not. Of course, it would be worse if they are found guilty, since that will result in a criminal record, penalties, and so on.

So we must be careful. As Ms. Levman pointed out earlier, and rightly so, more restrictive interpretation rules are adopted in the interpretation of the Criminal Code. We don't want the interpretation to be too broad. But it seems to me that the net is being cast too wide here. The amendment proposed by Mr. Virani and those proposed by Mr. Garrison confirm to me that the net is being cast very wide.

Once again, instead of very broad protection being ensured, the door is being opened to very broad interpretation that will result in individuals being incriminated, and that really worries me.

• (1315)

So I just wanted to remind the committee of this, and I would like Ms. Levman to tell me what she thinks about the situation I described. In other words, if a parent asks a professional, such as a psychologist, a social worker or a teacher, to speak to their eight-year-old child who wants to put on makeup and high heels to go to school, could that parent be accused of inciting someone to provide their child with conversion therapy?

[English]

The Chair: Thank you.

Go ahead, Ms. Levman.

Ms. Nathalie Levman: Thank you, Madam Chair.

You referenced my stressing the statutory interpretation principle of narrow construction of criminal legislation, but it goes beyond that. It also has to be a purposive and contextual interpretation, and that means that courts will have to look at the overall objective of the legislation, and that is to stop practices that are designed to change identity to conform with societal norms.

In cases like the one that Monsieur Fortin is describing, those principles would all be at play.

Then I would just remind the committee that we can't look at the definition in a vacuum without also looking at the corresponding offences. I believe Monsieur Fortin was referring to the proposed offence that would be causing a child to undergo conversion therapy, so that activity would also have to be proven in a case such as the one that he raised.

Thank you.

The Chair: Thank you very much.

Just for members' clarity, the debate we're having right now is on what is amendment LIB-1, which is the new language that has been proposed to everybody by email today, and not on NDP-2.

If there's no opposition, NDP-2 can be withdrawn, just for procedural clarity. Is that okay with everybody?

Okay, I see consent.

(Amendment withdrawn)

The Chair: Madame Findlay, you are next.

Hon. Kerry-Lynne Findlay: Thank you.

I'm getting more confused as we're going along here. In answer to Monsieur Fortin's question on gender expression, I believe Ms. Levman answered based on gender identity. Those are two different things. I think this is the struggle here at the moment with LIB-1, as you were referring to it, Madam Chair.

Again, Ms. Levman used the expression “the definition” and yet confirmed to me that there is no definition in the Criminal Code of Canada. It's getting confusing to me because we're conflating two or three different issues. Right now, LIB-1 is before us, as I understand it, and that has to do with gender expression, something that is already spoken to in the Criminal Code and human rights legislation, but is not defined, as has been confirmed.

Also, in the earlier response from Ms. Levman to my question—this is what I think I was talking about, because time's going by here between my ability to follow up—she used a phrase along the lines of “ordinary use” or something like that. This is what the struggle is here. “Gender expression” is very broad. We heard that from testimony from several witnesses. As someone who has to vote on this, I myself am not clear on exactly how much that captures under criminal sanction now. When Ms. Levman spoke to “ordinary use”, I don't believe there is an ordinary use of that term. I'm open to hearing from others about it, including my friend Mr. Garrison, on what the ordinary use of the term is. From what I'm hearing from Monsieur Fortin, what I feel myself and what I've heard from witnesses, there is confusion about what that would encompass.

There has been a lot of reference here back to the testimony of Minister Lametti in the beginning of our deliberations here. As I pointed out before, one of the first things the minister said when he spoke to this bill was that there seems to be confusion about the scope of this bill. It is up to the government, with their own legislation, to remove that confusion. This is exactly why we're struggling with very broad definitions, for which now the proposal is to expand those definitions and make them even broader. To my mind, that makes them even more confusing and harder to pin down.

I don't know if Ms. Levman has more she wants to say to explain to me what she meant by “ordinary use”, but I'm open to hearing it.

• (1320)

The Chair: Ms. Levman, go ahead.

Ms. Nathalie Levman: I'm sorry. I'm not sure about the reference to “ordinary use”. I think that I have, though, acknowledged that gender expression is a broad term. It does have meaning in law. I believe I said that. It's used in other areas of law. I also referenced established rules of statutory interpretation—not just for “gender expression” but for terms like “practice” and other terms in the definition of conversion therapy in the bill—in terms of how courts will apply those principles to these terms, or that they will.

First and foremost, there's the narrow construction of criminal statutes or criminal legislation, and also the fact that legislation has to be interpreted purposively, which means consistent with its objectives. That's where my reference to “gender identity” came in, because the overall objective of the bill is to stop practices that are designed to change gender identity to cisgender. We know that those types of interventions often involve efforts to reduce or repress gender expression. As I explained at the beginning of my remarks, it's my understanding that at least one of the main intentions behind including this amendment is to address certain evidentiary issues that are of concern.

Thank you.

The Chair: Thank you very much.

Mr. Moore, I have you next.

Go ahead, sir.

Hon. Rob Moore: Thank you, Madam Chair.

I have to comment on one thing. Mr. Maloney said that I inferred that something was “sinister”. I guess those are his words, not

mine. I did not say that anything Mr. Virani did was sinister, and I don't think it is.

What I'm saying is out of respect for everybody. The government knew last night that this amendment was going to be table-dropped, because they included a change to the preamble. That was at 4:30, so there is no doubt.... I don't think anyone could argue—I hope—with the fact that we are dealing with something that has been table-dropped. It is completely unfair to your colleagues to expect us to be ready on the spot to deal with what has been table-dropped. This is why we have deadlines for submitting amendments to legislation.

That was his language; it's certainly not mine. I think there is absolutely no doubt, however, that what the government has done here today has caused a lot of problems with our ability to do clause-by-clause. There's no doubt about that, because members did not have the benefit of having this even one day in advance, let alone a few days in advance, as we had agreed to.

I think it's very clear that the government has now table-dropped an amendment to this legislation that, in the department's own words, greatly broadens the definition, because “gender expression” is a broad term. It is also, on the departmental expert testimony, an undefined term in the Criminal Code. We have a term that's undefined in the Criminal Code and that broadens the definition.

Not to belabour it, but there was reference to the charter statement on this legislation. The charter statement that I saw was based on Bill C-6 as presented by the minister to our committee. The new change that the government has table-dropped is an expansion of Bill C-6, and if there has been an updated charter statement, I haven't had the benefit of seeing it. It could be that it's on the departmental website; I don't know.

My question to the department is this. We've seen the charter statement—and the minister spoke to this in his testimony—on what was Bill C-6, the original version. Is there an updated charter statement with this amendment?

• (1325)

The Chair: Ms. Levman, go ahead.

Ms. Nathalie Levman: Thank you.

No, we don't tend to update charter statements. My understanding is that it still applies to what you're looking at today. All of the charter considerations are outlined there; they all remain the same considerations.

Thank you.

The Chair: Thank you.

I'll call the question on amendment LIB-1.

For members' clarity, the vote on LIB-1 will apply to the vote on G-1, because they are consequential to one another. Also, if LIB-1 is adopted, NDP-3 and CPC-1 cannot be moved.

(Amendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

The Chair: LIB-1 and G-1 are adopted, and consequently NDP-3—

[*Translation*]

Mr. Rhéal Fortin: My apologies, Madam Chair. I would like to get a clarification.

Amendment LIB-1 came from Mr. Virani. However, you also mentioned amendment G-1. What are you talking about?

[*English*]

The Chair: G-1 is the amendment at the very last page of your package, which refers to just adding that same language that we've been debating to the preamble.

[*Translation*]

Mr. Rhéal Fortin: Okay. So this amendment has also been rejected, right?

[*English*]

The Chair: No, we just adopted LIB-1 and G-1. We just voted. The vote was counted and....

[*Translation*]

Mr. Rhéal Fortin: Okay.

[*English*]

The Chair: Is that okay?

[*Translation*]

Mr. Rhéal Fortin: Yes. Thank you.

[*English*]

The Chair: Okay. Again, to clarify, NDP-3 cannot be moved and CPC-1 cannot be moved, because we've adopted LIB-1.

We'll now go to NDP-4.

Mr. Garrison, go ahead.

Mr. Randall Garrison: Thank you very much, Madam Chair.

The original bill has a “for greater certainty” clause in clause 5, which attempts to say what is not covered in this ban on conversion therapy. It has two paragraphs, (a) and (b). We heard testimony and concerns from members about the vagueness of those two provisions in the “for greater certainty” clause.

So what I've done is draft an amendment that more parallels clinical practice than what was already in the bill. What the amendment would say is that the ban doesn't cover things that relate “to the exploration and development of an integrated personal identity without favouring any particular sexual orientation, gender identity or gender expression.” In other words, any good-faith attempts to assist a person with any questions about their identity or the development of their identity would not be covered by this bill, and it is neutral. The presumption of this amendment is that what we're defending here is those good-faith efforts that are not, in fact, aimed at changing or denigrating any particular orientation, identity or form of expression.

I think it's an important amendment. I think it matches the testimony that we heard from many witnesses, and I hope it will receive broad support of the committee.

Thank you.

• (1330)

The Chair: Thank you, Mr. Garrison.

Mr. Kelloway, go ahead.

Mr. Mike Kelloway: I'll be supporting this amendment. I thank MP Garrison for putting it forward.

This amendment could bring greater clarity to the types of therapies that do not fall within the bill's “conversion therapy” definition. In particular, the amendment clarifies that legitimate therapies for those seeking help to explore or develop their own identity do not favour one particular identity over another, which is a really key piece to this amendment. I thank the member for putting it forward and I'll be supporting it.

Thank you.

The Chair: Thank you, Mr. Kelloway.

I don't see any more hands raised, so I'll call the question on NDP-4.

(Amendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

The Chair: NDP-4 carries.

We'll now go to CPC-2.

Mr. Moore, I give you the floor.

Hon. Rob Moore: Thank you, Madam Chair.

As you recall, in his introduction of this bill, the minister outlined the goal of the bill and what it was intended to capture. Then when we looked at the clear language—the plain reading of the bill—and we saw that the definition was certainly problematic. We heard from witness testimony how the definition could capture good-faith discussions that shouldn't be captured under the Criminal Code sanctions in this bill.

This amendment takes language directly from the justice department website.

Under the definition of conversion therapy, the minister has a couple of “for greater certainty” clauses. The two that he has are these:

For greater certainty, this definition does not include a practice, treatment or service that relates

(a) to a person's gender transition; or

(b) to a person's exploration of their identity or to its development.

This amendment would include the language from the website that deals with conversations on “sexual orientation, sexual feelings or gender identity, such as where teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professionals, friends or family members provide support to persons struggling with their sexual orientation, sexual feelings or gender identity.”

The language may not be perfect, but it is from the government's site. I do think that it addresses some of the concerns we've heard from witnesses who are concerned about how broad the definition is. Now the definition is even broader, thanks to the amendment that was just passed. It's all the more important, in light of the expansion to the definition that was table-dropped on us, which was just passed, that we explicitly say what is not included.

The minister has seen fit to include two lines for greater certainty. This would add a third.

Thank you.

• (1335)

The Chair: Thank you, Mr. Moore.

Mr. Maloney, go ahead.

Mr. James Maloney: Thank you, Madam Chair.

Thank you, Mr. Moore, for proposing this amendment and for your comments.

I'm concerned that this amendment would defeat the purpose of the bill. Even though this is criminal legislation, I'm not going to get into motive and ascribing intent here, Mr. Moore, as we've discussed already. Mere expressions of personal points of view do not amount to a practice, service or treatment and they're not caught by the definition.

I've made my views well known throughout the discussion at this committee. As I said to Cardinal Collins the other day, I think the conversations in the confessional are not in any way going to be impeded going forward by this legislation, nor are conversations with parents or counsellors, so I'm going to oppose this amendment.

The second point is that the "for greater certainty" clause provides examples of what definitions already exist. Listing a group of situations that might be captured here.... We've had a discussion—and thank you, Ms. Levman, for talking to us about statutory interpretation. I remember arguing statutory interpretation cases in my younger days as a lawyer, and I avoided it later purposely.

Judges do their very best to interpret legislation based on its intent. The more specific you get, the more exclusive it gets, ironically. By listing all of these additional situations, you're actually excluding others. For that reason, it creates more confusion and undermines the purpose of the bill.

Thank you, Madam Chair.

The Chair: Thank you, Mr. Maloney.

I have Mr. Cooper next.

Go ahead, sir.

Mr. Michael Cooper: Thank you, Madam Chair.

I wish to speak in support of this amendment. I believe the amendment is necessary, having regard for the fact that the definition provided for is incredibly expansive in nature. I am concerned that it could cover situations involving parents, counsellors, faith leaders and others. We heard significant concern expressed in that regard.

The minister points to the two exemptions. One is with respect "to a person's gender transition". Well, I would submit that this is quite narrow in scope in terms of what would be covered pursuant to that exemption. The second is with respect "to a person's exploration of their identity or to its development". That is an incredibly vague term.

I think what is required is clarity. It's nice and well for the minister to be confident that it's not going to cover these types of good-faith conversations. It's nice to post a reassurance on the Department of Justice's website, but what matters is not the minister's reassurance or the reassurances provided on the department's website. What matters is what is in the legislation.

I believe clarity is required that is currently lacking, and I therefore will be supporting this important amendment.

The Chair: Thank you, Mr. Cooper.

Madame Findlay is next, and then Mr. Garrison.

Hon. Kerry-Lynne Findlay: Thank you, Madam Chair.

I want to speak in favour of this amendment. We heard a lot of testimony and we've had submissions—a few I've been able to read at least—before this committee speaking to the need for some comfort around understanding just what is captured in these amendments to the Criminal Code of Canada that bear criminal sanction along with them.

We've heard a lot of people here today—witnesses from the Department of Justice, as well as members of the committee—speak to what a judge does and doesn't do in interpreting a statute. I've never been appointed as a judge, but I was an administrative law judge for five years on the Canadian Human Rights Tribunal. In that capacity, knowing that my decisions were appealable to the courts—and they were appealed, in fact, in some instances—I was always very mindful, in taking in evidence, of what I was and was not able to look at.

In administrative law, you actually can take into account and weigh evidence in a bit broader context than perhaps you can in a regular court of law, certainly a criminal court of law. Lists are very helpful for a judge in interpreting. They need not be exhaustive. That's why you see language, as in this amendment, saying "such as". It's not meant to be an exhaustive list.

I heard the minister, and I believe Mr. Virani and others, say that lists aren't very good. Lists are helpful, in fact. Lists are helpful in interpretation. We've heard a lot of testimony here today about how intention is something that judges do look at in deciding these cases.

We've heard a lot about how it's on the website or someone can look it up on the website. As far as I know, websites are not considered authoritative in courts of law. I've never actually heard of a judge referring to a website in interpreting. That's not where you go.

Occasionally, I have seen decisions where a judge has looked to statements of a minister in and around the passing of legislation. Again, however, it's not authoritative. Why? Ministers come and go—with all due respect to those who hold those offices. When we're dealing with putting forward legislation, particularly that which carries with it criminal sanction, it is essential that the wording be specific enough and clearly understood enough that any future minister and any future judge, given the task to interpret that legislation or rely on the legislation, know what it is they're looking at and relying on.

Frankly, I don't understand why the government is not open to clarifying this legislation, the broad intent of which is clear, but the specifics are lacking in terms of definitions and language. That would give comfort to those who are not seeking to do anything coercive, but who are seeking only to help and support.

We've heard testimony from witnesses over the course of the discussion on Bill C-6 who said that this kind of counselling—whether it be from faith leaders or from people in the general counselling fields—was very helpful to them in just trying to get to where they needed to get in terms of their gender identity and/or gender expression. I would hate to see a situation where we pass legislation with criminal sanction attached to it that would put a chill on the kinds of supports and the kinds of taking of confidences that are necessary to help people as they struggle with the issues we're dealing with here.

• (1340)

My colleague Mr. Maloney spoke of the cardinal. He has a different interpretation than the cardinal, who said he spoke for literally millions of Catholics in the GTA, as to what is meant here. It seems to me that when we have a witness—and I will say that I am not Catholic—whose judgment, guidance and counsel are sought by literally millions of Canadians, we should be cautious and we should take into account that further definition and further help in interpretation—for future judicial comment and future judicial decisions—is the way we should go. We should not preclude people who are seeking our help from understanding this legislation.

Let's just take faith leaders for a moment. We've heard from faith leaders and have had submissions from faith leaders of almost every faith I can think of who have said they're against coercive conversion therapy and against the idea of trying to force anyone one way or the other, but that they need clarity. They need to understand that the conversations they may have that are supporting someone's own journey—supporting someone who, for any number of reasons, may need clarification within their own minds and within their own spirits in terms of where they're going in their life—would not be somehow shut down.

I'm asking people to really think on this. This is not in any way trying to derail the overall intent of this bill. It's not meant in any way to restrict the overall intent. What it's trying to do is give a level of comfort to those who find themselves in these very sensitive conversations—usually confidential conversations that they have in the course of their chosen field, be it professional or faith, or even in terms of family or friendship—that those will not be restricted in what I believe would be an unintended way.

Let's be clear. In this amendment, we've taken the wording directly from the government's own website. I have to assume that the government of the day believes in this wording, or they wouldn't have put it up on their website. As I said, a judge interpreting this in the future, or the ordinary Canadian public trying to understand what is permissible and what is not, is not going to go to a website. They are going to look at the legislation.

That's our job here today, and I hope that we will fulfill it by allowing this amendment to go through, which in no way subverts the overall intent of this bill.

Thank you.

• (1345)

The Chair: Thank you, Madame Findlay.

Mr. Garrison, I have you next on the list.

Go ahead.

Mr. Randall Garrison: Thank you very much, Madam Chair.

I do not doubt the good intentions of Mr. Moore in proposing this amendment, but I have to say that I just do not see that anything that's listed here is covered by this bill.

The second thing I would say about this one is that there is a principle of statutory interpretation that's colloquially known as “inclusion implies exclusion”, and that's the danger of any list being put in, because those not listed, it seems to imply, would not enjoy the same protections as those listed.

For that reason, I would oppose this amendment.

However, I'd like a ruling, Madam Chair, on whether this is in order, given the fact that we have passed the previous amendment, NDP-4, which has amended this section. There is no longer an (a) and a (b) to which you could add a (c) in this bill, so I wonder if this amendment, given that we previously adopted an amendment that has altered this section, is actually in order.

Thank you.

The Chair: That is an excellent question, Mr. Garrison.

I'll turn to our legislative clerk to clarify.

The Clerk: Thank you, Madam Chair.

We have noticed that also, and if it is the wish of the committee to adopt this motion, we would recommend a little something just to adjust to make the link between this amendment and the rest of the text.

I can turn to my colleague, who has prepared something, if the committee wants to adopt this amendment.

• (1350)

Mr. Randall Garrison: I have a point of order, Madam Chair.

The Chair: Yes, Mr. Garrison, go ahead on your point of order.

Mr. Randall Garrison: My understanding of that ruling is that this amendment as it stands is not in order. If it requires amendment, it's clearly not in order.

I would ask the chair to rule the amendment out of order, given the previous amendment that was adopted.

[*Translation*]

Mr. Rhéal Fortin: Madam Chair, I would like to get a clarification.

[*English*]

The Chair: Monsieur Fortin, go ahead.

[*Translation*]

Mr. Rhéal Fortin: I am surprised by Mr. Garrison's remarks. I probably missed something.

Amendment LIB-1, which we just adopted ends with “this definition does not include” and does not result in the removal of subsections (a) and (b). As far as I understand, they are still there, but I may be mistaken.

Can you explain to me why subsections (a) and (b) would no longer be there?

[*English*]

The Chair: Thank you, Monsieur Fortin.

The conflict is with NDP-4 and CPC-2. You can take a look at NDP-4.

In the meantime, I'll pass it over to our legislative clerk to explain.

Mr. Jacques Maziade: Thank you, Madam Chair.

The solution to the amendment is that it needs a subamendment, as I said, just to add a few words to make sure there is a link between the main text and the amendment. If nobody wants to move the subamendment, it means the amendment is out of order.

It's the chair who decides that, by the way.

The Chair: I will give the opportunity to Mr. Moore or to any of his colleagues to see if they would like to move that subamendment.

Mr. Michael Cooper: I'll move the subamendment.

The Chair: Mr. Cooper, you'd like to move the subamendment.

Mr. Michael Cooper: What I would move, to address this issue, is to incorporate the language “for greater certainty, this definition does not include”. That would, if passed, make our main amendment admissible.

The Chair: The question is on the subamendment at this time.

(Subamendment negatived: nays 6; yeas 5 [*See Minutes of Proceedings*])

The Chair: I don't see any more hands raised, so I'll call the question on CPC-2 and—

Mr. Randall Garrison: On a point of order, Madam Chair, we heard clearly from the clerk that if the subamendment was defeated, this would be out of order. There is no need for a vote.

The Chair: It is out of order. My apologies. Thank you for clarifying that, Mr. Garrison.

We shall now move on to NDP-6.

Mr. Garrison, I believe you want to withdraw that.

Mr. Randall Garrison: I withdraw the amendment.

The Chair: Thank you.

We'll go on to NDP-7.

Mr. Garrison, go ahead.

• (1355)

Mr. Randall Garrison: Thank you very much, Madam Chair.

The purpose of NDP-7 is quite simple. It's to replace the wording “against the person's will”, which is in the current bill, with “without the person's consent”.

In the Criminal Code, “consent” is a much more well-established concept. We know the meaning of it and we know how it's applied. I personally am not familiar with any other part of the Criminal Code that uses “against the person's will”. This really makes the language much more standard in terms of what already exists in the Criminal Code. It would allow specifying in the future—I have amendment NDP-8—what consent is, but even without further amendment, it would place this clearly in an established realm of law.

Thank you.

The Chair: Thanks, Mr. Garrison.

Go ahead, Mr. Virani.

Mr. Arif Virani: Thank you very much, Madam Chair.

I think it is important to make sure that we have consistent language. We've had this discussion already about ensuring consistency between the code and other statutes. I know, for example, that “without consent” is the language that's used in the Criminal Code with respect to sexual assault provisions. I think this is an important amendment that clarifies and facilitates interpretation, which we've heard a great deal about today from various interventions.

On that basis, I think it makes sense to clarify that the language being employed in this section of the bill reflects a lack of consent, as opposed to being against someone's will. On that basis, I will be supporting this amendment.

Thank you.

The Chair: Thank you, Mr. Virani.

I'll call the question on NDP-7.

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

The Chair: We'll now go to NDP-8.

Go ahead, Mr. Garrison.

Mr. Randall Garrison: Thank you very much.

I won't take much time on this.

What NDP-8 does is attempt to define much more specifically what consent means in the construct of conversion therapy. We heard many concerns about whether one can, in fact, consent to a practice that is fraudulent and harmful.

Thank you.

The Chair: Thank you.

Go ahead, Mr. Maloney.

Mr. James Maloney: Thanks, Madam Chair.

This amendment would list circumstances in which consent is not obtained in law for the purposes of the new offence that would prohibit causing a person to undergo conversion therapy without their consent, as was proposed by NDP-7. The listed circumstances in which consent would not be obtained in law are informed by the Criminal Code sexual assault provisions that vitiated consent in similar circumstances. However, the additional circumstances that are broader in scope are also listed.

Currently, the bill does not prevent adults from seeking out conversion therapy where such services are provided free of charge, because the evidence shows that some adults have sought out conversion therapy and reported positive results. Because this amendment would upset the balance that the bill seeks to achieve, I am not going to support it, Madam Chair.

Thank you.

The Chair: Thank you, Mr. Maloney.

I'll call the question on NDP-8.

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

The Chair: As I indicated earlier, NDP-9 and NDP-10 were consequential to NDP-1, so we have already dealt with those.

The next amendment before us is NDP-11.

Go ahead, Mr. Garrison.

• (1400)

Mr. Randall Garrison: Thank you, Madam Chair.

Just briefly, it's a very simple change that adds the words "promotes or" to the concept of advertising in order to capture unpaid forms of promotion of conversion therapy, as well as paid and unpaid advertising. It's a fairly simple amendment. It tries to capture what actually goes on in the shadows around conversion therapy. It would prohibit promotion as well as advertising.

Thank you.

The Chair: Thanks, Mr. Garrison.

I see that Mr. Virani's hand is raised.

Mr. Arif Virani: I'm sorry. My hand was raised from earlier.

I believe it's my colleague Mr. Sangha.

The Chair: Go ahead, Mr. Sangha.

Mr. Ramesh Sangha (Brampton Centre, Lib.): Thank you, Madam Chair.

The NDP-11 amendment proposes to add the word "promotes" so that it says, "promotes or advertises an offer to provide conversion therapy". Mr. Garrison has already explained the terms and that promoting or advertising the provision of conversion therapy

would be an offence. Accordingly, this amendment would ensure that the advertising offence protects against discriminatory public messaging as comprehensively as possible.

I therefore support this amendment.

Thank you, Madam Chair.

The Chair: Thank you, Mr. Sangha.

I'm not seeing any hands. We'll call the question on NDP-11.

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

(Clause 5 as amended agreed to: yeas 6; nays 0)

(Clause 6 agreed to: yeas 7; nays 0)

The Chair: We will now move on to the preamble and PV-3.

I do have a ruling on PV-3. It is inadmissible, as no amendments to the bill to justify amending the preamble have been adopted. I will reference *House of Commons Procedure and Practice*, third edition, page 774, which states:

In the case of a bill that has been referred to a 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 its purpose is to clarify it or to ensure the uniformity of the English and French versions.

In my opinion, the proposed amendment is inadmissible.

With that, and having already dealt with G-1, I call the question on the preamble.

Shall the preamble carry?

(Preamble agreed to: yeas 7; nays 0)

• (1405)

The Chair: Shall the title carry?

(Title agreed to on division)

The Chair: Shall the bill as amended carry?

I see that members would like a recorded vote.

(Bill C-6 as amended agreed to: yeas 7; nays 0)

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

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

Some hon. members: On division.

The Chair: With that, having gone through all of Bill C-6 clause by clause, thank you, members, for a wonderful session. Thank you for all your hard work, your passion and your dedication.

A special thank you goes to all of our support teams, the interpretation, the analysts and the IT teams. You guys have really kept us afloat. Our clerk and our legislative clerks—thank you all.

I wish you all a merry Christmas, happy Hanukkah, happy holidays and all the best in the new year.

The meeting is adjourned.

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